



LOS ANGELES FIRE DEPARTMENT

RALPH M. TERRAZAS
FIRE CHIEF

September 28, 2016

BOARD OF FIRE COMMISSIONERS
FILE NO. 16-113

TO: Board of Fire Commissioners

FROM:  Ralph M. Terrazas, Fire Chief

SUBJECT: RESPONSE TO INDEPENDENT ASSESSOR'S STATISTICAL
ANALYSIS OF DIRECTED AND OPTED BOARDS OF RIGHTS
2009-2014

FINAL ACTION:	<input type="checkbox"/> Approved	<input type="checkbox"/> Approved w/Corrections	<input type="checkbox"/> Withdrawn
	<input type="checkbox"/> Denied	<input type="checkbox"/> Received & Filed	<input type="checkbox"/> Other

SUMMARY

In her report issued February 1, 2016, the Independent Assessor reviewed cases entered into the Complaint Tracking System (CTS) between January 1, 2009, and December 31, 2014. This audit included cases in which charges that were filed with the Board of Fire Commissioners resulted in a suspension, and either the Department or the suspended member requested a hearing before a Board of Rights (BOR). The purpose of the report was to "provide a statistical overview of discipline in the Fire Department for the last 5 ½ years, specifically the cases awaiting a Board of Rights."¹

The audit accurately concluded that the number of requests for Boards of Rights had increased over time, while the number of Boards of Rights convened had decreased. The Department recognizes that this situation does not serve either the affected members or the Department. Therefore, the Department is addressing the timelines to resolve those cases pending BORs to ensure they are completed in an efficient and timely manner. However, the Department does not concur with the report's claim that "since 2012, the Department has almost completely stopped conducting BORs (both directed and opted)."² In fact, over the time period covered by the report, January 2009 through June 30, 2015, the Department convened 28 BORs. Of those 28 Boards, five were convened since 2012.

Moreover, the report recommends that the Department follow the procedures of the City Charter related to suspensions and opted Boards of Rights. The implication that the Department has routinely not been abiding by Charter rules is inaccurate. The

¹ Independent Assessor's report, p. 1.
² Independent Assessor's report, p. 10.

Department has fully complied with Section 1060 of the City Charter for all the discipline matters adjudicated during the time period in question. Additionally, the Department remains committed to completing thorough and prompt investigations including the adjudication of discipline cases. It is anticipated that the recent shift towards a new discipline model that will provide more educational opportunities and support for our members will result in alternative case resolutions and substantially shorter timeframes for cases awaiting BORs in the future.

RECOMMENDATION

That the Board:
Receive and file this report.

FISCAL IMPACT

The Department does not anticipate any fiscal impact at this time.

DISCUSSION

After disciplinary charges are served on a member and filed with the Board of Fire Commissioners, the member can be suspended for up to 30 days pursuant to Section 1060 of the City Charter without a hearing, unless the member timely files a request for a Board of Rights with the Fire Chief.³ As noted in the Independent Assessor's report, cases in which a member is facing discharge or a suspension of more than 30 days will be directed to a BOR automatically. A BOR is a panel of Chief Officers selected pursuant to Section 1060(g) to consider the evidence presented during the hearing to establish whether the member is guilty or not guilty of the disciplinary charges filed with the Commission.

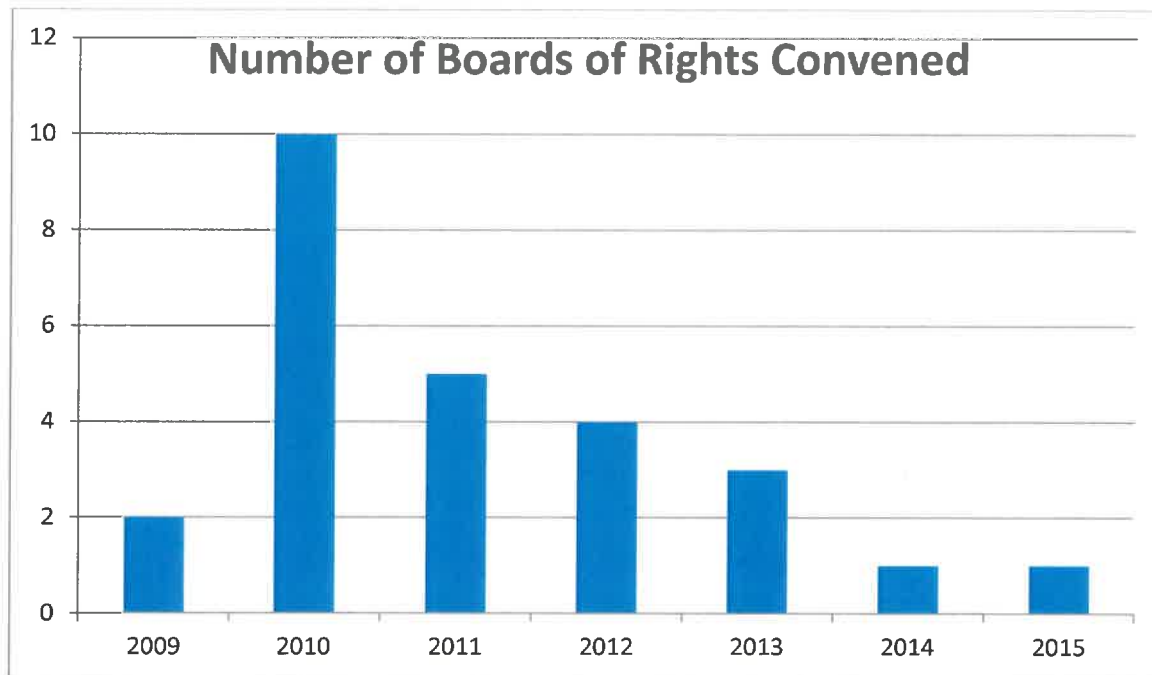
Since 2009, the number of member requested BORs has increased, while the actual number of Boards convened has decreased. In 2009, the Department convened three BOR hearings. In 2010, the Department convened ten BOR hearings. In 2011, the Department convened five BOR hearings. In 2012, the Department convened three Board of Rights hearings.⁴ In 2013, the Department convened three Board of Rights hearings. In 2014, the Department convened one Board of Rights hearing. In the first half of 2015, the Department convened one Board of Rights hearing.⁵

³ City Charter, Sections 1060(b)(2), (e) and (h).

⁴ In a fourth case, the Board was selected, and subsequently, the member agreed to take the discipline imposed.

⁵ These statistics include all Boards convened in the time period, not only cases entered into the CTS system during the time period. Since the investigation and adjudication period can take up to one year, several cases initiated in 2008 resulted in Boards of Rights convened in 2009 and 2010. See the table of cases where Boards of Rights were convened below.

As noted in the Independent Assessor's report, the decrease in the number of Boards convened, combined with the increase in the number of Boards requested, resulted in a backlog of 56⁶ cases awaiting the selection of Boards of Rights as of June 30, 2015.



This trend resulted in more cases taking longer to resolve over time, as identified by the Independent Assessor. Since June 30, 2015, the Department has implemented a series of initiatives to ensure that adjudicated cases are managed efficiently toward final resolution. These innovations have already worked to resolve most of the 55 backlogged cases which were the subject of the audit. Cases which have been adjudicated since June 30, 2015, are actively being processed to ensure swift resolution. The Department does not anticipate facing any future backlog of cases awaiting Boards of Rights.

The Department does not agree with the suggestion from the Independent Assessor's report that the backlog of cases awaiting the selection of a Board of Rights resulted from the Department's failure to comply with Section 1060 of the City Charter. The Department has fully complied with Section 1060 in handling all disciplinary matters. The accumulation of cases awaiting the selection of Boards did not result from violations of the City Charter.

⁶ The actual number of matters awaiting final resolution (and selection of a Board of Rights) as of June 30, 2015, was 55, since the Department had convened and conducted a hearing before a Board of Rights in one Department directed case filed in 2013, during the time period from April through June 2015. This Board is not captured in the figures contained in the Independent Assessor's Report. See Independent Assessor's Report, p. 8, where it references only one Department directed Board had been convened for cases filed in 2013. In fact, two Department directed Boards were convened for cases filed in 2013, one in November 2014 and one in 2015.

The City Charter does not prescribe a deadline for the selection of a Board of Rights. The process as detailed in subsections (c) through (g) of Section 1060 for a member to appeal a discipline determination is as follows:

1. The Department serves the member with the order of relief from duty or suspension which contains a statement of the charges, and then files the charges with the Board of Fire Commissioners (Sections 1060(c) and (d));
2. The member files a request for a hearing before a Board of Rights within five days of personal service of the charges, or within ten days, if the charges were served by certified mail (Section 1060(e));
3. To select a Board of Rights, the member pulls six names from the potential pool of chiefs, and selects three of those chiefs to constitute the Board (Section 1060(g));
4. The Fire Chief sets the time and place for the Board of Rights to convene not less than five or more than ten days after the selection of the Board of Rights by the parties (Section 1060(f)); and
5. The Board may continue the hearing after it is convened to a specific date (Section 1060(f)).

Section 1060 details the steps necessary for the member to preserve the member's right to appeal. The Section does not set forth a particular timeline for the selection of a Board of Rights. Section 1060(g) provides "[u]pon the filing of the request for hearing before a Board of Rights, the accused shall draw six cards from a box containing the names of all officers who are qualified to be members of the board. . ." This provision does not create a deadline for the selection of a Board. The Department sought City Attorney opinion in this regard, and the opinion concurs with the Department's discretionary practice to determine when Board selections shall be made.

After the filing of the request for a Board of Rights hearing, there is a window of opportunity to resolve the case prior to selection of a Board of Rights. The selection process itself is onerous and charged with ritual. The practice is for the member and the Department representative to meet with the Sergeant of Arms, who solemnly guides the member through the process of selecting the Board. The schedules of the chosen Board members have to be consulted, and the first meeting of the Board has to be scheduled to take place within the five to ten day window set forth in Section 1060(f).

Moreover, once a Board of Rights is convened, the three members of that Board are ineligible to sit on another Board while the initial Board is seated. Because of the number of chief officers, the Department can only seat up to three Boards simultaneously without jeopardizing the system. The selection process itself places a substantial burden on the Department. The selection of the Board should only take place when other alternatives for resolution are exhausted.

As demonstrated by the vast majority of the backlogged cases which have been resolved since June 30, 2015, the selection of a Board of Rights is not always necessary to achieve a suitable resolution. While the Department concurs with the Assessor's finding that some cases appear to have been unnecessarily delayed, the immediate selection of a Board of Rights for all cases in which a member opted for a BOR would have needlessly depleted Department resources.

In addition, the Department does not agree with the suggestion that the Fire Chief should require a member seeking to exercise his/her right to due process, to be placed on temporary leave without pay pending the Board of Rights hearing.⁷ First off, the Charter explicitly provides that after a member has preserved the right to appeal by timely requesting a hearing before a Board of Rights, the Fire Chief may "cancel [any] temporary relief from duty, or following such relief from duty, restore the member to duty with or without restrictions pending a hearing before a Board of Rights." Section 1060(b)(3). The practice of the Department pursuant to Section 1060(b)(3) has been to rescind any discipline pending the decision of the Board of Rights, once a member has filed a timely request for hearing.

The Department cannot unilaterally change the practice of rescinding discipline pending hearing for members who have reserved their rights to a Board. This would effectively abrogate the members' right to due process. The current practice to detail only those members who face serious charges to the Professional Standards Division is quite costly. This includes individuals who might pose a public protection threat, but it is necessary to ensure that the Department upholds its primary mission to provide exceptional Fire Protection and Emergency Medical Services to the people of Los Angeles. There is no basis under the City Charter or past practice to place members facing discipline who exercise their due process right to appeal on temporary leave without pay.

The Department does not support an effort to change the long-standing practice of rescinding proposed discipline pending the resolution of a Board of Rights, when the member has timely requested a hearing.

CONCLUSION

The Department recognizes that discipline cases should be resolved efficiently, and has taken steps to ensure that all cases pending Boards of Rights hearings are properly addressed. Most of the cases which were backlogged as of June 30, 2015 have been successfully resolved. The recent initiatives to educate members as part of the discipline model have worked. The Department will continue to comply with the City Charter with respect to the process for selecting Boards of Rights, and rescinding discipline pending the decision of a Board of Rights, where a member timely requests a Board.

⁷ Independent Assessor's report, p. 13.

The Department has made great strides to reduce the number of matters awaiting the selection of a Board of Rights, and the time period to fully resolve cases where discipline was imposed.

Department Response prepared by Karen Richter, Battalion Chief, Acting Commander, Professional Standards Division and Erin Joyce, Chief Special Investigator, Professional Standards Division.