

January 17, 2017

LOS ANGELES FIRE DEPARTMENT



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FIRE CHIEF

Revised/Corrected

January 10, 2017

BOARD OF FIRE COMMISSIONERS
FILE NO. 17-004

TO: Board of Fire Commissioners

FROM: *RMT* Ralph M. Terrazas, Fire Chief

SUBJECT: PROFESSIONAL STANDARDS DIVISION STATUS REPORT ON
RESPONSE TO INDEPENDENT ASSESSOR'S OUT OF STATUTE
AUDIT

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 Withdrawn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 May 17, 2016, the Independent Assessor made six recommendations for improvements of the discipline system:

1. To create a system of accountability including timelines for investigations, enhancing the notification system and using chronological logs;
2. To create a training curriculum and to ensure all members who conduct investigations are trained;
3. To develop a formal policy outlining the formal process for the alternative process;
4. To create written procedures for investigating complaints against the Fire Chief;
5. The installation of a new case management system and development of uniform procedures for entries in CTS; and
6. To develop a mediation pilot program.

The Department concurred with the six recommendations, as set forth in the Board Report presented on August 2, 2016. In August 2016, the Department submitted its first action plan for implementation of the six recommendations.

Attached is the Department's updated action plan for the implementation of the audit recommendations. The Department has adopted benchmarks for disciplinary investigations (Recommendation No. 1(a)) and formalized the Alternative Investigative Process (Recommendation No. 3). The Department is working diligently on all six of the Assessor's recommendations.

RECOMMENDATION

That the Board:

Receive and approve the report.

FISCAL IMPACT

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

DISCUSSION

The action plan provides the framework for what the Department still needs to accomplish to comply with the Assessor's recommendations.

The Department has adopted benchmarks for case handling and formalized the Alternative Investigative Process, as described below.

Benchmarks for Case Handling

One of the recommendations of the Independent Assessor was for the Department to adopt a system of accountability, including benchmarks for investigations.

Previously, in the Department's 2013 response to the Independent Assessor's 2010 assessment of the disciplinary process, the Department had identified several benchmarks:

1. The complainant intake interview should be conducted within the first two weeks of the assignment of the case to the investigator;
2. The completed investigation of complex investigations should be submitted for adjudication by the tenth month; and
3. The Department should complete the disciplinary process within 30 days of the member's service of the proposed penalty.

At the time, the Department was not routinely meeting the milestones. In fact, as late as October 2015, over 20% of investigations were not completed within one year of the statute of limitations period.

Since then, zero cases investigated by the Professional Standards Division (PSD) in the last six months have gone out of statute, and very few field investigations failed to be completed by the deadline. To ensure this positive trend continues, the Department has

committed to adopting benchmarks to assess how investigations are being handled by PSD.

The Department developed the following measurable benchmarks:

ACTION	PROPOSED COMPLETION
PSD command assigns case to investigators	Within five to ten business days from the date the complaint was entered into the Complaint Tracking System (CTS)
Investigators forward FG-53 for approval to PSD command staff requesting investigative authority	Within two to five business days of case assignment
Investigators forward Investigation Notifications; gather supporting evidence for Intake (including all computer generated evidence and surveillance recordings available), conduct Intake interviews, identify first round of interviews needed and send out interview notifications, and complete first round of investigative interviews	Within four months from the date the complaint was entered into CTS
Investigators identify any necessary follow up interviews, send interview notifications and conduct all follow up interviews	Within six months from the date the complaint was entered into CTS
Investigators submit investigative report draft to the Chief Special Investigator	Within eight months from the date the complaint was entered into CTS, and no later than nine months prior to statute of limitations

These five benchmarks in the life of an investigation are critical for a thorough and timely investigation. By pushing back the target completion date for the investigation to eight to nine months after the complaint was entered into the CTS, the Department is afforded sufficient time to properly review the investigation reports and evidence, and to conduct the adjudication and *Skelly* processes.

There are serious limitations with the current CTS, which will make tracking the Department's performance against these five benchmarks challenging. The PSD is seeking a new case management system, as recommended by the Independent Assessor, which will allow for more sophisticated analytics. However, since there are only five benchmarks to track, the Department will work out a system to determine if the Department is meeting the benchmarks on cases going forward.

The Department has adopted benchmarks to track milestones in the investigation process. The Department expects that these benchmarks will make it easier to

evaluate how disciplinary investigations are progressing to ensure timely and thorough investigation of all disciplinary complaints.

Alternative Investigative Process

The Department has developed a formal procedure for the Alternative Investigative Process, described below. The Alternative Investigative Process is employed when complaints are received by the Department alleging misconduct by PSD or members assigned to carry out the functions of the Division, or where investigations may cause a conflict of interest for PSD.

The Alternative Investigative Process that is currently in place provides the Department with an internal procedure to maintain unbiased, objective and transparent investigations.

1. When is the Alternative Investigative Process triggered?

Normally, the PSD Commander will determine the need for the Alternative Investigative Process as complaints are received by the Department. The PSD Commander shall consider the following conditions to make the determination:

1. Whether the complaint implicates the conduct of PSD or members assigned to carry out the functions of PSD, and if so, whether the conduct, if true, would constitute misconduct.
2. Whether investigation of the complaint by PSD would create a conflict of interest, or the appearance of a conflict of interest, which would potentially impact the Division's ability to be impartial.

If there is sufficient cause to implement the procedure, the PSD Commander shall notify the Fire Chief.

Upon concurrence of the Fire Chief, the appropriate Deputy Chief will be assigned to manage the investigation. When assigning the Deputy Chief to manage the investigation, consideration will be taken of any potential conflicts of interest and the complainant's chain of command.

2. What is the Notification Procedure for Investigations Assigned to the Alternative Investigative Process?

When an investigation is assigned to the Alternative Investigative Process, the assigned Deputy Chief will receive the complaint as it was initially received by the Department. The Command Staff of Administrative Operations will provide a list of qualified investigators¹ and a list of qualified members to complete the adjudication.

¹ The list of qualified investigators will list all Captains and Chief Officers with prior PSD investigation experience.

The Deputy Chief will assume the role normally fulfilled by the PSD Commander. The Deputy Chief may serve as the *Skelly* Hearing Officer and make any proposal for disciplinary action to the Fire Chief.

The Independent Assessor will be notified of the investigation upon its completion, since the Independent Assessor's role is limited to reviewing the completed investigation file. After the completion of the investigation, the Independent Assessor shall be provided full access to the investigation file, including but not limited to interviews of witnesses, including subjects, completed investigation reports and the adjudication documentation.

3. How are Investigators Assigned?

The Deputy Chief will select the necessary number of investigators required to conduct the investigation. During the selection process, consideration should be given to the following:

1. The training and experience of proposed investigator;
2. The rank of proposed investigator;
3. The availability of the proposed investigator;
4. The current affiliation of the proposed investigator with PSD; and,
5. The proposed investigator's caseload of matters assigned to the Alternative Investigative Process

The Deputy Chief may determine the need to select a qualified member to complete the duties of the adjudicator. A list of qualified members with experience as an adjudicator of Department discipline cases will be provided to the Deputy Chief at the time the investigation is assigned to the Alternative Investigative Process.

4. How is the Investigation Conducted in the Alternative Investigative Process?

The selected investigators will conduct the investigation and comply with all applicable laws and provisions set forth within the City Charter and appropriate policies, including the applicable MOUs and the Firefighters Procedural Bill of Rights. The investigators will have access to all PSD investigation materials, including the investigation notifications, the interview notifications and the admonitions. The purpose is to ensure that all investigations conducted by the Department, whether by PSD, or in the field, or in the Alternative Investigative Process, are handled in an even-handed and consistent manner.

5. How is the Final Investigation Report and Adjudication Completed for Investigations Conducted in the Alternative Investigative Process?

The selected investigators will complete the investigation report and the selected adjudicator will complete the adjudication of the investigation conducted in the Alternative Investigative Process. The adjudicator will review the investigative reports and evidence, make a recommendation as to whether to proceed with discipline or not,

and will determine the recommended level of discipline. The member selected to complete the adjudication may also participate in the *Skelly* Hearing, as necessary. In the Alternative Investigative Process, the assigned Deputy Chief will select a chief officer other than the adjudicator to serve as the *Skelly* officer.

6. Who Provides Administrative Support for Investigations in the Alternative Investigative Process?

PSD clerical staff will prepare required forms and process documentation as requested by the investigators selected for the investigations assigned to the Alternative Investigative Process. The Moderator assigned to PSD will normally complete the closure of the case within the Complaint Tracking System and forward appropriate disposition notifications. If the members normally utilized by PSD to perform these functions are implicated in the allegations of the case, appropriate personnel will be identified to assist with the investigation.

The members assigned to PSD are committed to conducting themselves in a manner which reflects the highest standards of the Department. The mere appearance of impropriety in the disciplinary process may erode the trust of Department members and the public. The Department has drafted procedures for the handling of matters assigned to the Alternative Investigative Process.

CONCLUSION

The Department has been working to implement the six recommendations made by the Assessor in her Out-of-Statute Audit. The Department has worked to craft achievable benchmarks for disciplinary investigations. The Department has outlined the formal process for handling matters assigned to the Alternative Investigative Process.

Board report prepared by Karen Richter, Acting Commander, Professional Standards Division and Erin Joyce, Chief Special Investigator, Professional Standards Division.

Attachment

**PROFESSIONAL STANDARDS DIVISION UPDATED ACTION PLAN RE: IMPLEMENTATION OF RECOMMENDATIONS
FROM THE INDEPENDENT ASSESSOR'S OUT OF STATUTE AUDIT DATED MAY 17, 2015
December 2016**

Recommendation	% Completed	Targeted Completion Date	Update
Recommendation No. 1 -- Create a system of accountability			
a. Develop benchmarks for investigation milestones	90%	November 2016	The Department is concurrently submitting the benchmarks for important investigation milestones.
b. Enhance the email notification system	50%	February 2017	The Department is creating internal audit system to review effectiveness of the automatic notification system in CTS.
c. Standardize use of chronological logs in CTS	50%		The comments section of the CTS is being used currently as a chronological log. The internal audit system will track the compliance with requirement to use the comments section to document important case activity.
Recommendation No. 2 -- Create a training curriculum and to ensure all members who conduct investigations are trained	30%	2017	The Department has already begun to train Captains and Battalion Chiefs to resolve complaints. The Department will enhance investigative training provided through continuing education for Captains and Command Staff, with the long term plan to provide comprehensive investigation training on Target Solutions and in person.
Recommendation No. 3 -- To develop a formal policy outlining the formal process for the alternative process	75%	December 2016	The Department is submitting the policy for the alternative investigative process for consideration by the Board of Fire Commissioners.
Recommendation No. 4 -- To create written procedures for investigating complaints against the Fire Chief	10%	March 2017	The Department will formalize the policy for the investigation of complaints against the Fire Chief which will be reviewed and submitted to the Board of Fire Commissioners.
Recommendation No. 5(a) -- The installation of a new case management system	10%	Unknown	The Department is continuing to seek funding for a new case management system to replace CTS.
Recommendation No. 5(b) -- Development of uniform procedures for entries in CTS	50%	Unknown	The Department has developed protocol for uniform CTS entries and is working on training to ensure that investigators are properly documenting investigative activity in CTS.
Recommendation No. 6 -- To develop a mediation pilot program	20%	March 2017	The Department is developing criteria for cases amenable for mediation involving workplace issues and minor misconduct cases. Because the City Attorney's Alternative Dispute Resolution section is not prepared to go forward, the Department is exploring other avenues for the mediation pilot program.