

July 17, 2018


# LOS ANGELES FIRE DEPARTMENT



RALPH M. TERRAZAS  
FIRE CHIEF

May 16, 2018

BOARD OF FIRE COMMISSIONERS  
FILE NO. 18-055

TO: Board of Fire Commissioners  
FROM: Ralph M. Terrazas, Fire Chief 

SUBJECT: PROFESSIONAL STANDARDS DIVISION RESPONSE TO  
INDEPENDENT ASSESSOR'S DISCIPLINE SETTLEMENT  
AGREEMENT AUDIT

FINAL ACTION:	<input checked="checked" 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 Withdrawn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 the Office of the Independent Assessor's (OIA) report issued May 15, 2018, the OIA made one recommendation to the Department:

1. The Department collaborate with the Office of the City Attorney and the OIA to formulate a template for settlement agreements for the Board of Fire Commissioners approval.

## RECOMMENDATION

That the Board:  
Receive and approve the report.

## DISCUSSION

The Department concurs with the recommendation made by the OIA, and Professional Standards Division (PSD) has set forth and established a draft Settlement Agreement Template constructed by the Office of the City Attorney. The template contains all of the provisions established by the Board of Fire Commissioners policy, and OIA recommendations.

Although the Settlement Agreement Template contains all of the required provisions, and will be used in all future written settlement agreements where the provisions are relevant, it must be noted that each and every disciplinary case is unique and may require additional provisions within the written agreement.

To ensure consistency and accuracy in all settlement agreements the Department will continue to collaborate with the Office of the City Attorney throughout the settlement process.

Attached is the Department's updated draft Settlement Agreement Template to be implemented as recommended by the OIA.

**CONCLUSION**

The Department is in agreement that the OIA recommendation is essential and necessary to ensure that all written settlement agreements are consistently drafted and reviewed. To that end, the creation and adoption of the Settlement Agreement Template further enables the Department to ensure fairness, impartiality and compliance throughout the disciplinary process.

Board report prepared by Stephen L. Gutierrez, Assistant Chief, Professional Standards Division.

Attachment

**(EDUCATION BASED DISCIPLINE  
SETTLEMENT AGREEMENT TEMPLATE)**

**SETTLEMENT AGREEMENT AND RELEASE**

**PRELIMINARY STATEMENT**

The Settlement Agreement and Release ("Agreement") is entered into by and between the City of Los Angeles and the Los Angeles Fire Department (hereinafter collectively referred to as "CITY" or "Department") and Member's Title and Full Name, EID \_\_\_\_\_, (hereinafter referred to as "Member's Title and Last Name" or "Member's Last Name"). Member's Title and Last Name and the Department shall be herein collectively referred to as the "Parties."

**RECITALS**

- A. The Department and Member's Title and Last Name are interested parties in a dispute wherein the Department has brought charges against Member's Title and Last Name as enumerated in the Professional Standards Division's Discipline Tracking System No. \_\_\_\_\_ ("DTS No. \_\_\_\_\_").
- B. Member's Title and Last Name was timely served with the notice of proposed action, the reasons for the proposed action, a copy of the charges and materials upon which the proposed action is based, and was given the opportunity to respond to the proposed action.
- C. Member's Title and Last Name participated in the pre-disciplinary meeting in DTS No. \_\_\_\_\_ on Date at Location **(ie. City Hall East, 18<sup>th</sup> Floor)**. Member's Title and Last Name agrees that all of the *Skelly v. State Personnel Board* (1974) 15 Cal.3d 194 due process requirements for the imposition of discipline have been met in DTS No. \_\_\_\_\_.
- D. Both parties desire to avoid litigation and any and all administrative processes upon the terms and conditions set forth below.

NOW AND THEREFORE, the Department and Member's Title and Last Name, in consideration of the mutual covenants herein, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree to be legally bound by the following terms and conditions, which constitute full settlement of any and all disputes between them related to DTS No. \_\_\_\_\_:

1. **Acknowledgement of Recitals.** The Parties acknowledge that the clauses in the Recitals preceding this paragraph 1 are true and correct, and are incorporated herein as material parts to this Agreement.

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2. Charges. Charges alleged against Member's Title and Last Name in DTS No. \_\_\_\_\_ as stated in the F501 Complaint Against Member signed Date are as follows:
  - a. Charge No. 1: In violation of sections \_\_\_\_\_ of the Rules and Regulations of the Los Angeles Fire Department, on or about Date, Member's Last Name did fail .....fill in the charge.
3. Consideration. Member's Title and Last Name admits, freely and voluntarily, based on his/her personal knowledge, to Charge No.1 (if more charges include all) set forth in Section 2 herein and as stated in the F501 Complaint Against Member signed Date.
4. Charges Sustained and Reflected in DTS. The Department accepts Member's Title and Last Name admission of the charge stated in Section 2 of this Agreement and in the F501 Complaint Against Member signed Date. The Department sustains the charge herein. DTS No. \_\_\_\_\_ maintained by the Professional Standards Division will reflect that Member's Title and Last Name violated sections \_\_\_\_\_ of the Rules and Regulations of the Los Angeles Fire Department and that the charge(s) set forth in Section 2 of this Agreement were "Sustained."
5. Suspension. The Department, upon execution of this Agreement, will issue a Letter of Imposition of a \_\_\_\_\_ suspension regarding DTS No. \_\_\_\_\_.
6. Acceptance of Suspension. Member's Title and Last Name agrees to serve the \_\_\_\_\_ suspension issued to him/her as specified in Section 5 of this Agreement, subject to compliance with Section 8 of this Agreement.
7. Suspension Held in Abeyance. The Department will hold the \_\_\_\_\_ suspension in abeyance upon Member's Title and Last Name compliance with the terms and conditions of Section 8 of this Agreement.
8. Education Based Discipline. Member's Title and Last Name agrees to attend and complete the course identified below:

COURSE NAME - HOURS - PROVIDER

- a. Member's Title and Last Name is required to attend the \_\_\_\_\_ course while he/she is **off duty** and shall bear the costs associated with this requirement, if any. The Department will not compensate Member's Title and Last Name for the time spent taking the \_\_\_\_\_ course. Further, the Department will not compensate for

the cost of this course or any course taken by Member's Title and Last Name to comply with this Agreement.

- b. Member's Title and Last Name shall enroll in the \_\_\_\_\_ course at the first available time it is offered after execution of the settlement agreement and begin coursework no later than four months (120) days of the execution of this agreement. Member's Title and Last Name shall complete the \_\_\_\_\_ course within one year from the date of this Agreement and provide proof of completion of the \_\_\_\_\_ course to the Professional Standards Division within one year of the date of the execution of this Agreement. Further, Member's Title and Last Name shall complete a Department-provided course evaluation form upon completion of the coursework. Member's Title and Last Name may request a reasonable extension to begin or complete the \_\_\_\_\_ course. The request for an extension must be submitted in writing to the Commanding Officer of PSD as soon as Member's Title and Last Name becomes aware of circumstances requiring the extension. Upon a showing of good cause, the Commanding Officer may grant the request for an extension.
  - c. Upon submission of proof of attendance at and completion of the \_\_\_\_\_ course, the \_\_\_\_\_ suspension specified in Section 5 of this Agreement will be withdrawn. Failure to begin or complete the required course within the timeframes specified herein, without good cause, shall result in the immediate imposition of suspension specified in Section 5.
9. Personnel File. The Parties agree and understand that Member's Title and Last Name records (including personnel and DTS files) will reflect that education based discipline, as specified in Section 8 of this Agreement, was imposed for DTS No. \_\_\_\_\_. The education based discipline outlined in this Agreement may be used for the purposes of progressive discipline, if appropriate. Failure to comply with Section 8 will result in the imposition of the \_\_\_\_\_ suspension specified in Section 5 which will be reflected in Member's Title and Last Name records.
  10. Precedence. The Parties further agree that this Agreement shall not be considered, cited, or used in future disputes as establishing past precedent or a past employment practice. This Agreement resolves the dispute between Member's Title and Last Name and the Department under DTS No. \_\_\_\_\_. This settlement shall not serve as precedence in any other disciplinary matter.
  11. Waiver of Right to Appeal/Grievance. Member's Title and Last Name knowingly and voluntarily waives his/her right to an administrative appeal and judicial review of the charge(s) underlying this Agreement. Member's Title and Last Name will not initiate or pursue any further legal remedy of

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whatever kind against the CITY or its employees, any claims against the CITY and its employees, any appeals or other administrative proceedings, including appeals to the City of Los Angeles Employee Relations Board or seek any other remedies available under the Los Angeles City Charter, state, or federal law arising from the facts and circumstances which gave rise to the charges as set forth in DTS No. \_\_\_\_\_.

12. General Release. In consideration of the terms and conditions set forth herein, Member's Title and Last Name agrees to fully release, acquit, and forever discharge the CITY, the Department, and all present and former officers, employees, and agents of the CITY and the Department, and their heirs, successors, assigns, and legal representatives from any and all liability whatsoever for any and all claims, expenses, (including, but not limited to attorney's fees), debts, account demands, costs, contracts, promises, acts, agreements, liabilities, obligations, judgments, damages, civil actions, and civil causes of action of every nature, under any civil theory under the law, whether common, constitutional statutory or other of any jurisdiction, foreign or domestic, federal, state, or local, either known or unknown, suspected or unsuspected, whether in law or in equity, only related to or arising from the facts and circumstances which gave rise to the charges as set forth in DTS No. \_\_\_\_\_ (excluding any current or future Workers' Compensation claims and the Department's obligation to defend and indemnify Member's Title and Last Name).

Moreover, Member's Title and Last Name agrees to release the CITY, as well as any and all of the CITY's officers, employees and elected officials in both their individual and official capacities, from liability and waives any and all claims and remedies, arising before the date of execution of this Agreement, and that relate to or arise from the facts and circumstances which gave rise to the charge(s) as set forth in DTS No. \_\_\_\_\_, under Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701, et. seq., the Americans with Disabilities Act, 42 U.S.C. 12101, et seq., the California Fair Employment and Housing Act of 1964, as amended, Title VII of the Civil Rights Act of 1964, Sections 1981 and 1983 of Title 42 of the United States Code, and the California and United States Constitutions.

Member's Title and Last Name further understands and agrees that the consideration provided for this Agreement is intended to and, except as provided above, does release and discharge any and all claims or damages related to or arising from the facts and circumstances which gave rise to the charge(s) as set forth in DTS No. \_\_\_\_\_, under the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. Section 621, et seq. Member's Title and Last Name represents that before signing this Agreement, he/she has the right to consult with an attorney of his/her own choosing regarding the Mutual Release and has been advised that he/she has twenty-one (21) days to consider this Agreement and that he/she has

seven (7) days after the date on which he/she signs this Agreement within which to revoke it. Member's Title and Last Name knowingly and voluntarily waives the twenty-one (21) day period for consideration of the Agreement. **THIS PARAGRAPH IS ONLY INCLUDED IF THE MEMBER IS 40 YEARS OF AGE OR OLDER.**

13. Waiver of Civil Code Section 1542. Member's Title and Last Name agrees to waive all rights and benefits which may be afforded by Section 1542 of the California Civil Code (or any similar law). Civil Code section 1542 states:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

In connection with this waiver and relinquishment, Member's Title and Last Name acknowledges that he/she is aware that he/she may subsequently discover claims or facts presently unknown or unsuspected, or facts in addition to or different from those which he/she now knows or believes to be true, with respect to the matters released herein. Nevertheless, it is Member's Title and Last Name intention, through this Agreement, to fully, finally, and forever settle and release all such civil matters and all civil claims relative thereto, which arise out of or are related to the facts underlying DTS No. \_\_\_\_\_, notwithstanding the nature, source, or circumstances of any such later discovered Claims or facts.

14. Independent Assessor Review. Member's Title and Last Name acknowledges that the discipline case in question may be subject to review by the Office of the Independent Assessor.
15. Complete Agreement and Understanding of Provisions. The foregoing sets forth the entire agreement between the Parties. Any prior agreements, promises, negotiations or representations, whether written or oral, relating to the subject matter of this Agreement which are not expressly set forth in this Agreement are of no force or effect. Any amendment or modification of this Agreement must be in writing, and signed by both Parties. By signing below, Member's Title and Last Name acknowledges that he/she has carefully considered the advantages and disadvantages this Agreement provides. Further, Member's Title and Last Name acknowledges:
- He/She has read each of the foregoing provisions;
  - He/She has had adequate opportunity to ask questions, to negotiate clarifications, and to consult with his/her attorney or union representative;
  - He/She agrees with each provision; and

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- d. He/She has received a copy of this document.
16. Headings. The various headings in this Agreement are inserted for convenience only and shall not be deemed a part of, or in any manner affect, this Agreement.
17. Execution of Agreement. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A photocopy or facsimile transmission of this Agreement, including signatures, shall be deemed to constitute evidence of the Agreement having been executed.
18. Effective Date. The date of the last signature placed hereon shall hereinafter be known as the "date of execution" and the "effective date" of this Agreement.

**By signing this Settlement Agreement, the parties agree to the terms and conditions contained herein. The signatures indicate that the parties have read and understand the terms and conditions of this agreement and agree to the provisions contained therein and hereby execute it voluntarily and with full understanding of its consequences.**

**PLEASE READ CAREFULLY: THIS SETTLEMENT  
AGREEMENT AND GENERAL RELEASE INCLUDES A  
RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS**

IN WITNESS WHEREOF, the Parties hereto each have approved and executed this Agreement effective as of the last date set forth below.

\_\_\_\_\_  
Member's First and Last Name, Title  
EID \_\_\_\_\_

\_\_\_\_\_  
Date

FOR THE DEPARTMENT:

\_\_\_\_\_  
Member's First and Last Name, Assistant Chief  
Professional Standards Division

\_\_\_\_\_  
Date