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BOARD OF FIRE COMMISSIONERS
FILE NO. 22-003

TO: Board of Fire Commissioners

FROM:  Ralph M. Terrazas, Fire Chief

SUBJECT: PROFESSIONAL STANDARDS DIVISION OVERVIEW

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 Withdrawn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

As directed by the Board of Fire Commissioners, the Los Angeles Fire Department (LAFD or Department) is providing a response to its request that it provide an overview of LAFD's Professional Standards Division. The report includes the steps of the investigation process, disciplinary process and appeals process.

RECOMMENDATION

That the Board:
Receive and file.

DISCUSSION

A. Overview of Mission and Responsibilities

The Professional Standards Division (PSD) was created on January 1, 2008. PSD is responsible for the oversight of the internal administrative investigative and disciplinary process. Additionally, PSD utilizes the Department's Disciplinary Action Guidelines and Complaint Recording and Tracking System to effectively manage disciplinary issues.

PSD's mission is to conduct timely, impartial and thorough investigations of on-duty and off-duty allegations of member (sworn and civilian) misconduct. To that end, investigations include all evidence relevant to the allegations of member misconduct and relevant to the credibility of evidence and/or statements, whether inculpatory or exculpatory.

In instances where a member has violated a Department policy, rule or regulation, it becomes PSD's role and responsibility to recommend disciplinary and corrective action to the Fire Chief consistent with existing statutory authority and Department standards and policies. Section 1060 of the Los Angeles City Charter outlines the disciplinary procedures for the Department and describes the rights and due process procedures afforded to sworn members. The Department also complies with the City Personnel Department's disciplinary guidelines in matters that involve civilian members.

B. Staffing

PSD has a two-person command staff structure. Currently, the commander is Assistant Chief Kristina Kepner and she is responsible for the overall management of the daily operations. Command staff also consists of one civilian manager, Chief Special Investigator Cynthia Hernandez, Esq. who assists in overseeing the operation. PSD command staff report directly to the Fire Chief.

Additional PSD staff includes one Battalion Chief, twelve (12) investigators (eight civilians and four sworn members/Captains)¹ and three administrative team members. The sworn members, including the Assistant Chief and Battalion Chief, are assigned to PSD for a minimum two-year term. The civilian staff serves as permanent staff members.

The Captains assigned to PSD have the same investigative duties and responsibilities as the civilian investigators. In addition, the Captains serve alongside the civilian investigators as Department representatives before Board of Rights and Civil Service hearings related to disciplinary appeals.

The PSD operation is divided into three general segments: (1) investigative process (2) disciplinary process (i.e. determining appropriate discipline and Skelly Hearings) and (3) Appeals (i.e. Board of Rights hearings/Civil Service Hearings).

C. Investigative Process

When the Department/PSD is notified of a reported incident of alleged misconduct, the complaint is recorded into the Department's Complaint Tracking System (CTS). An intake interview is performed and the case is then assigned to investigators. As reported by the Office of the Independent Assessor in its report "2019 Annual Review of LAFD Complaints of Misconduct", the Department has received 400 or more complaints per year, in the last four years.² In 2020, the number of complaints rose to 564. To date, for 2021, the Department has received 217 complaints.

¹ PSD has authority for 10 civilians and 5 sworn investigators but due to the City's hiring freeze, we are unable to hire for these positions.

² 2016 complaints received – 441; 2017 complaints received – 400; 2018 complaints received – 485; 2019 complaints received – 436.

Consistent with statutory authority including the the Firefighters Procedural Bill of Rights Act (FBOR) (Government Section 3250 et seq.) and the City Charter Section 1060, investigations of sworn members must be completed within one year of the Department learning of the alleged misconduct.³ There is no statute of limitations for civilian members, but PSD aims to complete those investigations within a one-year time period as well.

Upon completion of an investigation, the investigative report and supporting materials are reviewed and a determination is made as to whether the evidence proves by a preponderance that the member violated a Department policy, rule or regulation.

D. Disciplinary Process

In cases where an investigation proves that a member's conduct violated a Department policy, rule or regulation, procedures that relate to the disciplinary process are followed.

When the Department has established by a preponderance of the evidence that the member engaged in misconduct, the adjudicator sets the appropriate penalty, using the "LAFD Penalty Guidelines for Sworn Members" adopted on October 28, 2008, as well as the twelve factors first enunciated in *Douglas v. Veteran's Administration* 5 M.S.P.R. 280, 306 (1981). The final Penalty Guideline to be considered when determining the appropriate level of discipline is the adequacy and effectiveness of alternative sanctions to deter misconduct by the employee and others. For civilian members, the Department utilizes section 33.2 from the Policies of the Personnel Department, "Guide to Disciplinary Standards."

Prior to the imposition of discipline, Department members are served with a Pre-Disciplinary Packet (aka the Skelly Packet), which includes the investigative report and related exhibits. PSD is then responsible for conducting due process Skelly Hearings which affords a member to respond to the charges and an opportunity to mitigate the allegations prior to imposition of the Department's proposed disciplinary action. If the Department's proposed disciplinary action is upheld then the member is served with the Department's disciplinary documents.

E. Appeals (i.e. Board of Rights Hearings)

All employees have a right to appeal discipline imposed by the Department. For sworn members who appeal the Department's discipline (suspension of 30 days or fewer), they can request a Board of Rights hearing. In those cases, the discipline is held in "abeyance" pending the outcome of the Board of Rights hearing.

In other instances, where, based on the "LAFD Penalty Guidelines for Sworn Members", discipline *exceeded* a 30-day suspension, the Department directed a Board of Rights

³ The Charter specifically states, "The charges must be filed within one year of the department's discovery of the act committed or omitted by a member and in no event later than two years from the date of the act or omission."

hearing. Department directed Board of Rights cases will be prioritized when proceeding with the selection of a Board of Rights. The nature of the underlying case will also be considered when determining the scheduling of the selection of the Board of Rights.

Appeals relating to civilian members are referred to as Civil Service hearings. Currently, the Department does not have any pending Civil Service hearings.

F. Settlements

On June 20, 2017, the Board of Fire Commissioners authorized PSD to use alternatives to traditional discipline, which includes Disciplinary Settlement Agreements. When a member of the LAFD has been found to have engaged in misconduct and is facing suspension or potential termination from duty, the member and the Department may enter into a settlement agreement if it is determined that an alternative form of discipline will better serve the individual and the Department by modifying an employee's behavior so that it is congruent with the Department's high standards of professionalism. Alternative forms of discipline include training, counseling, education-based discipline, substance abuse or addiction treatment programs or "last chance agreements."

Consistent with the Department's Discipline Settlement Agreements Policy (approved by the Fire Commission) the Department will determine if a discipline case is eligible for settlement based on the following criteria:

1. Did the misconduct harm the public service?
2. Is the misconduct likely to recur?
3. Was the misconduct or the harm caused by the misconduct serious?
4. Whether the Department is likely to prevail in a Board of Rights hearing?
5. Will alternative sanctions likely deter future conduct?
6. Are there mitigating or aggravating circumstances, pursuant to the Penalty Guidelines that were not considered when the case was originally adjudicated?

In an effort to resolve administrative disciplinary cases expeditiously under certain circumstances, cases can be settled long before investigative resources are expended (i.e. before a formal investigation is initiated or completed and often without the need to interview the subject of the investigation or witnesses).

This process is referred to as the Early Resolution Settlement Agreement (ERSA) and is beneficial for both the Department and the member. For the Department, this process has the potential of conserving investigatory resources; it is time-efficient and can significantly reduce the investigative caseload allowing investigators to devote time to more complex cases. Streamlining the investigative process in this way will also help ensure that the Department meets or exceeds its internal investigative timeline goals. During the post-investigative stage, ERSA's also have the potential to save the Department costs, time and additional resources by decreasing the number of disciplinary appeals. Finally, the utilization of the ERSA process allows for prompt

remediation which, in turn, mitigates liability or potential liability incurred by the Department.

For the member, early resolution of an administrative case may result in the member returning to their assignment if they have been temporarily detailed pending the completion of a formal investigation. Also, a subject's early acceptance of responsibility for the misconduct (a key component to the ERSA) is considered a mitigating factor when determining the appropriate discipline. In addition, as part of an ERSA, the member may be offered an Education-Based Discipline plan and agree to attend training or relevant courses in lieu of serving the imposed suspension days. The eligibility of ERSA cases is determined by the established criteria set forth in the Department's Discipline Settlement Agreements Policy and follows the same procedural requirements.

G. Mediation

In the spring of 2017, the Department embarked on the LAFD Mediation Pilot Program. In an effort to resolve conflict before it rises to a level requiring a disciplinary investigation, and to provide our Sworn and Civilian employees with safe and productive work environments, the Department collaborated with the USC Gould School of Law's Judge Judith O. Hollinger Alternative Dispute Resolution Program to develop a Mediation Pilot Program. This program serves as an alternative for addressing and resolving personnel conflict in the workplace, or as an adjunct to assist during or after the investigative process in resolving workplace disputes. In mediation, disputing parties with the help of a mediator (a neutral third party) voluntarily meet to discuss their issues of concern with the aim of reaching mutually agreeable terms to resolve those issues. Unless disputing parties waive confidentiality, mediation remains confidential and only those parties directly involved remain privy to what was discussed, disclosed or agreed upon.

Senior law students from USC Gould School of Law Mediation enrolled in the respective mediation clinic, with the assistance of program faculty are utilized to mediate LAFD cases after their completion of an LAFD agency orientation.

Mediation has proven to be beneficial in the following areas:

- Minor workplace or personnel disputes that were the result of dynamics that would be better resolved through mediation as opposed to discipline;
- Workplace or personnel issues that would benefit from mediation concurrent with the investigative process;
- Mediation post the completion of a disciplinary investigation to assist in rebuilding workplace relationships.

Community Mediation Partnership

In the summer of 2019, the LAFD implemented an additional mediation program to serve as an alternative for addressing and resolving citizen complaints stemming from service complaints and/or misunderstandings of medical protocols by LAFD members during a service call. This program is called the Community Mediation Partnership (CMP).

The LAFD partnered with the Los Angeles City Attorney's Office, Dispute Resolution Program (DRP) to assist in the implementation of the CMP. Senior mediators are utilized to mediate Department citizen complaint cases.

Under the CMP Program, the following complaints are considered for mediation:

- Service call complaints
- EMS protocol-related complaints
- Discourtesy complaints
- Other low acuity citizen complaints against LAFD member(s)

The development of both mediation programs has helped foster positive work environments for our members and build stronger relationships with the community we serve.

CONCLUSION

In conclusion, the Professional Standards Division receives and investigates complaints in a fair and objective manner while maintaining the integrity of the Department and the rights of the subject. Complaints are investigated and adjudicated in an expeditious manner and a public service discipline model is used to correct behaviors and maintain public trust. When appropriate criteria are met, alternative forms of discipline are utilized to modify behaviors. The Professional Standards Division strives to maintain the highest level of professionalism throughout the disciplinary process to ensure the goals of the LAFD Strategic Plan, Mission, Vision and Core Values are being met.

Board report prepared by the Assistant Chief and Chief Special Investigator of the Professional Standards Division.