

DECEMBER 15, 2009

BOARD OF FIRE COMMISSIONERS  
FILE NO. BFC 09-117 R1

Date: December 3, 2009  
To: Board of Fire Commissioners  
From: Stephen Miller, Independent Assessor  
Subject: Policies and Authority of the Independent Assessor

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 Withdrawn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

**Recommendation:**

Approve the attached "Policies and Authority of the Independent Assessor."

**Summary:**

In March 2009, the voters of Los Angeles approved Charter Amendment A, which created the position of Independent Assessor. Section 523 of the City Charter provides that the Independent Assessor shall have the power and duties to "under rules established by the Board of Fire Commissioners" audit, assess and review any portion of the Los Angeles Fire Department.

The Board of Fire Commissioners has appointed an Independent Assessor. The attached "Policies and Authority of the Independent Assessor" set forth a proposed set of rules that would govern the Independent Assessor's reporting relationship to the Board of Fire Commissioners as well as the relationship between the Independent Assessor and the Los Angeles Fire Department. This includes defining the authority of the Independent Assessor as well as the duties and responsibilities of the Fire Department.

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**LOS ANGELES BOARD OF FIRE COMMISSIONERS**

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**POLICIES AND AUTHORITY OF THE INDEPENDENT ASSESSOR**

The Board of Fire Commissioners hereby establishes the following rules:

**PREAMBLE:**

In March 2009, the voters of Los Angeles approved Charter Amendment A, which created the position of Independent Assessor. Section 523 of the Charter provides that the Independent Assessor shall have the power and duty to "under rules established by the Board of Fire Commissioners" audit, assess and review any portion of the Los Angeles Fire Department. Accordingly, the Board of Fire Commissioners establishes the following rules.

**I. DIRECT REPORTING**

The Independent Assessor reports to and takes direction directly from the Board of Fire Commissioners (the Board) for all actions. The President of the Board embodies the authority of the Board and is the liaison for the Board on all communications, direction, assignments, and personnel matters relative to the Independent Assessor.

**II. DEFINITION OF TERM "INDEPENDENT ASSESSOR"**

The term Independent Assessor shall include employees of the Office of the Independent Assessor.

**III. DUTY TO PROVIDE ACCESS TO DEPARTMENTAL RECORDS AND INFORMATION****A. Duty to Cooperate**

Los Angeles City Fire Department (the Department) employees have an affirmative duty to cooperate with the Independent Assessor and to provide complete, unrestricted and prompt access to inspect and/or copy all Department physical or electronic records accessible to the Board, including reports, audits, reviews, plans, projections, documents, files, contracts, memoranda, correspondence, data or information on paper, audio, video, computer memory, tape/disc or other materials of the Department, including ongoing and pending

matters. The Independent Assessor is not required to articulate to the Department any reason or rationale for any specific request, or obtain prior Board approval for requests as described herein.

**B. No Restricted Access**

No Department protocols restricting access to Department records or information shall apply to the Independent Assessor. When inspecting, copying or duplicating Department records or evidence maintained by the Department, the Independent Assessor shall follow the same protocols pertaining to chain-of-custody, preservation of integrity of physical evidence and confidentiality applicable to Department personnel.

**C. Coordinate Activities**

When requesting materials from pending inquiries or investigations, the Independent Assessor shall coordinate all activities with the Department in a manner that does not interfere with or compromise the Department's work, inquiry or investigation.

**IV. ACCESS TO PERSONNEL**

**A. Prompt Access**

To carry out the duties of the office, the Independent Assessor shall have prompt access to any employee, and/or office of the Department, subject to limitations imposed by law or collective bargaining agreements. The Independent Assessor shall also have prompt access to any member of the Board's staff.

**B. Interviews and Documents**

To carry out the duties of the office, the Independent Assessor shall have the power to interview Department employees, and compel the production of such information, books, papers, records, data and documents as may be deemed necessary or relevant to any audit, assessment, investigation or review undertaken. The Independent Assessor shall notify the President of the Board of the issuance of such information requests.

**V. CONFIDENTIALITY OF COMPLAINANTS AND WITNESSES**

The Independent Assessor shall not disclose the identity of a complainant or witness without the individual's consent, unless such disclosure is unavoidable in order to investigate an allegation effectively or is otherwise required by law or the City Attorney's Office, provided, however, that the Independent Assessor shall

disclose the identity of such individual to the Board upon request. The Office of the Independent Assessor is not afforded an absolute privilege protecting conversations with complaining persons or witnesses, as a matter of law. Accordingly, any individual who requests confidentiality from the Independent Assessor shall be accurately informed of the inability to guarantee confidentiality.

## **VI. PROTECTION AGAINST RETALIATION**

### **A. Protected Right to Contact Independent Assessor**

It is the policy of the Department that employees are free to contact the Independent Assessor without fear that their employment status might be adversely affected. An employee's contact with the Independent Assessor shall play no role in any future employment action towards the individual by the Department. Retaliation by adverse employment action or harassment against employees who provide information to the Independent Assessor is a violation of Department policy and undermines the effectiveness of oversight efforts of the Independent Assessor by impeding the continued flow of information. However, the protections of this section shall not apply when the contact was made or the information was disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

### **B. Supervisory Vigilance**

The Board, the Independent Assessor and all Department supervisors shall be vigilant in protecting from retaliation or reprisal or threat of retaliation or reprisal any individual who discloses any information to the Independent Assessor.

### **C. Retaliation Complaints**

In the event that the Independent Assessor concludes that there is reason to believe retaliation against an individual has occurred, the Independent Assessor shall promptly forward a complaint, except a complaint against the Fire Chief, to the Commander of the Professional Standards Division or promptly request the Board to make a determination whether notice to the Professional Standards Division should be delayed.

## **VII. RULES PERTAINING TO ASSESSMENTS CONDUCTED BY THE INDEPENDENT ASSESSOR**

### **A. Definition of Assessment**

As used herein, "assessment" includes audits, inquiries, reviews, questions, and examinations of documents, data, records, evidence, or persons, and excludes the

routine or passive review of Department produced reports, files or Department investigations.

**B. Overall Power of the Independent Assessor to Audit the Department**

The Independent Assessor is empowered to initiate and conduct assessments of the Department, without limitation as to the type of activity of the Department, including oversight of ongoing and pending matters, unless directed by the Board to cease, end or limit an assessment, audit, inquiry, or review.

**C. Limitation of Access to the Records of the Independent Assessor**

The Independent Assessor is not obligated to provide access by the Department to the files of the Independent Assessor unless ordered to do so by the Board or required by law.

**D. Activities of the Independent Assessor Pertaining to Department Employees**

The Independent Assessor shall promptly forward any new personnel complaint made known to the Independent Assessor, except a complaint regarding the Fire Chief, to the Commander of the Professional Standards Division, or promptly request that the Board make a determination whether notice to the Professional Standards Division should be delayed. In forwarding matters to Professional Standards Division, the Independent Assessor shall disclose the identity of an eyewitness (i.e. percipient witness) to misconduct, unless the Independent Assessor promptly requests that the Board make a determination that disclosure is not necessary to investigate the allegations effectively.

When interviewing Department employees who are reporting misconduct, the Independent Assessor shall advise the Department employees that a report to the Independent Assessor does not satisfy their obligation to report misconduct pursuant to Departmental and City policies.

**E. Investigations of Individuals Not Employed By The Department**

The Independent Assessor does not have the power to conduct investigations of individuals not employed by the Department. However, the Independent Assessor may engage in the oversight of the Department's investigations of such individuals. In the event the Independent Assessor receives a report of criminal activity within the jurisdiction of the Department, the Independent Assessor shall promptly forward to the appropriate Department investigative unit all material information provided to the Independent Assessor

## **VIII. REFERRAL OF CRIMINAL MATTERS TO OTHER AGENCIES**

The Independent Assessor's powers do not include the independent power to refer criminal matters to outside law enforcement or prosecutorial agencies. In the event that the Independent Assessor determines that it is appropriate to provide law enforcement officials in agencies outside of the Los Angeles Fire Department with information or evidence relating to criminal acts, the Independent Assessor shall simultaneously recommend to the Board and the Fire Chief the reporting of the circumstances. If the Fire Chief fails to respond or fails to make the referral, then the Independent Assessor shall notify the Board of the failure to report. The Board then determines whether to instruct and direct the Fire Chief to make such a referral. In the event of a conflict of interest involving the Fire Chief or if the Fire Chief fails to comply with the Commission's instruction to refer a particular matter to an outside agency, the Commission may, in its discretion, make such a referral or instruct the Independent Assessor to do so on its behalf.

## **IX. PUBLICATION**

This document shall be promptly distributed by the Fire Chief throughout the Fire Department in the form of a Departmental Bulletin and shall be included in the Fire Department's Manual of Operation.

Adopted by the Board of Fire Commissioners on:

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Genethia Hudley-Hayes, President  
Board of Fire Commissioners