

July 17, 2012

BOARD OF FIRE COMMISSIONERS
FILE NO. BFC 12-121

Date: July 8, 2012
To: Honorable Board of Fire Commissioners
From: Stephen Miller, Independent Assessor *SM*
Subject: **REPORT AND RECOMMENDATIONS CONCERNING AUDIT IMPEDIMENTS
CAUSED BY CITY ATTORNEY ADVICE**

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 Withdrawn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

Recommendations:

1. That the Board of Fire Commissioners order, direct and instruct the Fire Chief to provide the Independent Assessor with complete, unrestricted and prompt access to inspect and/or copy all Fire Department physical and/or electronic records.
2. That the Board of Fire Commissioners order, direct and instruct the Fire Chief to provide the Independent Assessor with prompt access to any employee and/or office of the Department.
3. That the Board of Fire Commissioners seek authority from the Mayor and the City Council to retain legal counsel to prosecute a declaratory relief action for the purpose of seeking a judicial determination that: 1) the Board of Fire Commissioners has a right to access all Fire Department information as head of the Fire Department; and 2) the Independent Assessor has a right to access all Fire Department information because City Charter section 523 says that "the Independent Assessor ... shall have the same access to Fire Department information as the Board of Fire Commissioners."

Background:

The Fire Chief reports that the Fire Department's general counsel recently advised him that the Independent Assessor could not have access to investigative information which is necessary for and directly relevant to determining how the Fire Department handles complaints of misconduct.

This advice is entirely inconsistent with all other opinions, reports and advice issued by the City Attorney's Office in the last 60 years and is not consistent with all other legal authorities. This

recent advice was provided to the Fire Chief even though the City Attorney's Office has failed to answer reasonable and responsible questions from Fire Commissioners about the authority to access information since at least January 18, 2011.

The recent advice from the general counsel and the City Attorney has the effect of:

1. Preventing the Fire Commission from fully exercising its Charter powers to supervise, control, regulate and manage the Fire Department;
2. Placing the Fire Chief in the risky and vulnerable position of having to decide whether to follow the City Attorney's advice and defy the Fire Commission's instructions, should the Commission direct the Fire Chief to provide access despite the City Attorney's advice, without having the benefit of having answers to the Fire Commission's reasonable and responsible questions; and
3. Preventing the Independent Assessor from exercising powers set forth in the Charter and performing essential duties set forth in the Independent Assessor's class specification/job description.

This report is presented to the Fire Commission at its first meeting following the general counsel's advice to the Fire Chief. This report clearly establishes that further informal attempts to resolve the issues would be futile.

Summary:

On April 5, 2012, the Independent Assessor initiated an audit of the alternative investigative process. This is a process the Department uses to investigate misconduct complaints that are not investigated by the Professional Standards Division (PSD). At least some of the cases referred to this process for investigation include misconduct complaints against members of the Department's PSD and the Fire Chief.

After reviewing all information available in the Complaint Tracking System (CTS), including some investigative information, the Independent Assessor sought to review and copy the physical investigative files for certain cases. On June 26, 2012, the Fire Chief informed the Independent Assessor that the Fire Department's general counsel advised that the Independent Assessor could not be provided the materials pursuant to the written advice from the City Attorney's Office dated August 23, 2010.

On January 18, 2011, two Fire Commissioners sent written questions directly to City Attorney Trutanich that questioned the accuracy of the August 23, 2010 advice.¹ On July 19, 2011, the general counsel told the Fire Commission that Mr. Trutanich will decide whether the City Attorney's Office will respond to questions about the legal authority to access information in the Fire Department. The full Fire Commission provided the City Attorney another 60 days to answer their questions about the August 23, 2010 advice related to access.² On July 27, 2011 the Independent Assessor sent "legal advice questions" to the City Attorney's Office.³ The City Attorney's Office has not answered any of the questions.

¹ The questions are attached to the Subcommittee's report referred to as BFC 11-140.

² The questions appear in the Subcommittee's report referred to as BFC 11-140.

³ The questions are attached to the Independent Assessor's report referred to as BFC 11-141.

Audit impediment

The recent advice provided by the Fire Department's general counsel is a serious audit impediment that prevents the Independent Assessor from exercising his primary Charter power and performing an essential job duty.

Charter section 523(a) says the Independent Assessor shall have the power and duty to audit, assess and review how the Fire Department handles complaints of misconduct. The class specification, that was reviewed by the City Attorney's Office before final approval, says the Independent Assessor reviews investigations of complaints filed against Department employees to determine whether investigations are conducted fairly and comprehensively and progress within standard time frames, and determines whether adjudication complies with Department policies.

The general counsel's recent advice to the Fire Chief prevents the Independent Assessor from conducting an audit, assessment and review of the alternative investigative process, and other Department programs. For example, the advice would prevent the Independent Assessor from reviewing any investigative information where it was alleged employees received bonus pay for educational achievements they were not entitled to receive. The Independent Assessor is currently conducting an audit, assessment and review of the Department's bonus pay system and promotional process.

The advice would prevent the Independent Assessor from reviewing the quality of investigations conducted in EEO cases or even whether EEO investigations are conducted fairly, comprehensively and in a timely manner. In the last ten years, the Los Angeles taxpayers have paid almost \$18 million in litigation directly related to labor relations cases, and in some of those lawsuits there were allegations that Department investigations were not adequate.

The Independent Assessor's March 27, 2010 *Assessment of the Department's Disciplinary Process and Professional Standards Division (Assessment)* provided a great deal of information about PSD misconduct investigations and whether they were timely, complete and thorough. When a draft of the *Assessment* was submitted for a pre-publication review, the City Attorney's Office failed to object or express any concerns about the Independent Assessor's detailed review of investigative files. Nor did the City Attorney's Office object or express concerns when they commented on the *Assessment* at the April 13, 2010 Commission meeting.

The Fire Chief meets regularly with the PSD and City Attorney's Office to review the handling and investigation of misconduct complaints filed against Department employees. The Independent Assessor and another Fire Commission employee previously attended those meetings for approximately two years without any concern or objection from the City Attorney's Office before the *Assessment* was published.

The practice of law is not a game of "mother may I" and the City Attorney's Office maintains that it is only the City Attorney that may give legal advice. Attorneys have an obligation to voice objections and provide cautionary advice as soon as they become aware of any City employee, including the Independent Assessor, engaging in conduct that may expose the City to litigation.⁴

⁴ Not only should an attorney furnish advice to a client when requested, but he or she should also volunteer opinions when necessary to further the client's objectives. Please see *Nichols v. Keller* (1983) 15 Cal.App.4th 1672, 1683-84.

The City Attorney's Office failed to object or express concern about the Fire Commission's access to confidential personnel information until well after publication of the March 27, 2010 *Assessment*, which expressed some criticism of legal services provided to the PSD.

Independent Assessor's access is determined by the Fire Commission's access

The extent to which the Independent Assessor has access to Fire Department information depends solely on the extent to which the Fire Commission has access to Fire Department information. The first paragraph of Charter section 523 says:

"The Independent Assessor ... shall have the same access to Fire Department information as the Board of Fire Commissioners."

Without any legal citation, the August 23, 2010 advice suggests that the Independent Assessor may not access investigative information because the Charter does not provide the Independent Assessor with investigative powers. If the Independent Assessor's authority to access Department information depended on investigative powers, the City Attorney would have provided a legal citation to support that position a long time ago. If the Independent Assessor's authority to access Fire Department information depended on having the power to investigate, the Charter would not say the Independent Assessor's access shall be the same as the Fire Commission's. Thus far, the City Attorney has failed to explain how any of the Independent Assessor's powers determine the extent to which the Fire Commission has authority to access Fire Department information.

Fire Commission access existed before creation of the Independent Assessor position

Long before the Independent Assessor's position was approved by the voters on March 9, 2009, the City Attorney's Office advised Fire Commissioners on how to comply with Brown Act notice requirements to ensure their closed session disciplinary actions or decisions would not be held "null and void."

Knowing that criminal and severe civil penalties may be imposed for Brown Act violations, the general counsel repeatedly advised Fire Commissioners to meet in closed session to discuss employee discipline, dismissal and release from at least June 23, 2006, to January 26, 2009, because a Court of Appeal decision said a City of Los Angeles commission (like the Fire Commission) has ultimate power over discipline, another Court of Appeal decision says a commission (like the Fire Commission) may hold closed sessions, Civil Code section 3522 presumes the Commission has all powers necessary to perform its management and oversight duties and formal City Attorney reports say a commission that is the head of a department (like the Fire Department) has access to all department information.

The general counsel also advised the Fire Commission to meet in closed session concerning a personnel matter long after the Independent Assessor was created. On November 19, 2010, the general counsel advised the Fire Commission to meet in closed session to discuss the Fire Chief's performance evaluation.

When voters were asked to approve the Independent Assessor position, they could easily confirm that Fire Commissioners were actually accessing confidential personnel information. Since the Independent Assessor was proposed to assist the Commission in overseeing the Fire Department's disciplinary system, voters could easily presume the Independent Assessor would also have such access in order to carry out the powers and duties of the position.

The City Attorney has failed to explain how the Fire Commission's full and complete access to confidential personnel information in the Fire Department, which existed before creation of the Independent Assessor position, was changed, modified or reduced when voters approved the Charter amendment creating the Independent Assessor position after being told:

1. Approval "will permit the Fire Commission to hire and supervise an Independent Assessor, who will monitor the Fire Department's efforts to implement discipline in an appropriate and consistent manner;"
2. "The Assessor's independence from the department chain of command will ensure confidence from the public and among firefighters that professional standards are established and enforced in a fair and evenhanded way;" and
3. "Prevent taxpayer dollars from going to pay costly courtroom verdicts."

August 23, 2010 advice is false, inaccurate and inconsistent

While the Charter certainly says the City Attorney is the City's legal advisor, the City Attorney is not permitted to provide false, inaccurate and inconsistent advice about the Fire Commission's Charter authority or the Charter authority of the Independent Assessor. The City Attorney's declaratory relief action against the City Controller⁵ expresses some expectation that City officials and employees should be aware of and conform their conduct to what is set forth in formal City Attorney opinions.

The advice that the general counsel relied on in telling the Fire Chief that the Independent Assessor may not have access to investigative information is false, inaccurate and inconsistent because the August 23, 2010 advice:

1. Failed to disclose or discuss what ballots arguments said about creating the Independent Assessor position, the critical role ballot arguments play in determining the voters' intent, that voters' intent is decisive, that ballot materials are entitled to the greatest weight in determining voters' intent and courts may assume that ballot materials reflect the voters' intent.
2. Failed to disclose or discuss that, before and at the time a Charter amendment proposed creating an Independent Assessor position, voters could easily confirm and verify that Fire Commissioners were actually accessing confidential personnel information based on repeated written and verbal advice from the City Attorney's Office. Voters could, therefore, reasonably assume the Independent Assessor would also have such access.
3. Failed to disclose, discuss or distinguish prior written City Attorney advice issued on January 6, 1997, which cited and relied on California Civil Code section 3522 to explain that the law presumes complete access is granted in order to fulfill the voters' mandate when a position similar to the Independent Assessor was created by Charter amendment in the City of Los Angeles.
4. Failed to disclose, discuss or distinguish the Court of Appeal decision in *Patton v. Board of Harbor Commissioners* (1970) 13 Cal.App.3d 536, 542-43, which says that a City of

⁵ *The City of Los Angeles v. Los Angeles City Controller, Laura N. Chick*, Case No. BC402345, filed in Los Angeles County Superior Court on November 19, 2008.

Los Angeles commission with the powers and authority described by language that now appears in Charter section 509 has the ultimate power over discipline. Since the Fire Commission has the powers and authority set forth in section 509, the Fire Commission has the ultimate power over discipline in the Fire Department.

5. Failed to disclose, discuss or distinguish the Court of Appeal decision in *Nunes v. Board of Civil Services Commissioners of the City of Los Angeles* (1948) 88 Cal.App.2d 632, 634, which held that the health officer's power to discharge employees is subject to the rules and **instructions** of the Board of Health Commissioners.
6. Failed to disclose, discuss or distinguish formal City Attorney Opinion No. 2006:1, dated May 9, 2006, which says that the powers of a general manager, like the Fire Chief, to appoint, discharge, suspend or transfer employees are subject to the instruction of the Board like the Fire Commission.
7. Failed to disclose, discuss or distinguish the City Attorney's written and verbal advice provided directly to Fire Commissioners before the Independent Assessor position was created which explained that the Commission's failure to comply with the Brown Act notice requirements for holding closed session meetings pursuant to the "personnel exception" to the open meeting laws renders any disciplinary or other action decided by the Commission in closed session null and void. This advice obviously confirms the authority of the Fire Commission to meet in closed session for the purpose of reviewing the Fire Chief's functions of disciplining employees and issuing corrective instructions to the Fire Chief.
8. Failed to disclose, discuss or distinguish the Court of Appeal decision in *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165, or the California Attorney General's publication concerning the Brown Act and open meeting laws, which both indicate that a city commission like the Fire Commission may meet in closed session to consider confidential personnel matters.
9. Failed to disclose, discuss or distinguish formal City Attorney Opinion, 33 Ops.L.A.CityAtty 46, dated January 28, 1946, which says a commissioner's duties provide a right to access department information which is essential to intelligent supervision by the board over the department.
10. Failed to disclose, discuss or distinguish formal City Attorney Report No. R99.0021, dated January 25, 1999, which informed the City Council that as head of the Police Department, the Police Commission "may access all information available to the Department." The Fire and Police Commissions have the same powers as head of their respective departments, the only exception being that the Fire Commission actually has greater powers and authority over discipline and personnel matters pursuant to Charter section 509, 571 and 574.
11. Failed to disclose, discuss or distinguish formal City Attorney Opinion No. 99-7, dated September 20, 1999, which said that the Charter design for departments headed by boards, such as the Police Department, is that the board promulgates rules for the department, instructs the chief administrative officer, the chief officer follows such rules and instructions and the board has the power to issue precise directions to the chief that are operational in nature.

12. Failed to disclose, discuss or distinguish formal City Attorney Report No. R99-0302, dated September 30, 1999, which informed the City Council's Public Safety Committee that the Commission as head of the Police Department, has access to everything within the control of the Department. The Fire and Police Commissions have the same powers as head of their respective departments, the only exception being that the Fire Commission actually has greater powers and authority over discipline and personnel matters pursuant to Charter section 509, 571 and 574.

In addition, the August 23, 2010 advice falsely stated that:

1. Both the Fire Chief and the Police Chief have exclusive jurisdiction over the appointment, discipline and transfer of employees pursuant to Charter sections 509(b) and 574(c). The statement is false because Charter sections 509, 571 and 574 indicate that only the Police Chief has such exclusive jurisdiction. The Fire Chief simply does not have exclusive jurisdiction over personnel matters pursuant to Charter sections 509, 571 and 574.
2. Fire Commissioners could not hold closed session meetings to consider confidential personnel matters. The City Attorney's Office previously provided written and verbal advice on how to comply with Brown Act notice requirements in order to hold lawful closed session meetings. The general counsel repeatedly advised Commissioners to hold closed session meetings from at least June 23, 2006, to January 26, 2009, before the Independent Assessor position was created, and on November 19, 2010, after the position was created. Formal City Attorney Opinion No. 2004:8, dated August 4, 2004, says willful violations of the Brown Act can result in criminal penalties as well as substantial civil penalties for violations, even if inadvertent.
3. The report from the Personnel Department that proposed creating an Independent Assessor position did not indicate review of confidential records was required. This statement from the City Attorney's Office is completely false because page 7 of the Personnel Department's report actually says:

"Regardless of what form oversight may take, access and flexibility are the two crucial elements this function needs to be successful. Unfettered access to complaint and disciplinary tracking systems, databases, files, members, investigations, management etc. is paramount because anything less would be an impediment. **To guarantee and preserve the requisite access, we strongly propose that such access be codified through ordinance or charter provision, such as Charter Section 573 that grants LAPD's Inspector General access to Department information.**" (Emphasis in the original.).

No merit to claim that access is limited to sustained cases

There is no merit to a claim that the Independent Assessor may only review the confidential documents that are filed with the Fire Commission pursuant to Charter section 1060(c). The City Attorney has been unable to explain how such discipline records are any less confidential than the discipline records and files that are not filed with the Fire Commission.

Confidential personnel documents filed with the Fire Commission only involve sustained complaints. An audit, assessment or review of only the sustained complaints severely limits the

Independent Assessor's ability to properly audit, assess or review all complaints of misconduct in an attempt to improve the Fire Department's disciplinary process.

Ballot arguments urged voters to create an Independent Assessor position while noting that several multi-million dollar verdicts challenged conduct in fire stations. From 2002 to 2011, Los Angeles taxpayers paid about \$18 million in labor relations cases filed by members of the Fire Department. Allegations that the Fire Department failed to properly handle, investigate and sustain misconduct complaints were made in some of the lawsuits resulting in multi-million-dollar judgments against the City. Therefore, auditing, assessing and reviewing how the Fire Department handles such complaints requires access to all information related to how the Department investigates all such misconduct complaints regardless of whether the charges are ultimately sustained. **This is particularly critical in cases where charges are not filed because the statute of limitations has run out.**

Voters were urged to approve a Charter amendment because an Independent Assessor position would assist in ensuring that discipline was evenhanded and consistent and that professional standards were appropriately enforced. In 2009, 46 EEO complaints were filed in CTS and five were sustained. In 2010, 59 EEO complaints were filed in CTS and seven were sustained. In 2011, 63 EEO complaints were filed in CTS and four were sustained. Only by accessing all information related to how the Department handles and investigates all such complaints can it be determined whether the Fire Department is appropriately enforcing and consistently applying discipline and professional standards in an evenhanded manner in all EEO cases.

The City Attorney's Office reviewed the Independent Assessor's class specification before it was approved by the Civil Service Commission on March 12, 2009. That class specification accurately reflects the will, intent and reasonable expectation of the voters as follows:

1. The very first paragraph of the class specification says the Independent Assessor would conduct comprehensive procedural and operational audits of the Fire Department's administrative and EEO investigations;
2. The second paragraph of the class specification says the Independent Assessor serves as the Board's independent auditor and may conduct highly complex and sensitive administrative audits, reviews and assessments including, but no limited to, EEO complaints and discipline; and
3. Under the section titled "Examples of Duties" it says the Independent Assessor reviews investigations of complaints filed against Department employees to determine whether investigations are conducted fairly and comprehensively and progress within standard time frames, and determines whether adjudication complies with Department policies and procedures.

August 23, 2010 advice is not consistent with more recent legal advice:

The August 23, 2010 advice is not only inconsistent with the legal authorities previously noted, but it is also inconsistent with more recent legal advice and authorities.

The City Attorney's Office provided written legal advice to the Fire Commission, dated May 16, 2011, which stated that the Fire Chief's functions of discharging and suspending Department employees are subject to review and corrective instruction from the Fire Commission. To

support this legal advice, the City Attorney cited formal City Attorney Opinion No. 2006:1 and the Court of Appeal decision in the *Patton* case involving the City of Los Angeles. These legal authorities relied on by the City Attorney in the May 16, 2011 advice were not even mentioned, disclosed, discussed or distinguished in the August 23, 2010 advice.

On July 19, 2011, the general counsel said Mr. Trutanich decides how he wants to run his office and Mr. Trutanich decides whether his office will answer questions about the August 23, 2010 advice. As the subcommittee's September 12, 2011 report to the full Commission⁶ indicates, the City Attorney has yet to explain:

1. Why the August 23, 2010 advice, which fails to mention either formal City Attorney Opinion No. 2006:1 or the *Patton* case, says the Fire Commission has no role in personnel actions or the discipline of Department employees, and has no role in oversight of the disciplinary process when the City Attorney's May 16, 2011 advice, that does reference these authorities, says the Fire Chief's functions of discharging and suspending Department employees are subject to review and corrective instruction from the Fire Commission.
2. How the Fire Commission can appropriately and responsibly review the Fire Chief's discharge and suspension of Fire Department employees and issue appropriate corrective instructions to the Fire Chief, pursuant to Charter section 509, formal City Attorney Opinion 2006:1, the Court of Appeal decision in *Patton* and the City Attorney's May 16, 2011 advice, without having the same access to the same confidential information the Fire Chief uses in imposing suspensions and discharges.
3. Why the Commission is now being told it does not have access to Fire Department personnel information when the City Attorney's Office repeatedly advised Commissioners to hold closed session meetings to discuss Fire Department discipline and personnel matters both before and after the August 23, 2010 advice was issued.
4. Why the August 23, 2010 advice cites Charter sections 509(b) and 574(c) for the proposition that both the Police Chief and the Fire Chief have exclusive jurisdiction over discipline in their respective departments when: 1) it is Charter section 571(b)(1) (and not either section 509 or 574) that says only the Police Chief has such exclusive jurisdiction; and 2) the City Attorney's May 16, 2011 advice says the Fire Chief's functions of discharging and suspending Department employees are subject to review and corrective instruction from the Fire Commission.
5. How the August 23, 2010 statement that the Fire Commission has no role in oversight of the disciplinary process can be reconciled with either of the following: 1) the City Attorney's repeated advice to Commissioners to hold closed session meetings to discuss Department discipline and personnel matters; and 2) the approved class specification that says the Independent Assessor assists the Board of Fire Commissioners in providing civilian oversight by monitoring the disciplinary process in the Los Angeles Fire Department (LAFD) to ensure that investigations are conducted in a thorough, fair, and effective manner.

On June 21, 2011, Dean and Distinguished Professor of Law Erwin Chemerinsky, the Chair of the Elected Los Angeles Charter Reform Commission that was largely responsible for writing

⁶ BFC 11-140.

the Charter, provided a written opinion indicating that the August 23, 2010 advice was "mistaken." Dean Chemerinsky's June 21, 2011 opinion letter was entirely consistent with the Court of Appeal decisions, formal City Attorney opinions and reports, informal written and verbal advice from the City Attorney, and the California Attorney General's publication concerning the Brown Act; none of which was disclosed, discussed or distinguished by the August 23, 2010 advice. Dean Chemerinsky's opinion was also entirely consistent with the City Attorney's May 16, 2011 written advice.

Repeated attempts to resolve issues related to August 23, 2010 false, inaccurate and inconsistent advice

The Fire Commission and Independent Assessor have made repeated and appropriate attempts to resolve the issues, ask questions and communicate with the City Attorney's Office for two years. The City Attorney's Office has simply failed and refused to appropriately respond to these numerous efforts. Some of these attempts include the following:

1. On May 11, 2010, the Independent Assessor provided the City Attorney's Office with information concerning: 1) the City Attorney's January 6, 1997 informal advice, which explained that according to Civil Code section 3522, the law presumes complete access is granted in order to fulfill the voters' mandate; and 2) formal City Attorney Report No. R99.0021, dated January 25, 1999, which explained that as head of a department, a commission like the Fire Commission may access all information available to the Department. The Independent Assessor also explained that unless the City Attorney's Office could explain why these opinions did not apply, the Independent Assessor would continue to review all disciplinary records without limitation. Despite bringing these legal authorities to their attention, these legal authorities were not disclosed, discussed or distinguished in the City Attorney's August 23, 2010 advice. The City Attorney's Office responded by saying that only its office could provide legal advice.
2. On May 11, 2010, the City Attorney's Office represented that they would be available to discuss the advice about legal authority to access Fire Department information when it was completed. Despite the representation, that discussion has not taken place and obvious questions and concerns have not been addressed. No Charter provision permits the City Attorney's Office to provide false, inaccurate or inconsistent advice about the Fire Commission's Charter authority or to actively avoid answering reasonable and responsible questions about their false, inaccurate and inconsistent advice.
3. At the August 17, 2010 Fire Commission meeting, the general counsel advised that the City Attorney's advice on the authority to access personnel information would be forthcoming and that Commissioners could discuss and ask questions about the legal advice, but that it was something that the public had the right to observe. While the Fire Commission has attempted to discuss the advice in public twice in two years (once on September 21, 2010, and again a year later on September 20, 2011), the City Attorney's Office has been successful in avoiding that public discussion both times.
4. Just before the Fire Commission was to discuss the legal advice in public on September 21, 2010, the City Attorney's Office requested that the Fire Commission appoint a subcommittee to discuss the legal advice, with three other items, in private. Although the City Attorney's Office said it would "coordinate" the meeting, and despite follow up emails on September 28, 2010, and November 15, 2010, the meeting was not promptly

scheduled. By requesting a private meeting, the City Attorney's Office was successful in preventing Fire Commissioners from discussing and asking questions about its legal advice in public, which the general counsel said the public had a right to observe.

5. On December 15, 2010, members of the Mayor's Office provided the City Attorney's Office with a copy of the Independent Assessor's written analysis that raised substantial questions about the accuracy of the August 23, 2010 advice. No one from the City Attorney's Office ever discussed that analysis with the Independent Assessor or answered any of the concerns and questions raised in the analysis. Quite frankly, it is very difficult to understand a City Attorney's Office that would fail to discuss the Independent Assessor's Charter authority directly with the Independent Assessor.
6. After waiting four months for the City Attorney's Office to schedule the private meeting they had requested on September 21, 2010, Fire Commission President Hudley-Hayes and Vice President Tolentino sent a letter directly to Mr. Trutanich, dated January 18, 2011. Included with the letter sent to Mr. Trutanich were written questions that questioned the accuracy of the August 23, 2010 advice. No one from the City Attorney's Office, including Mr. Trutanich, has ever replied, answered or sought to discuss these written questions from two Fire Commissioners in the almost 18 months since the questions were provided directly to Mr. Trutanich.
7. In a June 28, 2011 letter from the Independent Assessor, the City Attorney's Office was asked to reconsider the advice in light of an opinion from Dean Chemerinsky, a copy of which was provided at the same time. The City Attorney's July 6, 2011 written response to Dean Chemerinsky was embarrassing, hostile, aggressive and inaccurate.
8. On July 7, 2011, the Independent Assessor sent a draft board report and draft policy statement regarding access to information to the City Attorney's Office for review and comment. The draft statement was based almost exclusively on legal authorities involving the City of Los Angeles and City commissions similar to the Fire Commission. This did not resolve the issues.
9. On July 13, 2011, the Independent Assessor sent a letter to the City Attorney's Office containing 11 questions concerning the right to access Fire Department information. The City Attorney's Office again failed to answer the Independent Assessor's questions about his Charter authority.
10. On July 19, 2011, the Fire Commission met in public and informed the general counsel that it was providing the City Attorney's Office still another 60 days to provide written answers to 11 questions concerning the legal authority of the Fire Commission and the Independent Assessor to access information in the Fire Department. The general counsel noted that the Fire Chief was in the position of having to choose between the Commission and the City Attorney's legal advice. At least one commissioner said that the Fire Chief does not have a choice. During this meeting it was the general counsel who said that the Commission could not direct an employee to engage in illegal activity. The City Attorney has yet to answer the Commission's questions which would clarify if

the access to information by the Fire Commission and the Independent Assessor is actually unlawful.⁷

11. During the July 19, 2011 meeting, the general counsel told the Commission and the public that City Attorney Carmen Trutanich decides how he runs the Office of the City Attorney and how he wants to assign resources. The Commission, Independent Assessor and public were told that with respect to whether or not the City Attorney's Office is going to take further steps to respond specifically to the "litany of questions and analysis that has been presented" is something City Attorney Trutanich will determine. Despite Charter section 271(b), which says that the City Attorney shall give advice or opinion in writing when requested to do so by a board (like the Fire Commission), the City Attorney has failed to provide written answers to questions the Commission asked last year on July 19, 2011. In fact the City Attorney has not answered the Commission's July 19, 2011 at all.
12. On July 27, 2011, the Independent Assessor sent written questions about the Charter authority to access information which sought to clarify the City Attorney's Office inconsistent advice. The City Attorney's Office did not answer the questions, but did send an August 8, 2011 letter directly to the Fire Commission. The Independent Assessor understood the letter to be a threat given the information contained in the letter and because it was sent directly to the Fire Commission who may remove the Independent Assessor.
13. The Fire Commission's second attempt at a public discussion of the City Attorney's August 23, 2010 legal advice, in accordance with the general counsel's advice, took place on September 20, 2011. That time, the item was tabled when Commissioners were told that representatives from the Mayor's Office and the City Attorney's Office would engage in direct communications about the issue. Nothing has been resolved since September 20, 2011. However, the City Attorney's Office continues to be successful in preventing Fire Commissioners from discussing and asking questions about legal advice in public, which the general counsel said the public had a right to observe.

Threats to Fire Commission control and need for declaratory relief action

Instructing the Fire Chief that the Independent Assessor may not have access to investigative information threatens the power of the Fire Commission to supervise, control, regulate and manage the Fire Department as head of the Department. The August 23, 2010 advice threatens the Commission's ultimate power over discipline and the ability to instruct the Fire Chief pursuant to Charter section 509, as is explained in the *Patton* case and formal City Attorney Opinion No. 2006:1.

The Independent Assessor previously recommended that the Fire Commission's HRDC/Personnel Committee hold a closed session meeting on February 13, 2012, to review the Fire Department's handling of certain very serious complaints of alleged misconduct. When Commissioners attempted to go into closed session, as they had many times before, the general counsel simply directed that "there is no closed session item" based on advice given by

⁷ In *Lysick v. Walcolm* (1968) 258 Cal.App.2d 136, 147, the court explained that an attorney has a duty to disclose all information necessary to enable a client to make free and intelligent decisions regarding the subject matter.

Senior Assistant City Attorney Zna Portlock Houston and Chief Assistant City Attorney Pedro "Pete" Echeverria.

This directive to Commissioners is entirely inconsistent with all other legal authorities and the general counsel's longstanding advice. This inconsistency goes unexplained, except to say, that the City Attorney is the City's sole legal advisor and anyone who questions the advice is encroaching on the City Attorney's authority. Thus far the City Attorney has not explained the inconsistent advice.

To direct that "there is no closed session" to consider complaints of misconduct lodged against Department employees clearly prevents the Fire Commission from exercising its full range of power. Without closed session meetings, the Fire Commission is prevented from reviewing the Fire Chief's functions of discharging and suspending employees and issuing corrective instructions, which is exactly what the City Attorney's May 16, 2011 advice said the Fire Commission had the power to do.

Instructing and directing the Fire Chief to provide the Independent Assessor with access to confidential personnel information does not fully address the threat to the Fire Commission's Charter power to supervise, control, regulate and manage the Fire Department as head of the Department. Given the City Attorney's position on the Fire Commission's ability to hold closed session meetings it appears necessary to pursue a declaratory relief action for the purpose of seeking a judicial determination that the Board of Fire Commissioners has a right to access all Fire Department information, including confidential personnel information, in order to review the Fire Chief's disciplinary decisions and issue corrective instructions.

The general counsel has provided inconsistent advice about Fire Commissioners meeting in closed session to discuss discipline, dismissal and release of Department employees. The City Attorney has failed to explain the inconsistency or answer other appropriate, reasonable and responsible questions about the authority of the Fire Commission to access confidential personnel information. Only a declaratory relief action will stop the City Attorney's office from giving inconsistent advice and continuing to engage in the conduct described in this report.

Fire Chief's conflict position

By advising the Fire Chief that the Independent Assessor may not access investigative files, the general counsel is intentionally placing the Fire Chief in a risky and vulnerable position. The head of the Fire Department is the Fire Commission, not the Fire Chief. The job of the general counsel is not to direct the Fire Chief or to undermine the Fire Commission's Charter authority. The general counsel has a legal and ethical duty to provide accurate, clear, consistent and understandable **advice** so the Commission may instruct and direct the Fire Chief.⁸ As a formal City Attorney opinion suggests, such advice is essential to intelligent supervision of the Department by the Commission.⁹

During the July 19, 2011 Fire Commission meeting, it was the general counsel who said the Commission could not direct an employee to engage in illegal conduct. Oddly enough, while the

⁸ In its declaratory relief action against the City Controller, the City Attorney's Office said that it has a legal and ethical duty when providing advice interpreting the City Charter to give advice that is legally accurate and that City officers should expect that the City Attorney will act consistently with City Attorney formal opinions.

⁹ 33 Ops.L.A.CityAtty 46.

general counsel said the Commission could not direct an employee to engage in illegal conduct, the general counsel repeatedly advised Commissioners to hold closed session meetings pursuant to the Brown Act to discuss confidential employee discipline, dismissal and release matters in private. As previously noted, a formal City Attorney opinion says that willful violations of the Brown Act can result in criminal penalties as well as substantial civil penalties for violations, even if inadvertent.

To provide advice to the Fire Chief in the hopes that he will follow the advice, because he fears doing something illegal, or suggesting that the Commission may be directing the Fire Chief to do something illegal, without answering the Commission's questions, is unfair to the Fire Chief, deeply disrespectful of the Fire Commission as head of the Fire Department and unprofessional. The general counsel's public comments to the Commission on July 19, 2011, recognize that the Fire Chief is placed in the position of having to decide whether to follow the Commission's instructions or the City Attorney's advice without the benefit of having the answers to the Commission's questions. As page 5 of formal City Attorney Opinion No. 2006:1, dated May 9, 2006, says:

"From a practical standpoint, disregarding the Board's instruction may result in unfavorable consequences for the General Manager, such as the risk that the Board lodge a complaint with the Mayor, and the attendant consequences, including possible removal by the Mayor."

Access despite August 23, 2010 advice

Until this recent advice to the Fire Chief and except for not attending the Fire Chief's discipline meetings, the Independent Assessor has continued to access confidential personnel information despite the August 23, 2010 advice. This has included accessing the following: 1) confidential misconduct complaints and some investigative information in the CTS; 2) physical investigative files kept by the PSD; 3) personnel files in the custody of the Personnel Services Section; and 4) payroll records.

This continuing access has been based on a July 14, 2010 memorandum from the former Fire Chief directing all Department employees to provide full cooperation with the Independent Assessor's attempts to access information. The City Attorney's Office is well aware of the July 14, 2010 directive to Department employees. The City Attorney's Office and the general counsel know the Independent Assessor has continued to access such information despite the August 23, 2010 advice.

On May 11, 2010, the Independent Assessor told the City Attorney's Office in writing that he would continue to access confidential information. The Commission President informed the City Attorney's Office that the Independent Assessor would continue to access such information. The general counsel acknowledged hearing the Independent Assessor inform the City Council's Public Safety Committee that he was accessing confidential personnel information pursuant to the July 14, 2010 directive. The City Attorney's Office failed to object or voice any concern when provided a draft of the April 26, 2012 *Audit and Assessment of Fire Department Litigation* a month before it was published. This report made repeated, open, and obvious references to reviewing confidential personnel information.

Until the recent advice to the Fire Chief, the City Attorney's Office had done nothing to stop the Independent Assessor's open and obvious access to confidential information. No legal action has been filed. The City Attorney has failed to pursue a declaratory relief action to seek a

judicial determination that the Fire Commission and the Independent Assessor do not have the Charter authority to access confidential personnel information or any other information in the Fire Department.

The City Attorney's Office has very good reasons for failing to pursue any legal action to prevent the Independent Assessor from accessing confidential personnel information, even though the general counsel suggested that it is illegal on July 19, 2011. No court will find any merit in the August 23, 2010 advice, given the obvious failure to disclose, discuss or distinguish City Attorney opinions, reports and advice issued over the last 60 years as well as other legal authorities from the Court of Appeal. A court will take a particularly harsh view of misrepresenting what the Charter says about the Fire Chief having exclusive jurisdiction over Fire Department personnel and discipline matters and misrepresenting what the report from the Personnel Department recommended about the Independent Assessor needing to have access to confidential information.

August 23, 2010 advice as retaliation

The City Attorney's Office only issued the false, inaccurate and inconsistent advice after publication of the *Assessment*, which contained some criticism of the legal services provided by that office. The false, inaccurate and inconsistent legal advice was prepared by the same unit whose legal services were criticized in the *Assessment*. A Fire Department memo dated April 1, 2009, also expressed criticism with the same City Attorney unit as follows:

"[S]upervisors have voiced a reluctance to formally seek legal advice from the City Attorney's Office for a variety of reasons, including their lack of response, their demeaning attitude to LAFD members making the request and/or the perception that any response will be untimely and/or incomplete." (Emphasis added.)

The City Attorney's Office did not claim the *Assessment* was inaccurate in any way before it was published or when it was formally presented to the Fire Commission. However, the same unit in the City Attorney's Office, whose work was criticized in the *Assessment*, and that prepared the false, inaccurate and inconsistent legal advice about the authority of the Commission and Independent Assessor, prepared an August 16, 2010 response to the *Assessment* that was also false, incomplete and inaccurate. The following are limited examples of the inaccuracies contained in that response:

1. When the *Assessment* reported that the City Attorney did not respond to a November 18, 2008 legal request from the Fire Department, the August 16, 2010 response said the City Attorney's Office first learned of this request on April 14, 2010. The April 1, 2009 Fire Department memo and a July 21, 2009 email **from** the attorney preparing the August 16, 2010 response proves this is a false statement.
2. The response said the *Assessment* was "completely false" in reporting that the City Attorney did not respond to a January 30, 2009 request for an attorney to assist in presenting the Department's case at a Board of Rights hearing because no hearing was scheduled for or conducted on January 30, 2009. The August 16, 2010 response went on to explain other activities that took place on January 30, 2009, that were completely unrelated to the request. What the City Attorney's August 16, 2010 response failed to disclose was that the second to last sentence of the January 30, 2009 legal request itself said the hearing would commence in mid-February, not on

January 30, 2009. The City Attorney's response also failed to disclose a February 4, 2009 email stating that the hearing would reconvene on February 17, 2009.

3. When the *Assessment* reported that the City Attorney's Office failed to respond to a February 10, 2009 request for advice, the August 16, 2010 response said: 1) the request was not received until April 2010; 2) once found, the City Attorney's Office confirmed that it had not been received previously; 3) the Fire Department made no effort to ask about the request between February 20, 2009 and April 2010; and 4) if the request had been received, it would have been logged in and assigned to an attorney. These statements to the Fire Commission and to the public are not truthful for two reasons. First, the request for advice was sent directly to the attorney who prepared the response by email on February 10, 2009, at 2:57 pm. Second, the April 1, 2009 Fire Department memo and that attorney's own July 21, 2009 email also proves that the attorney personally knew about the legal request long before April 2010.
4. The *Assessment* reported that the Fire Department had been waiting for over a year after a January 28, 2009 request asked for advice concerning investigative subpoenas. The City Attorney's August 16, 2010 response, represented that the Fire Department said nothing about the request for investigative subpoena advice until October 2, 2009. This is an untruthful statement for at least three reasons. The attorney preparing the August 16, 2010 response confirmed receiving the Fire Department's April 1, 2009 memo which referred to the request, and her own July 21, 2009 email to the Department asked if the request was still open. A second copy of the request for advice was sent directly to the attorney who prepared the response by email on July 23, 2009 at 5:08 a.m. A third copy of the legal request was sent directly to the same attorney on October 2, 2009, with an email which said "this is the request that was resent to you on July 23 in regards to the subpoena issue, as I mentioned to you today." The attorney's misguided attempt to blame the Fire Department for the failure of the City Attorney's Office to properly track and provide timely legal advice also ignores the fact that the Mayor's Office contacted the City Attorney's Office about the request in July 2009.
5. The City Attorney's August 16, 2010 response to the Fire Commission and public said that the *Assessment* "incorrectly" reported that the City Attorney's Office failed to provide the requested advice in more than a year, in connection with the January 28, 2009 request concerning investigative subpoenas. The advice was finally provided in a written memo dated August 16, 2010. That is clearly more than a year after the request was made on January 28, 2009.

Repeated attempts to resolve issues related to August 16, 2010 response

Fire Commissioners and the Independent Assessor have attempted to discuss and determine the accuracy of the City Attorney's August 16, 2010 response without success. The failure and refusal to discuss the accuracy of the August 16, 2010 response over the past two years includes the following events:

1. The City Attorney's Office failed to provide copies of the exhibits referred to in the August 16, 2010 response despite three written requests dated August 25, 2010, August 28, 2010, and September 2, 2010.

2. On September 13, 2010, the Independent Assessor sent a written review of the August 16, 2010 response to the City Attorney's Office with a request that the City Attorney's Office fact check it. The City Attorney's Office never responded.
3. On September 20, 2010, the Independent Assessor sent an email asking that the City Attorney's Office conduct a fact checking review of the material provided a week earlier by September 24, 2010. No one from the City Attorney's Office responded to this request.
4. In a second email dated September 20, 2010, sent to two senior City Attorney managers, the Independent Assessor suggested that it would be appropriate to meet to discuss the issues raised by the August 16, 2010 response and the Independent Assessor's review of it. No one from the City Attorney's Office responded.
5. Just before the Fire Commission was to discuss the City Attorney's August 16, 2010 response in public on September 21, 2010, the City Attorney's Office requested that the Fire Commission appoint a subcommittee to discuss the response, with three other items, in private. Although the City Attorney's Office said it would "coordinate" the meeting, and despite follow up emails on September 28, 2010, and November 15, 2010, the City Attorney's Office did not promptly schedule the meeting. By asking for a private discussion, the City Attorney's Office was successful in avoiding a public discussion of information the public has every right to observe.
6. After waiting four months for the City Attorney's Office to schedule the private meeting they had requested on September 21, 2010, Fire Commission President Hudley-Hayes and Vice President Tolentino sent a letter directly to Mr. Trutanich dated January 18, 2011. Included with the letter sent to Mr. Trutanich were written questions about the accuracy of the August 16, 2010 response. No one from the City Attorney's Office has responded to these written questions in almost 18 months.
7. On August 2, 2011, the City Attorney's Office was provided with: 1) detailed information about the unsuccessful attempts to communicate with the City Attorney's Office about the August 16, 2010 response over the preceding year; 2) a copy of the Independent Assessor's draft review of the August 16, 2010 response; and 3) copies of exhibits referenced in the Independent Assessor's review. No one from the City Attorney's Office provided comments and corrections or attempted to explain or discuss the issues mentioned in the Independent Assessor's review.
8. On August 8, 2011, the City Attorney's Office sent all Fire Commissioners a letter responding to, among other things, the Independent Assessor's August 2, 2011 request. The Independent Assessor believes that the City Attorney's Office was attempting to threaten him given the information contained in that letter, since the Fire Commission has the authority to remove the Independent Assessor.
9. On August 8, 2011, the City Attorney's Office was again asked to provide comments concerning the Independent Assessor's review of the City Attorney's August 16, 2010 response by no later than September 1, 2011. There was no response from the City Attorney's Office.

Retaliation and Repeated Violations of Legal and Ethical Duties:

California Labor Code section 1102.5(a) says an employer may not prevent an employee from disclosing violations of state statutes or violations or noncompliance with state rules or regulations. Section 1102.5(b) says that an employer may not retaliate against an employee for disclosing information the employee has a reasonable cause to believe discloses violations of state statutes or violations or noncompliance with state rules or regulations. The Independent Assessor claims the protections of section 1102.5.

The City Attorney and the attorneys he supervises have ethical and legal duties set forth in the State Bar Act and in the Rules of Professional Conduct. While not a complete list, the City Attorney and some of his subordinates have violated those duties as follows:

1. The City Attorney's Office knowingly and intentionally provided false information to the Fire Commission and public in the City Attorney's August 16, 2010 response to the Independent Assessor's March 27, 2010 *Assessment*. Providing false information violates Business and Professions Code sections 6068(d) and 6106.
2. Between September 13, 2010, and August 8, 2011, the Independent Assessor repeatedly attempted to discuss the accuracy of the City Attorney's August 16, 2010 response with, or obtain information concerning its accuracy from, the City Attorney's Office. The City Attorney's Office would not answer the Independent Assessor's questions about the accuracy of the August 16, 2010 response, discuss it with the Independent Assessor or provide information about it. The failure to communicate violates Business and Professions Code section 6068(m) and Rule 3-500.
3. Two Fire Commissioners sent a January 18, 2011 letter directly to Mr. Trutanich with written questions about the accuracy of the August 16, 2010 response. No one in the City Attorney's Office ever responded to these written questions. The failure to communicate violates Business and Professions Code section 6068(m) and Rule 3-500.
4. The August 23, 2010 advice is completely false when it says the Personnel Department's report that recommended creating the Independent Assessor did not indicate that review of confidential records was required. Untruthfulness and dishonesty are violations of Business and Professions Code sections 6068(d) and 6106.
5. The August 23, 2010 advice is completely false when it says the Fire Chief has exclusive jurisdiction over the appointment, discipline and transfer of employees pursuant to Charter sections 509(b) and 574(c). Untruthfulness and dishonesty are violations of Business and Professions Code sections 6068(d) and 6106.
6. The August 23, 2010 advice is false, inaccurate and inconsistent with all other legal authorities including at least three Court of Appeal decisions, formal City Attorney opinions, formal City Attorney reports, other City Attorney advice, Civil Code section 3522, the Attorney General's advice concerning the Brown Act and Dean Chemerinsky's opinion. The City Attorney's declaratory relief action against the City Controller says that the City Attorney has an ethical and legal duty when providing legal advice to give advice that is legally accurate pursuant to Business and Professions Code section 6068 and Rule 3-110. The City Attorney's Office also said in its declaratory relief action that the City Controller should have known that the City Attorney's Office would act consistently with a **formal** City Attorney opinion.

7. From at least June 23, 2006, through January 26, 2009, before the Independent Assessor position was ever approved by voters, the general counsel repeatedly advised Fire Commissioners to hold closed session meetings to discuss employee discipline, dismissal and release. If the general counsel advised Fire Commissioners to hold closed session meetings in violation of the Brown Act, thus subjecting Commissioners to criminal penalties, civil penalties and lawsuits, she violated Business and Professions Code section 6068 and Rule 3-110.
8. The two Fire Commissioners who engaged in closed session meetings on the basis of the general counsel's advice sent a letter directly to Mr. Trutanich on January 18, 2011 with written questions. The written questions asked if the Brown Act had been violated by holding closed sessions, what actions the Commissioners should take to mitigate any violations and to what extent the City was exposed to the risk of litigation by such advice and conduct. No one from the City Attorney's Office ever replied to the questions. The failure to communicate violates Business and Professions Code section 6068(m) and Rule 3-500.
9. The applicable job description says the Independent Assessor may ask the City Attorney about litigation matters involving the Fire Department, particularly issues related to policy making. On May 23, 2011, the City Attorney's Office was sent written questions concerning litigation involving the Department which resulted in a \$1 million verdict. The City Attorney sent a written response saying it was refusing to answer or discuss the questions. The failure to communicate violates Business and Professions Code section 6068(m) and Rule 3-500.
10. On July 19, 2011, the full Fire Commission provided the City Attorney still another 60 days to answer their questions in writing after being told Mr. Trutanich decides how he runs his office and Mr. Trutanich will decide if questions will be answered. The Fire Commission's questions have not been answered in a year. The failure to communicate violates Business and Professions Code section 6068(m) and Rule 3-500. The City Attorney's failure to provide written answers also violates Charter section 271(b), which requires written answers when requested by a City commission.
11. On July 27, 2011, the Independent Assessor sent written questions concerning his authority to access Fire Department information to the City Attorney's Office. The City Attorney has failed to answer any of the questions. The failure to communicate violates Business and Professions Code section 6068(m) and Rule 3-500. The City Attorney's Office did respond with an August 8, 2011 letter to the Fire Commission, which the Independent Assessor reasonably understood to be a threat because of what was said in the letter and the fact that it was addressed to the body with the authority to terminate his employment.
12. On August 29, 2011, the Independent Assessor provided the City Attorney's Office with a draft report for review, which indicated that the City Attorney's Office was provided false, incomplete and misleading information to the City Council's Budget and Finance Committee concerning a trial verdict in a case involving the Fire Department. The draft report also reported that the City Attorney's Office had refused to respond to questions about the litigation and what the Fire Department could do to avoid similar lawsuits. The City Attorney's Office responded with a letter threatening to report the Independent Assessor to the State Bar if he did not "cease and desist." Threats of this type are prohibited by Rule 5-100.

13. On October 12, 2011, the City Attorney's Office was requested to provide a copy of a chief officer's deposition and a motion seeking discovery of Fire Department personnel files in litigation involving the Department. The deposition is believed to be directly related to how the Department handles misconduct investigations, and the Mayor's litigation risk management directive (Executive Directive No. 9) recommends reviewing deposition testimony in order to evaluate whether changes need to be made in Department policies and procedures. The City Attorney refused to provide the Independent Assessor with the materials. The failure to communicate violates Business and Professions Code section 6068(m) and Rule 3-500.
14. On February 22, 2012, Mr. Trutanich was provided written information evidencing these failures to comply with ethical and legal duties. Instead of initiating corrective action since that notice was provided, the Fire Chief was advised that the Independent Assessor has no access to investigative information directly related to determining how the Fire Department handles misconduct complaints. There is a conflict and Rule 3-310 is violated when an attorney places their interests above that of their client. Rule 5-220 prohibits the suppression of evidence that the attorney has an obligation to reveal. The City Attorney's declaratory relief action against the Controller suggests that the City Attorney has an obligation to disclose, discuss or distinguish the legal authorities, including a formal City Attorney opinion and Court of Appeal decision, that were not set forth in the August 23, 2010 advice but were set forth in the City Attorney's May 16, 2011 advice.

Fiscal Impact:

The cost of prosecuting a declaratory relief action is not known to the Independent Assessor.

Conclusion:

It is the Independent Assessor's position that the Fire Commission, Independent Assessor and Fire Chief are entitled to accurate and consistent legal advice concerning the Charter authority of the Fire Commission and the Independent Assessor. The Fire Chief should not be placed in a position where he must decide whether to defy the Commission or follow the City Attorney's advice. The Fire Commission and the Independent Assessor are also entitled to complete answers to their appropriate, reasonable and responsible questions about their Charter authority. It appears as though the City Attorney is determined to prove that the Independent Assessor is wrong in holding this position and that the Charter provides the City Attorney with all the authority necessary to engage in the two years of conduct described in this report.

It is respectfully requested that the Board of Fire Commissioners adopt the recommendations.