

# LOS ANGELES FIRE DEPARTMENT



BRIAN L. CUMMINGS  
FIRE CHIEF

October 29, 2012

BOARD OF FIRE COMMISSIONERS  
FILE NO. 12-184

TO: Board of Fire Commissioners

FROM: Brian L. Cummings, Fire Chief

SUBJECT: RESPONSE TO AUDIT AND ASSESSMENT OF FIRE DEPARTMENT  
LITIGATION

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 Withdrawn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:** That the Board:

1. Authorize the Commission Executive Assistant II to transmit the Response to Audit and Assessment of Fire Department Litigation to the Public Safety Committee.

**Summary:**

The Independent Assessor's Office completed an audit of the Fire Department's litigation. The audit determined that the Fire Department needed to do more to prevent and reduce the risk of litigation, to monitor litigation once it was filed, and to improve its litigation risk management practices.

The Fire Department has addressed the recommendations and the findings included in the audit, and have established proposed policies and procedures that will be enforced.

The Public Safety Committee has requested a copy of the "Response to Audit and Assessment of Fire Department Litigation."

**Conclusion:** The attached updated "Response to Audit and Assessment of Fire Department Litigation" is to be submitted to the Public Safety Committee by October 31, 2012.

Board report prepared by Daren Palacios, Chief Deputy, Administrative Operations.

Attachment

## SPECIFIC RECOMMENDATIONS

#	RECOMMENDATION	RESPONSIBLE PARTIES	TIMELINE	TASKS	STATUS
	<b><i>TRACKING SYSTEMS</i></b>				
1	The Department should design, implement and consistently use an electronic tracking system to track litigation and enhance risk management. This should also include tracking litigation costs and the amount of time spent on RMS personnel on each case.	Adm Ops Ex. Adm Ast., Risk Management Staff and new Risk Manager II	2 Months January 1, 2013	- Tracking System has been developed and is in Beta testing - Coordinate w/MIS to add cost and time tracker to Tracking System.	Awaiting test results and finalizing  MIS staff not able to address yet
2	To the extent that the Department's electronic tracking system for litigation is not able to adequately track or preserve information related to litigation, the Department should develop and regularly use a paper-based case file system.	MIS Staff and Risk Management Staff	Completed	- Establish paper-based file system	Completed
3	The manner in which the Department tracks information related to litigation should include all of the information called for by Executive Directive No. 9. It is recommended that the Department also track additional information. One suggested outline is included in Appendix 2.	MIS Staff and Risk Management Staff	6 Months April 1, 2013	- Coordinate w/MIS to add Executive Directive #9 worksheet to Litigation Tracking System - MIS will put in priority order	RM Staff continues to work with MIS staff to accomplish by April 1, 2013.
4	The manner in which the Department categorizes litigation case information should be consistent with the way in which the City Attorney's Office categorizes such information.	MIS Staff and Risk Management Staff, City Attorney and new RM II	2 Months January 1, 2013	- Review with City Attorney Staff. Coordinate changes with MIS. MIS will put in priority order.	RM and MIS Staff working this currently.
5	Biweekly litigation meetings conducted by the Fire Chief should place a greater emphasis on making sure the information called for by Directive No. 9 is being obtained consistently and used to reduce the exposure to litigation. One suggested roadmap is included in Appendix 3.	RM Staff New Civilian Risk Manager II	Completed	-Using list created from Roadmap at each meeting to ensure compliance.	Completed
	<b><i>MATTSON, SARVER &amp; STEIN</i></b>				
6	The Fire Chief and the Fire Department should be instructed to provide a revised written substance abuse policy to the Fire Commission for consideration and approval. This policy should clearly state Department members will be considered impaired and unable to perform their duties in a safe manner if their blood alcohol concentration is .01 percent or more. The revised written policy should be provided to the Fire Commission in no more than 30 days.	ERO and PSD Staff	Undetermined	- Old Reasonable Suspicion policy has been suspended. - ERO and Risk Management to develop new policy. - Rewrite instructions for MSD to do substance abuse testing and training. - Work with City Attorney regarding presentation to Labor in the Meet and Discuss practical consequences process.	-PSD and ERO staffs have met with MSD. -Rewrite of instructions has begun. -ERO has had meetings with Labor.
7	The Fire Chief and the Fire Department should be instructed to stop the manner in which blood alcohol concentration levels are currently tested. The Fire Chief and the Fire Department should be instructed to begin utilizing the City Personnel Department's process to determine both blood alcohol concentration levels and substance abuse.	PSD and ERO Staff	Undetermined	- Old policy has been suspended. Refer to #6.	-PSD and ERO staff meeting with City Personnel and discussing with Labor

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8a	The Fire Chief and the Fire Department should be instructed to revise the Department's written substance abuse practices and procedures in order to: Ensure reasonable suspicion determinations are made only by appropriately trained personnel who are able to demonstrate proficiency in making such determinations; and	ERO, PSD and Training Staffs	Undetermined	- Refer to #6. In-Service Training to develop training for Officers to be presented at COCEP and OCEP for officers to identify potential substance abuse	PSD, TSB, and ERO staff meeting with City Personnel to develop training.
8b	Effectively and efficiently facilitate the City Personnel Department's testing of both blood and alcohol concentration levels and substance abuse.	ERO and PSD Staff	Undetermined	- Refer to #6	PSD staffing meeting with City Personnel
9	In complying with these recommendations, the Fire Department should immediately obtain the advice of the City Attorney's Office to determine the extent to which the Department is required to "meet and confer" about these recommended changes in the Department's policies, practices and procedures related to alcohol and substance abuse testing.	ERO and City Attorney's Office	Undetermined	- Refer to #6	Request submitted
10	The Department should adopt written procedures that clearly define when a name clearing liberty interest hearing is required, who is entitled to such a hearing and what the requirements are for such a hearing.	ERO, PSD and City Attorney's Office	Undetermined	- ERO and PSD to work with City Attorney's Office to establish clear objectives. Policy needs to be developed and codified	ERO and PSD continue to meet with City Attorney's Office
<b>ROBINSON</b>					
11	The Fire Department should be required to fully explain and justify all unfunded positions, or certify that no unfunded positions exist, to the Fire Commission in writing every six months.	Personnel Services Section Staff	November 20, 2012	- Report to Commission every 6 months	PSS to furnish report to Fire Chief.
12	The Department should ensure compliance with the Fire Commission-approved policies regarding disability accommodation so that all members are treated the same.	Personnel Services Section Staff	August 1, 2012	- Assign full time Reasonable Accommodation position in PSS.	Completed
<b>BURTON &amp; TOHILL</b>					
13	The Fire Department should require that attorneys who represent the interests of the Department in trial have substantial and verifiable jury trial experience in the issues being litigated.	Risk Manager II RM Staff, City Attorney's Office	September 1, 2012	- Fire Chief currently verifying experience.	Completed
14	The City should review how it selects outside counsel in litigation matters, including its requirement that outside counsel have sufficient legal malpractice coverage for the case being handled by the attorney. In selecting counsel to handle appellate issues, the City should consider selecting counsel who did not litigate the case being appealed.	Fire Chief and City Attorney's Office currently, new Risk Manager to assist in future	September 1, 2012	- Fire Chief has requested input on all outside counsel for LAFD cases.	Completed
15	In addition to hiring a professional general risk manager to lead and manage the RMS and the Department's Risk Management Program, the Department requires a professional specialist with substantial training, education and experience to specifically manage and oversee Fire Department civil litigation matters on a daily basis.	Admin Operations and ASB	December 1, 2012	Department to Exempt new Risk Manager II and require substantial training, education and experience in litigation and labor laws of this new Risk Manager II.	Awaiting letter to exempt new Risk Manager II to be approved.

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	<b>BRESSLER, LEE &amp; MELLINGER</b>			-	
16	City Charter section 1060 should be amended to include a statute of limitations and tolling provisions as described in the Firefighter BOR and Public Safety Officers.	ERD and PSD Staff with Fire Commission	December 1, 2013	- Board Report #12-149 approved by Fire Commission, awaiting City Council Committee approvals.	- ERO negotiated with labor organizations to Impasse. - Awaiting Council scheduling
	<b>PROCEDURAL BILL OF RIGHTS ACTS</b>			-	
17	In addition to fully complying with the Executive Directive No. 9, the Department should attempt to reconcile inconsistencies between internal investigations and litigation results.	Fire Chief, PSD and RM Staff	Completed for past litigation, will be ongoing for future	- Conduct regular meetings to pass information from litigation results.	Completed
18	Evidence and how the Department conducted its internal investigation, as revealed by the Bressler trial, strongly confirms the need to have internal investigations conducted and overseen by investigative professionals.	PSD	October 1, 2012	- PSD conducts investigations on all matters of criminal, complicated, or of a serious nature. PSD reviews and adjudicates all field internal investigations.	Completed
	<b>MILLER &amp; RUEDA</b>				
19	Seek authority to hire an employee with the necessary education, training, expertise and experience to effectively monitor and oversee pretrial, trial and post-trial proceedings, as well as manage general litigation risk management issues, on behalf of the Fire Department.	Fire Chief, ASB and Admin Ops	December 1, 2012	- Position approved by Managed Hiring Committee. - Exempting position from Civil Service - Interview and selection person	Awaiting approval of Civil Service Exemption letter.
20	Adopt a formal set of protocols to address what the Fire Commission and Fire Department expect its litigation counsel to provide in the way of information, advice and legal services to inform its efforts in further reducing litigation risks.	Fire Chief, RM Staff, City Attorney and New Risk Manager	January 1, 2013	- Coordination between Fire Commission, Fire Chief, City Attorney and new Risk Manager. - Expectations to be established and implemented	Development of protocols underway
21	Continue to increase the hiring of qualified civilian employees to manage and supervise the disciplinary process, conduct misconduct investigations and prosecute Board of Rights hearings.	PSD Staff	Continuous	- 1 vacancies awaiting approval from Managed hiring. - One approved and in selection process	Continuing
	<b>TRAINING</b>			-	
22	The Department should develop and implement a comprehensive, consistent and integrated plan to ensure human relations, work environment and leadership training needs are effectively met at every level of the Department.	Training Support Bureau and Administrative Staff	July 1, 2013	- The Department's Human Relations advocate, Greg Apodaca, is developing a "cradle to grave" plan of items noted in the audit. Training will have the ability to infuse "as needed" training that may come from PSD or Risk Management Section.	Development of goals and implementation plans underway.
23	The Department should also ensure that those responsible for training receive information from the PSD, RMS and other areas of the Department that receive information related to possible training gaps so that as issues are identified training curricula may be updated to address those issues in a timely manner.	PSD, RM and TSB Staff	Continuous	- Regular meeting between Risk Management staff, PSD staff, and Training will address gaps in identified training curricula.	Meetings scheduled

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24	The Department should ensure that it complies with the Executive Directive No. 9 when complaints are filed against the Department with Equal Employment Opportunity Commission, Department of Fair Employment and Housing or other similar entities. This is particularly true as it relates to thoroughly reviewing the facts of a complaint to determine if: (a) changes in policy or practices are warranted to prevent similar future complaints; and (b) appropriate discipline and/or training is necessary.	Risk Management Staff, PSD (EEO) staff, Administrative Office and New Risk Manager II	December 1, 2012	<ul style="list-style-type: none"> <li>- Coordinate a section within Litigation Tracking to include EEOC issues.</li> <li>- EEO and Risk Management to develop implementation process</li> </ul>	<ul style="list-style-type: none"> <li>-Working with MIS staff to created section to track EEO.</li> <li>-Process to thoroughly review facts of complaints currently under development.</li> </ul>

### GENERAL RECOMMENDATIONS

#	RECOMMENDATION	RESPONSIBLE PARTIES	TIMELINE	TASKS	STATUS
1	The Department should hire a professional risk manager to manage all of the Department's risk management programs. The Department should also hire an employee with the necessary education, training and experience to evaluate, oversee and monitor litigation involving the Fire Department.	Fire Chief, Administrative Operations and ASB	December 1, 2012	<ul style="list-style-type: none"> <li>- Position approved by Managed Hiring Committee.</li> <li>- Letter to Exempt position being forwarded to Mayor's Office</li> <li>- Selection, Job Offer, hiring</li> </ul>	<p>Completed</p> <p>Forwarded to Mayor's Office</p> <p>Awaiting letter approval</p>
2	The Department should develop, implement and consistently use an electronic litigation tracking system fully capable of meeting the requirements of Executive Directive No. 9 and documenting all relevant litigation-related information.	MIS Staff and Risk Management Staff	April 1, 2013	- Coordinate w/MIS to implement Executive Directive #9 to Litigation Tracking System.	Electronic System almost complete.
3	The Department should ensure that the allegations set forth in all claims, complaints and lawsuits are carefully and thoroughly evaluated within 105 days of the Department's notice for the purpose of identifying and taking appropriate and timely corrective and remedial actions. Such evaluations and follow-up actions should involve affected persons and parts of the Department, as appropriate.	Fire Chief, Risk Management Staff and new Risk Manager II	October 15, 2012	- Currently being applied to all claims, complaints and lawsuits.	Applied to all current and new claims, complaints and lawsuits.
4	The Department should ensure that the facts, as revealed through investigation and pretrial discovery, are carefully and thoroughly evaluated on a real-time basis in all cases to ensure appropriate and timely corrective or remedial actions. Such evaluations and follow-up actions should involve affected persons and parts of the Department, as appropriate.	Fire Chief, Risk Management Staff and new Risk Manager II	October 15, 2012	- Currently being applied to all cases.	Currently being applied to all cases.
5	The Department should ensure that all facts and circumstances are carefully and thoroughly reviewed to determine the advisability of implementing appropriate and timely corrective or remedial actions within 30 days following the conclusion of litigation through settlement, verdict or judgment in all cases.	Fire Chief, City Attorney, Risk Management Staff and new Risk Manager II	October 15, 2012	Currently being applied to all claims, complaints and lawsuits.	Applied to all current and new claims, complaints and lawsuits.

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6	The Department should adopt a process whereby all litigated cases are thoroughly and carefully evaluated for litigation errors within 30 days after trial and appellate proceedings have concluded.	City Attorney, Risk Management Staff and new Risk Manager II	October 15, 2012	- Process to evaluate all litigation for errors within 30 days of trial and appellate hearings	Completed - Applied to all current and new claims, complaints and lawsuits
7	The Department should take all necessary steps to ensure that information that is not truly confidential is shared with appropriate parts of the Department, such as the PSD and Training & Support Bureau, in a timely manner so that early corrective actions can be formulated and effectuated. For example, PSD should be provided with copies of claims, complaints, lawsuits, discovery responses, deposition testimony and a summary of trial testimony in a timely manner when issues in the case are directly related to PSD policies, procedures and investigations.	Risk Management Staff and new Risk Manager II	October 15, 2012	- Applying currently and on new claims, complaints and lawsuits.	Applying currently and on new claims, complaints and lawsuits.
8	The Fire Chief should use the biweekly litigation meetings as an opportunity to ensure litigation risk management and prevention opportunities are maximized. In doing so, the Fire Chief should consider requiring that the information called for in the outline set forth in Appendix 3 is provided on a regular basis.	Risk Management Staff and new Risk Manager II	October 15, 2012	- Applying currently and on new claims, complaints and lawsuits.	Applying currently and on new claims, complaints and lawsuits.
9	When litigation counsel do not provide appropriate litigation status reports on a voluntary basis, the Department should seek such reports, which should then be documented in the litigation tracking system and shared with other parts of or persons in the Department, as appropriate. Some of the information that the Department should require that defense counsel provide in litigation status reports is set forth in Appendix 2.	Risk Management Staff and new Risk Manager II	October 15, 2012	- Applying currently and on new claims, complaints and lawsuits.	Applying currently and on new claims, complaints and lawsuits.
10	The Fire Department should be kept fully informed about the Department's continuing litigation evaluations, and the advisability of changes in policies, practices, training, discipline and all other necessary corrective actions within 120 days after the Department is first placed on notice of the claim, complaint or lawsuit; periodically as appropriate throughout the litigation; and within 45 days following the conclusion of the litigation by way of settlement, verdict or judgment.	Risk Management Staff and new Risk Manager II	October 1, 2012	- Applying currently and on new claims, complaints and lawsuits	Applying currently and on new claims, complaints and lawsuits
11	In litigation matters, the Department should ensure that it fully complies with the letter and spirit of Rule 15(g) of the Department's Rules and Regulations, which requires that the Fire Commission receive all conclusive recommendations, requests, reports and other communications before they are provided to others in the City.	Risk Management Staff and new Risk Manager II	October 1, 2012	- Applying currently and on new claims, complaints and lawsuits	Applying currently and on new claims, complaints and lawsuits
12	The Department should establish standards for trial experience, legal malpractice coverage, etc., for all trial attorneys representing the Department in litigation.	Risk Management Staff and new Risk Manager II	November 1, 2012	- Applying currently and on new claims, complaints and lawsuits	Applying currently and on new claims, complaints and lawsuits