



LOS ANGELES FIRE DEPARTMENT

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FIRE CHIEF

August 12, 2013

BOARD OF FIRE COMMISSIONERS FILE NO. 13-101
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TO: Board of Fire Commissioners

FROM: Brian L. Cummings, Fire Chief 

SUBJECT: UPDATE 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 Withdrawn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

SUMMARY

The Fire Department continues to implement the recommendations of the Independent Assessor in his Audit and Assessment of Fire Department Litigation dated April 26, 2012. The attached matrix updates the progress previously reported to the Fire Commission on October 2, 2012 (BFC 12-143) and on November 6, 2012 (BFC 12-184). Additionally, the Department has hired a civilian Risk Manager to oversee its risk management programs and to implement the provisions of Executive Directive No. 9.

RECOMMENDATION

It is recommended that the Board receive and file this report.

DISCUSSION

The Department has continued to implement the recommendations of the Independent Assessor as outlined in his Litigation Audit. The Department has moved forward in revising its substance abuse policy and developing human relations training, with anticipated completion dates by the end of this year. While there has been significant progress in most areas, the Department is limited in technology updates due to a lack of staffing and resources. Specifically, the Department has not been able to move forward on the online tracking system. The Risk Management Section (RMS) has formulated the requisite fields and communicated the information to the programmers, but the Management Information Section (MIS) has not yet been able to program the databases. The Department is seeking to fill vacancies at MIS through Managed Hiring, which if successful, will allow completion of the tracking system in approximately six to nine months. In the interim, RMS tracks all claims and litigation through a manually updated spreadsheet and paper-based case file system.

At present, the Department is in substantial compliance with Executive Directive No. 9 regarding Litigation Risk Management. Pursuant to the Directive, the Department has hired a Risk Manager to oversee and implement management protocols to reduce exposure. The Risk Manager reports directly to the Chief Deputy of Administrative Operations

The Risk Manager is also responsible for assessing all claims upon notice from the City Attorney's Office. This review process includes evaluating policies and practices for revision where necessary to mitigate liability and prevent future claims of a similar nature.

As provided in the Directive, the Risk Manager has been developing an internal process for evaluation of litigation and claims, and implementation of appropriate follow-up to such; however, completion of this project is pending the return to duty of the Risk Management Section (RMS) Officer who manages the tracking system.

The Risk Manager works with all the Department Bureaus on a wide spectrum of issues. Department personnel have open access to the Risk Manager and are encouraged to seek her assistance. The Risk Manager attends the weekly Bureau Commanders meeting and the Combined Operations meeting where issues may be brought to her attention for further review. Collaboration across the Department is critical to the Risk Manager's ability to function successfully, and she works in cooperation with the different divisions and sections on a daily basis.

A large part of the Department's costs of risks is related to employment claims and litigation, therefore the Risk Manager has focused much of her efforts in this area. What first appears as a minor personnel conflict can spiral to a much more serious situation, resulting in allegations of harassment, retaliation, and a hostile work environment. The Risk Manager's goal has been to address the underlying causes at the earliest opportunity, as soon as the conflict is brought to light. In such cases, she works in coordination with RMS and the affected bureaus to formulate a plan to address the conflict. While the Department has long been cognizant of the need to address these kinds of issues at an early junction, a lack of process and oversight has often hampered these efforts. For example, the different parts of the Department were not reliably communicating with each other, resulting in mismanagement or exacerbation of the initial problem. The Risk Manager has implemented a process in conjunction with RMS and the Emergency Services Bureau (ESB) to address work environment problems. This has brought cohesion and oversight to ensure a process that is consistent while maintaining the flexibility to address the unique circumstances of each incident.

The Risk Manager also works closely with the Employee Relations Officer (ERO) on labor matters, ranging from grievances, arbitrations, and negotiations. These issues have prompted the Risk Manager to review Department policies where inconsistent practice and enforcement of such have led to disputes with the union and potential violations of the Firefighter Procedural Bill of Rights.

Diversity training is another area with which the Risk Manager has been involved. She, along with the EEO Coordinator, has been working with the Training & Support Bureau on the EEO training for Chief Officers. Additionally, she will be assisting some newer officers with their training presentation at the field level.

Outside of the Fire Department, the Risk Manager consults regularly with the Labor Relations Division and the General Counsel of the City Attorney's Office for legal counsel. The Risk Manager also consults with the Police Department on issues that affect both Departments to determine, where possible, a mutually beneficial approach.

Fortunately, the Department has not been notified of any new claims against for the Risk Manager to report to the Fire Commission. However, when new claims do arise, the Risk Manager intends to provide quarterly reports to the Commission, summarizing the nature of the claim any updates to those claims.

CONCLUSION

The Department has made much progress toward implementing the recommendations of the Independent Assessor, complying with Executive Directive No. 9, and initiating programs that will lower the Department's risks. The Department is dedicated to completing its tasks in this area, and committed to a proactive approach to risk management.

Report prepared by Chief Deputy Daren Palacios, Administrative Operations

Attachment

SPECIFIC RECOMMENDATIONS

#	RECOMMENDATION	RESPONSIBLE PARTIES	TIMELINE	TASKS	STATUS
TRACKING SYSTEMS					
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	February 1, 2014	- Tracking System has been developed and is in Beta testing - Coordinate w/MIS to add cost and time tracker to Tracking System.	MIS staff not able to complete due to lack of staffing. Seeking to fill two vacancies through Managed Hiring.
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	February 1, 2014	- Coordinate w/MIS to add Executive Directive #9 worksheet to Litigation Tracking System - MIS will put in priority order	See #1.
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	February 1, 2014	- Review with City Attorney Staff. Coordinate changes with MIS. MIS will put in priority order.	See #1.
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
MATTSON, SARVER & STEIN					
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	December 1, 2013	- Old Reasonable Suspicion policy has been suspended. - PSD and ERO 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. -ERO has had meetings with Labor. -PSD has completed rough draft of revised Reasonable Suspicion bulletin. Going through internal review process
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	December 1, 2013	- Old policy has been suspended. Refer to #6.	-PSD and ERO staff meeting with City Personnel and discussing with Labor.
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	December 1, 2013	- 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 upon completion of bulletin.

#	RECOMMENDATION	RESPONSIBLE PARTIES	TIMELINE	TASKS	STATUS
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	December 1, 2013	- 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	December 1, 2013	- Refer to #6.	Legal opinion obtained from City Attorney. ERO to present Labor with revised bulletin when completed.
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	December 1, 2013	- 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
ROBINSON					
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	Completed	- 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	Completed	- Assign full time Reasonable Accommodation position in PSS.	Completed
BURTON & TOHILL					
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	Completed	- 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	Completed	- 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	Completed	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.	New Risk Manager hired 3/10/13
BRESSLER, LEE & MELLINGER					
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	March 2015	- Board Report #12-149 approved by Fire Commission, but did not get past City Council Committee.	Awaiting resubmission to Fire Commission and Council.

#	RECOMMENDATION	RESPONSIBLE PARTIES	TIMELINE	TASKS	STATUS
PROCEDURAL BILL OF RIGHTS ACTS					
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	- 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	Completed	- PSD conducts investigations on all matters of criminal, complicated, or of a serious nature. PSD reviews and adjudicates all field internal investigations.	Completed
MILLER & RUEDA					
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	Completed	- Hire new Risk Manager	Completed - New Risk Manager hired on 3/10/13
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	November 1, 2013	- Coordination between Fire Commission, Fire Chief, City Attorney and new Risk Manager. - Expectations to be established and implemented	Risk Manager and RMS to meet with City Attorney's Office.
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	- Hire qualified personnel.	PSD will have two vacancies as of 8/23/13.
TRAINING					
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	Continuous	- Training to develop a comprehensive HR training program that includes items noted in the audit and that 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. - Professional development course created by Training to be ready by October 1, 2013 for internal review.
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.	See #22.

#	RECOMMENDATION	RESPONSIBLE PARTIES	TIMELINE	TASKS	STATUS
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	Completed	- Risk Manager to oversee review of all complaints filed against the Department.	Completed.

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	Completed	- Hire new Risk Manager	Completed, new Risk Manager hired on 3/10/13
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	February 1, 2014	- Coordinate w/MIS to implement Executive Directive #9 to Litigation Tracking System.	MIS staff not able to complete due to lack of staffing. Seeking to fill two vacancies through Managed Hiring. Refer to #1.
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	Completed	- Currently being applied to all claims, complaints and lawsuits.	Completed
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	Completed	- Currently being applied to all claims, complaints and lawsuits.	Completed
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	Completed	- Currently being applied to all claims, complaints and lawsuits.	Completed

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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	Completed	- 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	Completed	- 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	Completed	- 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	Completed	- 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	Completed	- 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	Completed	- 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	Completed	- Applying currently and on new claims, complaints and lawsuits	Applying currently and on new claims, complaints and lawsuits.