

LOS ANGELES FIRE DEPARTMENT



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INTERIM FIRE CHIEF

December 23, 2013

BOARD OF FIRE COMMISSIONERS
FILE NO. 14-003

TO: Board of Fire Commissioners

FROM: James G. Featherstone, Interim Fire Chief

SUBJECT: DEPARTMENT'S RESPONSE TO THE INDEPENDENT ASSESSOR'S
SEPTEMBER 4, 2013 REVIEW OF THE FIRE DEPARTMENT'S
DISCIPLINARY PROCESS

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 Withdrawn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

At the September 17, 2013 Board of Fire Commissioners Meeting, the Board directed the Los Angeles Fire Department (LAFD) to respond to the Independent Assessor's (IA) September 4, 2013, Review of the Fire Department's Disciplinary Process at the November 5, 2013 Board meeting. This report is intended to (1) provide the Department's response to the Independent Assessor's 50 recommendations; (2) provide an overview of what the Fire Department has done regarding the disciplinary process since the Board of Fire Commissioners adopted the 2008 Audit Implementation Plan; and (3) begin dialogue with this newly appointed Board as to its vision of the role of discipline in the 2013 that is consistent with the LAFD vision.

RECOMMENDATIONS

That the Board:

1. Receive and file this report.
2. Direct the Fire Chief to modify the discipline philosophy approved in the 2008 Audit Implementation Plan to allow the Department to adjudicate minor complaints with non-punitive alternatives such as corrective action or training and counseling, even when there is a relevant disciplinary guideline.

FISCAL IMPACT

This Board Report is the Department's initial response to the Independent Assessor's September 4, 2013 Review of the Fire Department's Disciplinary Process. For those recommendations which have been implemented and "completed," there is a continued operating cost associated with that task. For those which are in progress (either

because the matter is appropriate for the “meet and confer” process, requires amendments to the City Charter by ballot or are substantive budgetary issues such as staffing), those costs have not been calculated for this initial report.

DISCUSSION

According to the IA “Review of the Fire Department’s Disciplinary Process,” the Independent Assessor was directed by the Board of Fire Commissioners “to determine the extent to which the current process complies with prior audit recommendations, applicable laws, collective bargaining agreements, Fire Commission directives and other standards.”

The Independent Assessor’s review consisted not only of a document review and his past research on disciplinary issues, but on interviews of sworn and civilian members, and union officials regarding their perspectives and criticisms of the disciplinary process. The Independent Assessor wrote that “[M]any of the complaints we heard about the process can be attributed to the failure to deviate from the standards adopted in response to negative audits and expensive litigation.”

The Independent Assessor concluded that he “generally found that the disciplinary process complies with applicable standards” but that he discovered, concerns and had made the fifty (50) recommendations to the Department.

The Department has reviewed the Independent Assessor’s recommendations and has compiled its initial response in a table entitled “Los Angeles Fire Department’s Responses to the Independent Assessor’s September 4, 2013 Review of the Fire Department’s Disciplinary Process,” attached and incorporated herein as “Appendix One.”

The Department agrees with the majority of the Independent Assessor’s recommendations. Many of the recommendations have been implemented through the creation of processes and procedures by the Professional Standards Division (PSD). However, there are a substantial number of recommendations which have not been completed because of the nature of the recommended actions and the process involved in modifying or changing the item. These fall into three broad categories: (1) changes to labor agreements or memorandums of understanding; (2) changes to the Los Angeles City Charter and (3) changes requiring the creation of authorized positions and funding if approved.

Background

In the aftermath of high profile hazing incidents and the Los Angeles Fire Department’s handling of disciplinary issues from those incidents, the City Controller and the Personnel Department conducted audits of the Department’s management practices as to Equal Employment Opportunity (EEO) and disciplinary investigations in 2006. Both

reviews were highly critical of the Department's existing practices and recommended that the LAFD:

1. Reinstitute a separate EEO investigative function outside the LAFD chain of command to handle the investigating, tracking and reporting of EEO-related complaints;
2. Establish a centralized mandatory tracking and reporting system for disciplinary and corrective actions that includes all measures taken at each LAFD level;
3. Develop, with input from the firefighter and chief unions, a set of standard disciplinary penalty guidelines for sworn members;
4. Once the disciplinary penalty guidelines are developed, assure that they are consistently applied and fairly administered;
5. Eliminate the practice of proposing greater disciplinary punishment simply to create a bargaining position for negotiating a lesser punishment with the accused member or the union by proposing penalties consistent with the disciplinary penalty guidelines;
6. Create a separate Internal Affairs Division within the LAFD with permanently assigned investigative staff who possess the necessary expertise, experience and training to conduct the wide range of investigations to ensure public accountability of the LAFD, as well as prepare and maintain professionally documented investigative files;
7. Require that the separate Internal Affairs Division report to both the Fire Chief and Fire Commission, but be otherwise removed from the chain of command;
8. Amend Charter Section 1060(g) of the Disciplinary Procedures for the LAFD to mirror the provisions of Charter Section 1070(f) for the Police Department to add a non-sworn, independent civilian member to the Board of Rights;
9. Revise its current investigation procedures to ensure that all pertinent witnesses are interviewed and that the interviews are thoroughly documented.

Reference: January 26, 2006: Controller's Review of the Los Angeles Fire Department's Management Practices (*a complete copy of this and PSD materials was provided on a compact disc that was delivered to the current Board of Fire Commissioners for distribution at the Board of Fire Commissioners Meeting on October 1, 2013*).

January 31, 2006: Personnel's Audit of Fire Department Selection and Employment Practices (*a complete copy of this and PSD materials was*

provided on a compact disc that was delivered to the current Board of Fire Commissioners for distribution at the Board of Fire Commissioners Meeting on October 1, 2013).

In response, the Mayor's Office convened the LAFD Professional Standards Division Working Group to present a final plan that incorporated best practices, realistic timelines and resources necessary to implement the best model for the PSD. The product of these efforts resulted in the creation of the present structure and staffing of the PSD. On March 10, 2008, the Department presented its Audit Implementation Plan to the Board of Fire Commissioners, which addressed the four major concerns of the Controllers' and Personnel's 2006 Audits, including the "Complaint and Disciplinary Process." On March 18, 2008, the Board of Fire Commissioners approved the Audit Implementation Plan and directed the Department to implement its provisions. As to the "Complaint and Disciplinary Process," the Commission directed that the Department:

1. Create the Complaint Tracking System (CTS) to track all complaints received by the LAFD against its members;
2. Assess incoming complaints to determine if they allege misconduct against LAFD members and if so, assigning the complaint for investigation to either the chain of command or to PSD;
3. Provide an eight-hour training program to all 700 Officers and Chief Officers on basic administrative investigations skills;
4. Create procedures within the PSD for the handling of complaints of serious misconduct and EEO/Hazing, to ensure thorough, complete and well documented investigations;
5. Create a review and adjudication process within the PSD to determine whether the investigation is complete and to adjudicate complaints without involvement of the chain of command;
6. If one or more of the allegations were sustained, propose discipline consistent with the Disciplinary Guidelines;
7. Utilize an investigative team consisting of a sworn Advocate and a civilian Investigator on all cases to marry LAFD knowledge with investigative expertise in all PSD cases;
8. Ensure that all implemented practices not only satisfy the City Charter and existing Memorandum of Understanding's (MOUs), but complies with the newly enacted Firefighters Procedural Bill of Rights (FFBOR).

Reference: March 18, 2008: Los Angeles Fire Department, Board of Fire Commissioners Audit Implementation Plan (*Board of Fire Commissioners Report 08-026. A complete copy of this and PSD materials was provided on a compact disc that was delivered to the current Board of Fire Commissioners for distribution at the Board of Fire Commissioners Meeting on October 1, 2013*).

Under the administration of Fire Chief Douglas Barry, the Department created the Professional Standards Division as the entity responsible for implementing the 2008 Audit Implementation Plan and having responsibility for the disciplinary process. Almost immediately, PSD found that strictly adhering to these processes produced operational challenges. The number of complaints received in CTS in 2009 and 2010 exceeded the Audits' estimate of 100 complaints annually by ten fold. The caseload among three civilian Investigators, four sworn Captains and two contracted part-time Senior Personnel Analysts (for EEO cases) initially assigned to PSD, immediately became overwhelming. The need to thoroughly document interviews and investigative steps in the Advocate Report added to that burden. Further, conflict between the statute of limitations provisions of the City Charter and the FFBOR required that the LAFD complete all investigations within one year, without the ability to extend that period as allowed under the FFBOR. Finally, the LAFD's strict adherence to the Disciplinary Guidelines in imposing punitive action, coupled with refusing to lower proposed penalties in informal "settlement" discussions, led to an increase in members requesting Boards of Rights to challenge their discipline. The lack of permanent PSD staffing to prepare for and present Boards of Rights added to the backlog of hearings.

On April 2, 2010, the Independent Assessor submitted his "Assessment of the LAFD's Disciplinary Process and Professional Standards Division," dated March 27, 2010, to the Board of Fire Commissioners. On April 13, 2010, the Board of Fire Commissioners approved the Assessment as Board Report Number 10-027 and directed the Fire Department to respond to its recommendations.

Reference: April 2, 2010 - Assessment of the Department's Disciplinary Process and Professional Standards Division (*Board of Fire Commissioners Report 10-027. A complete copy of this and PSD materials was provided on a compact disc that was delivered to the current Board of Fire Commissioners for distribution at the Board of Fire Commissioners Meeting on October 1, 2013*).

On July 20, 2010, the Department made a verbal presentation regarding its response to the Independent Assessor's 2010 Assessment, identifying seven "action items" for response and implementation:

1. Adopt disciplinary guidelines with rules for their application that set and maintain a higher standard of conduct for sworn members than for non-sworn members;

2. Apply discipline in a consistent manner that set and maintain a higher standard of conduct for sworn members than for non-sworn members;
3. Staff the disciplinary system with personnel with a demonstrated proficiency, expertise, experience, training, authority and tools to conduct, supervise and manage investigations, disciplinary hearings and the Department's disciplinary system;
4. Establish a policy and process for documenting all agreements between management and labor organizations;
5. Bring the informal pre-disciplinary process, known as the Skelly process, into full compliance with due process requirements;
6. Establish a policy and process to ensure that the Board of Fire Commissioners is fully informed and in agreement with the development of and modifications to the Department's system of discipline;
7. Establish and maintain current policies, procedures, practices, guidelines and training to efficiently and properly support the Department's disciplinary system.

The Department acknowledges and takes responsibility for its failure to submit a written response to the Independent Assessor's "Assessment of the LAFD's Disciplinary Process and Professional Standards Division" before the submission of Board of Fire Commissioners report 14-004. However, despite not filing a written report responding to the Independent Assessor's Assessment, the Department continued to move forward in implementing the 2008 Audit Implementation Plan, and reporting on those efforts to the Board of Fire Commissioners.

The Disciplinary Guidelines

In their 2006 audits, both the Controller's Office and Personnel Department criticized the inconsistency in the disciplinary penalties against sworn members. The 2008 Audit Implementation Plan required the Department to develop and maintain disciplinary guidelines through a collaborative process that would restore confidence in Department members and in the public that the disciplinary process was fair.

A version of the disciplinary guidelines was presented and approved by the Board of Fire Commissioners in November 2006. However, the Department was advised by the City Attorney's office that the disciplinary guidelines were subject to the "meet and confer" process with both United Firefighters of Los Angeles City (UFLAC) and the Chief Officers Association (COA) unions. The Department met and conferred with the unions regarding the guidelines. The COA agreed to a modified version of the disciplinary guidelines on January 12, 2008. UFLAC agreed to a modified version of the guidelines on October 28, 2008. However, the Department failed to submit the modified versions

prior to finalizing the agreements with both unions. The Commission and the Independent Assessor were critical that "many of the penalty ranges" in the UFLAC guidelines were "substantially lower" than the Guidelines approved by the Fire Commission in November 2006 and that some of the sworn penalties were lower than corresponding penalties for civilians under City Personnel Policy 33.2.

The Department acknowledged to the Commissioners that it erred in failing to submit the versions of the disciplinary guidelines agreed to with both unions, prior to the signing of the letters of agreement.

The Department has proposed additions and deletions to the disciplinary guidelines based on challenges it has faced based on the guideline wording as they currently exist. The Department has proposed using a "baseline penalty" approach as the starting point within the disciplinary guideline. The Department currently begins its assessment of the penalty by starting at one-third of the penalty required under by the appropriate disciplinary guideline for UFLAC members, and one-half for COA members. Under the "baseline penalty" approach, the Fire Chief would designate a starting point for each penalty guideline, based on its significance to the Department's Core Values.

The Department has presented these proposals to the Commission and they are the subject of continued "meet and confer" discussions with the two sworn labor organizations.

Consistent Application of Discipline

The 2006 Audits pointed out that the disparity of Fire Department discipline was based on several factors, including the subjective decisions made by the chain of command in proposing penalties. The 2008 Audit Implementation Plan required the Department to centralize the adjudication and the proposal of discipline within PSD and that PSD report directly to the Fire Chief. Although this approach has been questioned and criticized by many, the PSD continues to adjudicate and proposed disciplinary action outside of the influence of the chain of command and strives to follow the application of the disciplinary guidelines in proposing penalties in each case.

Professional Standards Division Staffing

When it was initially created, the investigator pool within PSD consisted of four Fire Captain II, three Special Investigator II and two part-time Senior Personnel Analyst I. The Commission had approved a four-phased staffing plan to increase the number of Special Investigator and support staff to its intended full compliment. However, the economic downturn and its corresponding effect on the City and the Fire Department budget forced the Department to forgo moving forward with this plan.

On September 20, 2010, the Department presented Board Report 10-118 to the Board of Fire Commissioners requesting approval to seek eight Special Investigator II

positions and one Management Analyst II position for the Professional Standards Division. The Board of Fire Commissioners approved the report, which was forwarded to the Mayor's office. By mid-2011, the City Council approved the Department's request. By the beginning of 2012, the eight Special Investigator II positions had been filled.

Despite this additional staffing, PSD investigators are still handling upwards of twenty cases each. Because of the seriousness of the complaints and the inability of the chain of command to handle investigations because of a lack of training, the number of cases retained by PSD rose. Similarly, the number of complaints retained by PSD because they alleged EEO or hazing issues also rose.

The PSD staffing estimates did not take into account the responsibility PSD and its staff members would have of prosecuting a disciplinary case before a Board of Rights. As of the date of this report, the Department has over twenty pending Board of Rights hearings for members requesting to challenge the Fire Chief's imposed disciplinary action. The predominate reason given for member-requested Boards was not that they were not guilty of the alleged act, but that they believed the proposed penalty was excessive and unfair.

PSD implemented a number of changes to its processes to reduce the impact of these unforeseen issues. These include using single investigators (as opposed to the sworn/civilian team) whenever possible, utilizing a "short form" report to document investigations where no allegations could be sustained and empowering civilian investigators to interview sworn members alone (through the use of a Fire Chief letter presented to the member). However, the extent that PSD could modify its investigative practices was limited to those issues not covered in the 2008 Letter of Agreement with UFLAC.

The Department continues to assess PSD's staffing levels against the critical tasks that it is responsible for, and has made a recommendation to increase staffing in the upcoming budget.

Reference: September 20, 2010: Los Angeles Fire Department Board of Fire Commissioners Approval of the Recommendations for the Staffing Plan of the Professional Standards Division (*Board of Fire Commissioners Report 10-018. A complete copy of this and PSD materials was provided on a compact disc that was delivered to the current Board of Fire Commissioners for distribution at the Board of Fire Commissioners Meeting on October 1, 2013*).

Pre-Deprivation or "Skelly" Process

The 2008 Audit Implementation Plan required the Department to make changes to the pre-deprivation "Skelly" hearing such that the Skelly process was no longer used as a

settlement vehicle to resolve discipline with reduced penalties. The Department revamped its Skelly hearing process to conform to practices used in the public sector consistent with *Skelly v. State Personnel Bd.* (1975) 15 Cal. 194. The Department developed a training curriculum which identified the role of the pre-deprivation hearing, the manner in which the hearing should be conducted and the responsibilities of the Skelly hearing officer in weighing the member's presentation against the Department's case and making appropriate recommendations to the Fire Chief. The Department then presented the two hour training program to prospective Skelly hearing officers identified by the Fire Chief. The Skelly hearing process developed in response to the 2008 Audit Implementation Plan is being used today.

Informing the Board of Fire Commissioners about the Department's Disciplinary Process

The Department has made formal presentations, verbal presentations and written several Board Reports when needed to keep the Board of Fire Commissioners abreast of changes and modifications to the Department's disciplinary process. The Department is responsive to requests made by the Independent Assessor. Per the Fire Chief, the Department provides the Independent Assessor with access to information and documents related to the disciplinary process when requested.

Professional Standards Division Manual

The Professional Standards Division has several manuals regarding its policies and procedures. The Advocate Manual, which applies to the sworn and civilian investigators in PSD, was initially updated in 2008 and again in 2010. The Board of Rights manuals and procedures have not been updated since they were developed in 2005. The Department acknowledges that a full revision of the PSD Manual system is needed and that because of workload demands, this has not been done.

City Charter Section 1060 - Disciplinary Procedures for the Fire Department

Based on the recommendations of the 2006 Audits and the 2008 Audit Implementation Plan, the Department has proposed amendments to City Charter Section 1060 regarding the Disciplinary Procedures for the Fire Department. The Department's first proposed amendments in 2010 did not reach the City Council. The Department's second proposed amendments are currently under review with the City Attorney and will be subject to meet and confer with UFLAC and COA as a meet and confer issue.

References: February 24, 2012 - Proposed City Charter Section 1060 - Sworn Fire Disciplinary Statute of Limitations (*Board of Fire Commissioners Report 12-040. A complete copy of this and PSD materials was provided on a compact disc that was delivered to the current Board of Fire Commissioners for distribution at the Board of Fire Commissioners Meeting on October 1, 2013*).

October 4, 2012 - Proposed Amendments to City Charter Section 1060 (*Board of Fire Commissioners Report 12-167. A complete copy of this and PSD materials was provided on a compact disc that was delivered to the current Board of Fire Commissioners for distribution at the Board of Fire Commissioners Meeting on October 1, 2013*).

Alternatives to Formal Discipline

As stated above, the Department strictly adhered to the 2008 Audit Implementation Plan. Every complaint that alleges misconduct is entered into the Complaint Tracking System (CTS) and investigated. If the investigation supports by preponderance of the evidence that misconduct occurred, the member is disciplined according to the applicable disciplinary guidelines.

The Department believes that strictly adhering to these processes resulted in significant operational challenges. Although the annual numbers of complaints have decreased annually, the number of complaints alleging EEO, hazing or workplace environment issues continue to rise. PSD retains the majority of open investigations because the type of allegation and/or the investigative challenges that precludes most complaints from being handled by the chain of command. Because of the conflict between the statute of limitations provisions of the City Charter and the Firefighter's Bill of Rights requiring that the Department complete all investigations within one year, the Department is constantly challenged in meeting statute. Finally, the LAFD's strict adherence to the Disciplinary Guidelines in imposing punitive action, coupled with refusing to lower proposed penalties in informal "settlement" discussions, led to an increase in members requesting Board of Rights hearings to challenge the proposed discipline. The lack of permanent PSD staffing to prepare for and present Board of Rights cases added to the backlog of hearings.

On September 24, 2012, the Department reported these challenges to the Board of Fire Commissioners and requested Board approval to allow the Department to propose strategies which use learning and education as alternatives to the formal discipline process. Two specific approaches were recommended to the Commission: "Pre-Disposition Resolution" (PDR) as a means of expeditiously resolving disciplinary complaints where the member readily admits culpability and accepts responsibility for his or her actions; and "Learning and Education Alternatives to Discipline" (LEAD) as a means of using education and learning in lieu of punitive action to resolve lower-level misconduct cases. The Commission gave the Department approval to further explore these alternatives.

Reference: September 25, 2012 - Discipline Philosophy: Alternative Discipline Strategies to Modify or Correct Behavior in Lieu of Punitive Action (*Board of Fire Commissioners Report 12-067. A complete copy of this and PSD*

materials was provided on a compact disc that was delivered to the current Board of Fire Commissioners for distribution at the Board of Fire Commissioners Meeting on October 1, 2013).

CONCLUSION

The Department has strictly adhered to the Board of Fire Commissioner's direction, as approved in the 2008 Audit Implementation Plan, in tracking complaints, conducting complaint investigations and disciplining Department members. The Independent Assessor has reviewed and reported on the Department's implementation of the 2008 Plan. As stated in this Report and the reports referenced herein, the disciplinary process, as implemented, is bogged down with delays, backlog and disagreement.

The Department believes that using formal discipline every time misconduct is proven because there is a disciplinary guideline is not consistent with the intent of discipline. As stated in Board of Fire Commissioners Report 12-067, the Department believes there are many situations where a member's behavior can be changed without the use of formal discipline. The Commission's approval to explore Pre-Disposition Agreements and Learning and Education Alternatives to Discipline are positive steps to resolving formal discipline but still does not give the Department the latitude to use counseling, training or other non-punitive measures if a disciplinary guideline exists.

The Department requests that the Commission direct the Fire Chief to modify the discipline philosophy approved in the 2008 Audit Implementation Plan to allow the Department to adjudicate minor complaints with non-punitive alternatives such as corrective action, training and counseling, even when there is a relevant disciplinary guideline.

Board report prepared by Assistant Chief Dean Ulrich, Professional Standards Division and Chief Special Investigator Paul Hayashida, Professional Standards Division.

Attachment

**LOS ANGELES FIRE DEPARTMENT'S PRELIMINARY RESPONSES TO THE INDEPENDENT ASSESSOR'S
SEPTEMBER 4, 2013 REVIEW OF THE FIRE DEPARTMENT'S DISCIPLINARY PROCESS**

NO	RECOMMENDATION	RESPONDING ENTITIES	POSITION	TIMELINE/STATUS
	GENERAL RECOMMENDATIONS			
1	The Fire Department should not modify or change any aspect of the Department's disciplinary process without the full knowledge and consent of the Fire Commission.	Fire Chief Professional Standards Division	Agree	Completed
2	The Mayor's Office and Fire Commission should ensure that the manner in which the Fire Chief manages the disciplinary process is evaluated on a regular basis. This oversight requires that the Commission has access to the same information relied on by the Fire Chief to make disciplinary decisions. Only with this information can the Commission determine whether the Fire Chief is properly executing his or her duties, if it needs to issue corrective instructions, and whether the Commission needs to make changes to the Department's rules, regulations, policies and procedures.	Mayor's Office Board of Fire Commissioners	No Position	Not Applicable

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NO	RECOMMENDATION	RESPONDING ENTITIES	POSITION	TIMELINE/STATUS
3	The Fire Chief should be required to consult with and obtain the Fire Commission's approval and authorization before signing conciliation agreements related to how the Fire Department handles complaints of misconduct committed by Fire Department employees. While the Commission has no authority to approve or reject settlements involving the payment of money, the Commission has the power to supervise, control, regulate and manage the Fire Department and all of the Fire Chief's powers are subject to instructions issued by the Commission.	Fire Chief Risk Manager City Attorney	Requires further discussion	Requires further discussion to weigh the nature of civil litigation and the need to maintain attorney/client confidentiality versus how the need to keep the Fire Commission informed should be accomplished.
4	The Department should develop a training and evaluation process to ensure that every Department manager and supervisor provides consistent, fair, effective and timely supervision, including counseling, instruction and/or verbal admonishments, without violating members' due process rights. This training and evaluation process should also ensure that supervisors consistently provide such counseling or training even if a formal complaint of misconduct is pending.	Fire Chief Risk Manager Employee Relations Officer Training and Support Bureau EMS Division	Agree in concept	Subject to the availability of resources from the involved bureaus, funding and training.
5.1	The Department should eliminate agreements and/or past practices that: 1) do not comply with industry practices.	Employee Relations Officer Professional Standards Division	Agree	Letter of Agreements are subject to "meet and confer" process.

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NO	RECOMMENDATION	RESPONDING ENTITIES	POSITION	TIMELINE/STATUS
5.2	The Department should eliminate agreements and/or past practices that: 2) prevent investigators from controlling the progress of investigations.	Employee Relations Officer Professional Standards Division	Agree	Letter of Agreements are subject to "meet and confer" process.
5.3	The Department should eliminate agreements and/or past practices that: 3) contribute to the Department being unable to complete disciplinary actions in a timely manner.	Employee Relations Officer Professional Standards Division	Agree	Letter of Agreements are subject to "meet and confer" process.
5.4	The Department should eliminate agreements and/or past practices that: 4) are based on mistaken assumptions of law.	Employee Relations Officer Professional Standards Division	Agree	Letter of Agreements are subject to "meet and confer" process.
5.5	The Department should eliminate agreements and/or past practices that: 5) reduce management rights.	Employee Relations Officer Professional Standards Division	Agree	Letter of Agreements are subject to "meet and confer" process.
5.6	The Department should eliminate agreements and/or past practices that: 6) fail to ensure that firefighters and their supervisors and managers are held to standards that are higher than the standards for civilian employees.	Employee Relations Officer Professional Standards Division	Agree	Letter of Agreements are subject to "meet and confer" process.
5.7	The Department should eliminate agreements and/or past practices that: 7) expand rights and privileges beyond those provided by the voters.	Employee Relations Officer Professional Standards Division	Agree	Letter of Agreements are subject to "meet and confer" process.
5.8	The Department should eliminate agreements and/or past practices that: 8) threaten the reliability and integrity of investigations.	Employee Relations Officer Professional Standards Division	Agree	Letter of Agreements are subject to "meet and confer" process.

**LOS ANGELES FIRE DEPARTMENT'S PRELIMINARY RESPONSES TO THE INDEPENDENT ASSESSOR'S
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NO	RECOMMENDATION	RESPONDING ENTITIES	POSITION	TIMELINE/STATUS
6	The Department should adopt programs that effectively reduce the frequency and severity of work environment issues and conflicts.	Administrative Operations Employee Relations Officer Risk Manager	Agree	In Progress
7	The Department should provide email access and addresses to all Department employees to facilitate effective and timely communication and enhanced training opportunities.	Administrative Operations	Agree	Completed
8	The Department should adopt a disciplinary philosophy that is consistent with the City's disciplinary philosophy, bearing in mind that the citizens of Los Angeles must have confidence in the Department's ability to engage in self discipline under the Charter.	Fire Chief	Agree	This issue will be revisited with the incoming Fire Chief for direction.
9	The Department should continue to develop appropriate and effective alternatives to formal discipline that comply with and advance the City's policy of fair, equitable and progressive discipline.	Professional Standards Division	Agree	The Board of Fire Commissioners has authorized the Department to create an implementation plan and to present it to the Board at a later date.
	ISSUE SPECIFIC RECOMMENDATIONS			
	Professional Standards Division Staffing			

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NO	RECOMMENDATION	RESPONDING ENTITIES	POSITION	TIMELINE/STATUS
10	The Department should employ a sufficient number of non-sworn staff with the demonstrated expertise, experience, training and proficiency to conduct, supervise and manage investigations, prosecute disciplinary hearings and effectively manage the Department's disciplinary system. This would also include providing substantial support to field investigations without compromising other PSD responsibilities. The Department must increase staffing to reduce PSD caseloads and increase the timeliness of disciplinary actions. Of particular concern is the management of EEO cases, which are increasing in number and complexity. EEO issues are the subject of at least three conciliation agreements.	Professional Standards Division	Agree	September 2013: The Department has recommended adding additional civilian investigative staff in the 2014-2015 budget. Budget process commencing.
11	The role of sworn personnel in the PSD should be limited to providing support and subject matter expertise.	Professional Standards Division	Disagree	Sworn members have an important role and function in the LAFD disciplinary process and will continue to conduct investigations and assist in Board of Rights hearings.
12	The Management Analyst position that was authorized to manage the tracking systems more than two years ago must be filled to ensure that the complaint and disciplinary tracking systems are used as intended.	Fire Chief Professional Standards Division Human Resources Division	Agree	The Professional Standards Division continues to request that this position be submitted to the Managed Hiring Committee for approval
	Complaint Tracking Systems			

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13	The Department should ensure that its policies, procedures, rules, regulations and training promote and/or require the prompt reporting of suspected misconduct.	Fire Chief Planning Section Professional Standards Division	Agree	This issue will be revisited with the incoming Fire Chief for direction.
14.1	The Department should continue to make information about the complaint process available to the public and employees, and should continue to accept verbal, unsigned and anonymous complaints.	Professional Standards Division	Agree	Completed
14.2	[The Department] should continue to accept verbal, unsigned and anonymous complaints.	Professional Standards Division	Agree	Completed
14.3	The Department should also continue to allow anonymous complainants to remain anonymous.	Professional Standards Division	Agree	Completed
15	The Department should ensure that all information related to complaints, statute of limitations, investigations, disciplinary actions, Skelly hearings, Board of Rights hearings and related actions is promptly entered into the complaint and disciplinary tracking systems.	Professional Standards Division	Agree	Completed
16	The PSD Commander, under the direct supervision of the Fire Chief and subject to the ultimate authority of the Fire Commission, should continue to triage all complaints and adjudicate all disciplinary actions in an attempt to achieve consistency and fairness.	Professional Standards Division	Agree	Completed

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NO	RECOMMENDATION	RESPONDING ENTITIES	POSITION	TIMELINE/STATUS
17	The complaint and disciplinary tracking systems should be updated and modified to ensure they are fully capable of providing accurate and detailed management reports. The systems should also be designed to assist with identifying work environment and risk management issues requiring correction.	Professional Standards Division Risk Manager Management Information Systems Division	Agree	At the May 7, 2013 Board of Fire Commissioners meeting, PSD reported on the limitations of CTS as a data analysis platform. CTS was created by ITA specifically to track complaints from intake to closure. The Board instructed the Department to research available options. PSD is preparing a needs assessment tool to send to stakeholders and evaluating software programs in industry
18	The Department should communicate information about disciplinary actions, to the extent permitted by law, to the disciplined member's chain of command as well as the Department and to the public. This keeps supervisors informed about the conduct of their subordinates. It demonstrates that disciplinary action is being taken consistent with Department policies to both members and the public.	Professional Standards Division	Agree	The Department has resumed publishing the monthly Disciplinary Action Summary which is submitted to the Board of Fire Commissioners and available to the chain of command for use by supervisors.
19	The Department must ensure that it fully complies with laws and protocols related to the required reporting of possible violations of the California Health and Safety Code after validation of a complaint or when an EMT or paramedic: 1) is terminated or suspended; 2) resigns following notice of an impending investigation; or 3) is removed from EMT or paramedic duties for disciplinary cause.	Professional Standards Division EMS Division Medical Director	Agree	October 2013: The Department has drafted a revised procedure on licensing agency notifications which is in review by PSD management
	Investigative Process			

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NO	RECOMMENDATION	RESPONDING ENTITIES	POSITION	TIMELINE/STATUS
20	The Department should eliminate the rule that provides representatives seven business days to schedule interviews. The rule: 1) is not consistent with the industry practice; 2) prevents investigators from controlling the progress of investigations; 3) contributes to the Department being unable to complete disciplinary actions within the one-year statute of limitations; and 4) is based on the mistaken assumption that the Department is obligated to accommodate the representative's schedule.	Employee Relations Officer Professional Standards Division	Agree	Because this is contained in the 2008 Letter of Agreement with UFLAC, any change is subject to the "meet and confer" process.
21	The Department should not permit or engage in practices that would compromise the effectiveness, reliability and integrity of investigations. As such, the Department should not provide investigative information before interviews and interrogations, and should not permit witnesses to record their interviews.	Professional Standards Division	Agree	Completed
22	The Department should not negotiate investigative procedures, or other fundamental managerial or policy decisions related to the disciplinary process, that are not by law mandatory subjects of bargaining.	Employee Relations Officer Professional Standards Division	Agree	Completed as to future discipline issues not already subject to "meet and confer"

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23	The Department should continue to use its admonition forms without modifying or negotiating them. Objections to their use and refusals to sign should simply be noted on the interview recording without debate.	Professional Standards Division	Agree	Completed
24	The Department should ensure that the chain of command places a greater priority on supervising field investigations to ensure they are thorough, complete and done in a timely manner.	Emergency Operations Administrative Operations Professional Standards Division	Agree	Subject to appointment of Chief Deputy and PSD staffing for field/support function
25	The Department should provide regular and continued training, sufficient variable staffing hours and an evaluation process that increases accountability to ensure that field investigations are complete, thorough and timely. The Department should provide relevant training as soon as possible and take steps to ensure that the training is put into practice.	Professional Standards Division	Agree	Subject to PSD staffing for field/support function
26	The Department should improve the reporting template in the CTS to assist field investigators in fully, completely and accurately documenting their investigations.	Professional Standards Division	Agree	PSD Moderator is drafting improvements to the reporting template for review by PSD management
27	The Department should ensure that the chain of command reviews and is satisfied with the quality and consistency of field investigations and recommendations before they are submitted to the PSD for adjudication.	Professional Standards Division	Agree	Subject to appointment of Chief Deputy and PSD staffing for field/support function

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28	The Department should complete preparation of the PSD Manual.	Professional Standards Division	Agree	The Department continues to use the 2009 version of the Advocate Manual and 2005 version of the Board of Rights Manual. Revision of PSD Manual assigned to Chief Special Investigator subject to other priorities
29	The Department should eliminate all barriers that prevent civilian investigators, supervisors and managers from engaging in all activities related to investigating, admonishing, questioning, charging and prosecuting sworn members of the Department, and managing all other aspects of the disciplinary system on behalf of the Fire Chief and Fire Commission.	Employee Relations Officer Professional Standards Division	Agree	Completed as to civilian investigators; other aspects of this recommendation may impact issues subject to the "meet and confer" process
30	The Department should not use written statements as a substitute for face-to-face interviews unless and until adequate and appropriate protections are in place to guard against due process violations. Written statements should also not be used or relied on unless their reliability can be verified.	Employee Relations Officer Professional Standards Division	Agree	At this time, the Department does not rely on written statements. The Department may consider using written statements in minor cases, provided that procedures to ensure that due process is provided are in place.
31	All information provided to the EEOC pursuant to conciliation agreements must also be provided to the Fire Commission as the head of the Fire Department.	Fire Chief Risk Manager City Attorney	Requires further discussion	Requires further discussion to weigh the nature of civil litigation and the need to maintain attorney/client confidentiality versus how the need to keep the Fire Commission informed should be accomplished.

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32	The Charter should be amended to permit tolling of the statute of limitations, consistent with the FBOR and Charter provisions governing the discipline of Los Angeles police officers.	Chief of Staff Employee Relations Officer Professional Standards Division	Agree	Proposed amendments to City Charter 1060 under review by City Attorney and with ERO to discuss with labor. To be presented to Commission by mid-2014 for March 2015 ballot
	Deciding Disciplinary Penalties			
33	The Charter should be amended to permit reductions in pay, demotions and transfers for purposes of punishment, as permitted by the FBOR. Such an amendment would make firefighter disciplinary options consistent with what is available for police officers, would reduce lost firefighter income due to discipline and would reduce the overtime cost associated with suspending firefighters.	Chief of Staff Employee Relations Officer Professional Standards Division	Agree	Proposed amendments to City Charter 1060 under review by City Attorney and with ERO to discuss with labor. To be presented to Commission by mid-2014 for March 2015 ballot.
34.1	The Department should continue to use the same 12 penalty factors used by the Federal Government, and set disciplinary penalties in strict compliance with the disciplinary guidelines negotiated with the unions.	Professional Standards Division	Agree	Completed
34.2	The Department should consider how to more effectively communicate how it determines disciplinary penalties generally as well as in specific cases to the affected member.	Professional Standards Division	Agree	The Department is evaluating the use of DVD or online video clips for training purposes to the field, due to lack of staff and available training time for live training

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34.3	The Department also needs to improve its consistency in documenting the identity of Department members on the forms used to calculate a disciplinary penalty.	Professional Standards Division	Agree	Completed. The form used by PSD to determine the proposed penalty was revised based on the Independent Assessor's recommendations and implemented.
35	The Commission should adopt disciplinary guidelines that set a standard of conduct for firefighters that is higher than the standard of conduct for civilian employees of the City. Additionally, supervisors and managers should be held to an even higher standard.	Employee Relations Officer Professional Standards Division	Agree	Because this is contained in the 2008 Letter of Agreement with UFLAC, any change is subject to the "meet and confer" process.
36	The Commission should adopt disciplinary guidelines that set forth baseline penalties rather than the same starting point for each penalty range. Until baseline penalties are adopted, the Department should continue to begin the penalty calculation at the mid-point for COA members and the bottom third for members of UFLAC.	Employee Relations Officer Professional Standards Division	Agree	Currently in "meet and confer" and before Commission in closed session by ERO.
37.1	Discipline should be known, predictable and consistent. When deciding to impose discipline, the Department should consider: 1) the extent to which the misconduct resulted in, or if repeated is likely to result in, harm to the public service; 2) the circumstances surrounding the misconduct; and 3) the likelihood of recurrence.	Employee Relations Officer Professional Standards Division	Agree, in concept	The Department acknowledges the three prong test from Skelly regarding the appropriateness of discipline. However, the level of appropriate discipline is based on the disciplinary guidelines.

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37.2	The Department should not permit each successive step of the disciplinary process to be viewed as another opportunity to further reduce the penalty.	Professional Standards Division	Agree	Completed
	Skelly Process			
38	The Department should fully comply with its Skelly procedures and training program the Department developed in response to concerns the Controller raised in 2006 and the Office of the Independent Assessor raised in 2010.	Professional Standards Division	Agree	Completed
39	Skelly hearings should not serve as a settlement conference or opportunity to negotiate discipline.	Professional Standards Division	Agree	Completed
40	The Department should not adopt Skelly officer recommendations to reduce disciplinary penalties based on mitigating information that has already been considered in setting the proposed discipline. Any deviations from the proposed penalty should be well documented and fully justified.	Professional Standards Division	Agree	Completed
41	The Department should continue to use well trained, impartial chief officers who have the authority to make meaningful recommendations as Skelly officers. The Department should not return to using the PSD Commander as the Skelly officer.	Professional Standards Division	Agree	Completed
	Disciplinary Appeals and Boards of Rights			

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42	The Department must adopt an informal hearing procedure for the appeal of written reprimands without further delay.	Employee Relations Officer Risk Manager Professional Standards Division	Agree	September 2013: The ERO and Risk Manager are evaluating potential processes for the written reprimand appeals.
43	Like police officers, firefighters should be responsible for paying for their own Board of Rights defense; the Charter should be amended to eliminate the right and privilege to have a defense representative appointed at taxpayer expense. Until the Charter is amended, the Department should ensure, with the assistance of the City Attorney's Office, that its policies controlling costs related to defense representatives, and the way it manages such policies, appropriately and reasonably balance the need for responsible financial controls with the need of defense representatives to have sufficient time to prepare for a Board of Rights hearing.	Employee Relations Officer Professional Standards Division	Agree	Proposed amendments to City Charter 1060 under review by City Attorney and with ERO to discuss with labor. To be presented to Commission by mid-2014 for March 2015 ballot. Enforcement of the manner in which representatives are paid while serving on a Board of Rights is controlled by the ERO
44	The Department should not pay the cost of a defense representative beyond the conclusion of the Board of Rights hearing.	Employee Relations Officer Professional Standards Division	Agree	Completed
45	The Department must devote the staff necessary to prosecute hearings in a timely manner. They should be experienced and qualified civilian staff who were not involved in the investigation.	Professional Standards Division	Agree, in concept	Because of the number of civilian investigators trained and experienced in presenting Board of Rights, it is foreseeable that someone involved in the investigation may be assigned to prosecute the Board.

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46	The Charter should be amended to allow an Administrative Law Judge or hearing officer to preside over Board of Rights hearings. In the meantime, the Department should provide continuing training and a "Benchbook" for chief officers who may sit on a Board of Rights.	Employee Relations Officer Professional Standards Division	Agree	Proposed amendments to City Charter 1060 under review by City Attorney and with ERO to discuss with labor. To be presented to Commission by mid-2014 for March 2015 ballot. The BOR Chief provides an extensive briefing to Chief Officers selected for a Board of Rights. The Department will revise the BOR Manual when priorities allow.
47	The Charter should be amended to prohibit ex parte communications during a Board of Rights hearing, as it does for police officers.	Employee Relations Officer Professional Standards Division	Agree	Proposed amendments to City Charter 1060 under review by City Attorney and with ERO to discuss with labor. To be presented to Commission by mid-2014 for March 2015 ballot.
48.1	The Department should not provide training, cell phones, print services or other support to defense representatives.	Employee Relations Officer	Agree	Completed
48.2	The Department should also not expose the City to a risk of litigation by providing confidential discipline information to the unions when the Department member has not chosen to be represented by the union.	Employee Relations Officer Professional Standards Division	Agree	Completed

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49	The right of firefighters to appeal the Department's final disciplinary decision should be no greater than the rights provided to other Department employees and Los Angeles police officers. A writ proceeding in superior court provides an adequate protection against abuse. Therefore, the right to request binding arbitration following a Board of Rights hearing should be eliminated.	Employee Relations Officer Professional Standards Division	Agree	Because this is contained in the current MOU with COA and UFLAC, any change is subject to the "meet and confer" process.
50	A Board of Rights should be required to comply with the Department's disciplinary guidelines when making penalty recommendations.	Fire Chief Chief of Staff Employee Relations Officer Professional Standards Division	Agree, in concept	City Charter 1060 gives the Board of Rights the discretion to decide and impose a penalty based on the evidence and upon a finding of guilt.