

January 21, 2014

# LOS ANGELES FIRE DEPARTMENT



JAMES G. FEATHERSTONE  
INTERIM FIRE CHIEF

December 30, 2013

BOARD OF FIRE COMMISSIONERS  
FILE NO. 14-004

TO: Board of Fire Commissioners

FROM: James G. Featherstone, Interim Fire Chief

SUBJECT: RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
ASSESSMENT OF THE DEPARTMENT'S DISCIPLINARY PROCESS  
AND PROFESSIONAL STANDARDS DIVISION

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 Withdrawn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

On March 27, 2010, the Independent Assessor issued his Assessment of the Los Angeles Fire Departments (LAFD) Disciplinary Process and Professional Standards Division (PSD). On April 13, 2010, the Board of Fire Commissioners approved the Assessment as Board Report Number 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), and directed the Fire Department to respond to its recommendations.

After the April 13, 2010 Fire Commission meeting, the Fire Department created a team to review and respond to the 2010 Assessment. This team was comprised of six battalion chiefs not assigned to PSD so that PSD would not be distracted from their other duties. 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 implementation:

1. Adopt disciplinary guidelines with rules for their application that sets and maintains a higher standard of conduct for sworn members than for non-sworn members;
2. Apply discipline in a consistent manner that sets and maintains a higher standard of conduct for sworn members than for non-sworn members;
3. Staff the disciplinary system with personnel demonstrating proficiency, expertise, experience, training, authority and tools to conduct, supervisor 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 of 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.

This report responds to the Independent Assessor's March 27, 2010 Assessment of the LAFD's Disciplinary Process and Professional Standards Division. The Department acknowledges and takes responsibility for its failure to submit a timely written response to the Independent Assessor's March 27, 2010 Assessment of the LAFD's Disciplinary Process and Professional Standards Division. Attached for the Board of Fire Commissioners is the response to the Independent Assessor's 2010 Assessment of the Department's Disciplinary Process and Professional Standards Division, Disciplinary Guidelines, Recommendations One to Twelve to be received and filed.

#### **RECOMMENDATION**

That the Board:  
Receive and file this report.

#### **FISCAL IMPACT**

This Board Report is the Department's response to the Independent Assessor's March 27, 2010 Assessment of the LAFD's Disciplinary Process and Professional Standards Division. 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**

The Fire Department continued to brief the Board of Fire Commissioners on the progress of this team and on the implementation of key steps addressing the Independent Assessor's recommendations through verbal presentations on August 17, 2010, September 21, 2010, October 19, 2010, December 7, 2010, January 4, 2011, January 18, 2011, February 16, 2011, March 15, 2011, April 5, 2011, May 3, 2011, June 7, 2011, July 19, 2011 and August 16, 2011. During the verbal presentation on October 6, 2011, the Department informed the Board that the team's work was being compiled into a report by one battalion chief. The Department continued to update the Board at

its October 18, 2011, November 15, 2011, December 6, 2011 and January 17, 2012. At the January 17, 2012, the Department advised the Board that the completion of the response to the Independent Assessor's Assessment had been assigned to another battalion chief to complete. The Department provided an additional update at the May 15, 2012 meeting. Because of competing demands on the assigned battalion chief, the response to the Independent Assessor's 2010 Assessment was assigned to PSD in June 2013 to complete. On September 16, 2013, the Department provided to the Independent Assessor a draft of the responses to his 168 recommendations in the 2010 Assessment for review.

### **CONCLUSION**

The Department acknowledges and takes responsibility for its failure to submit a written response to the Independent Assessor's March 27, 2010 Assessment of the LAFD's Disciplinary Process and Professional Standards Division. Although the Department has not completed a response report to the Independent Assessor's 2010 Assessment, it has moved forward on many of his recommendations and has reported the progress on these efforts to the Board of Fire Commissioners. Those efforts are reported in Board of Fire Commissioners Report Number 14-003 entitled "Fire Department's Response to the Independent Assessor's September 4, 2013 Review of the Fire Department's Disciplinary Process."

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

Attachment

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
ASSESSMENT OF THE DEPARTMENT'S DISCIPLINARY PROCESS AND  
PROFESSIONAL STANDARDS DIVISION**

**DISCIPLINARY GUIDELINES**

**RECOMMENDATIONS  
ONE  
TO  
TWELVE**

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
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<b>Category</b>	<b>Disciplinary Guidelines</b>
<b>IA Recomm. No.</b>	<b>One</b>
<b>Independent Assessor's Recommendation</b>	An effort should be made to determine why the Department agreed to disciplinary guidelines that are inconsistent with the unanimous action taken by the Board of Fire Commissioners on November 21, 2006, why the Board of Fire Commissioners and the Stakeholders were not consulted about the guidelines during the meet and confer process that resulted in the adoption of the September 21, 2007 guidelines and three versions of guidelines in 2008, and why the Department failed to inform the Board of Fire Commissioners of the differences in the disciplinary guidelines it negotiated as compared to the guidelines approved by the Board in 2006.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department has reviewed its actions as to the disciplinary guidelines from November 21, 2006 to October 28, 2008 when the letter of agreement with UFLAC containing the disciplinary guidelines was signed.
<b>Status</b>	Completed.
<b>Follow-Up</b>	The Department will update the Board of Fire Commissioners about modifications or changes to the disciplinary guidelines and present the revised guidelines to the Board of Fire Commissioners prior to their adoption.

The Department has reviewed its actions as to the disciplinary guidelines from their approval by the Board of Fire Commissioners on November 21, 2006 through October 28, 2008 when the letter of agreement with UFLAC containing the disciplinary guidelines was signed.

The Department was advised by legal counsel that the disciplinary guidelines were a matter appropriately within the scope of representation by the appropriate bargaining unit under the Meyers-Milias-Brown Act. However, the Department failed to report to the Board of Fire Commissioners about the progress of the "meet and confer" process and failed to present the proposed agreed-upon version of the disciplinary guidelines prior to completing a letter of agreement.

Since the identification of this failure, the Department has kept the Board of Fire Commissioners updated on matters related to the Professional Standards Division and the disciplinary process. The Department will continue to update the Board of Fire Commissioners about modifications or changes to the disciplinary guidelines and present any future revised guidelines to the Board of Fire Commissioners prior to their adoption.

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<b>Category</b>	<b>Disciplinary Guidelines</b>
<b>IA Recomm. No.</b>	<b>Two</b>
<b>Independent Assessor's Recommendation</b>	The Board of Fire Commissioners should direct the Department to take all steps necessary to adopt disciplinary guidelines consistent with the audit recommendations made by the City Controller and Personnel Department in 2006, with what the Stakeholders recommended in 2006, and with what the Board of Fire Commissioners approved in 2006. The Board should set a deadline within which this task is to be accomplished.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department has not completed this process because changes to the existing disciplinary guidelines are subject to the "meet and confer" process.
<b>Status</b>	Ongoing.
<b>Follow-Up</b>	The Department will update the Board of Fire Commissioners about modifications or changes to the disciplinary guidelines and present the revised guidelines to the Board of Fire Commissioners prior to their adoption.

Because legal counsel has advised that the disciplinary guidelines are a matter within the scope of representation by the appropriate bargaining unit under the Meyers-Milias-Brown Act, the Department can modify the existing disciplinary guidelines only after complying with the "meet and confer" process. To do so will require the joint effort of the Fire Chief and the Employee Relations Officer to determine what steps are necessary to install the 2006 disciplinary guidelines, either through the "meet and confer" process or, after meeting and conferring in good faith, declaring an impasse and imposing the Department's final offer.

Based on a high number of members requesting Board of Rights for lower suspensions and the belief of the unions that the 2008 Disciplinary Guidelines are unduly harsh, the Department believes that implementation of the 2006 version of the Disciplinary Guidelines will significantly increase the number of disciplinary actions and will result in a higher number of both member-requested and Department-directed Boards of Rights.

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<b>Category</b>	<b>Disciplinary Guidelines</b>
<b>IA Recomm. No.</b>	<b>Three</b>
<b>Independent Assessor's Recommendation</b>	The Board of Fire Commissioners should direct the Department to take all steps necessary to adopt a cover document for the disciplinary guidelines that is consistent with what the Stakeholders discussed and the Board of Fire Commissioners requested in October 2008. The Board should set a deadline within which this task is to be accomplished.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department has adopted and published the "Fire Chief's Message" as part of its revisions to the Rules and Regulations approved by the Board of Fire Commissioners on February 27, 2012.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

On or about February 27, 2012, the Department submitted to the Board of Fire Commissioners a timeline for the revision of the Rules and Regulations.

On or about October 18, 2012, the Department submitted Board Report 12-148 to the HRDC/Personnel Committee entitled "Amended Rules and Regulations / Fire Chief's Message" for their consideration. The document included a proposed Preamble to the Rules and Regulations outlining the Fire Chief's expectations as to the conduct of members and their adherence to the Rules and Regulations. The Department was ordered to submit the document to the Board of Fire Commissioners.

On or about September 28, 2012, the Department submitted Board Report 12-148 entitled "Amended Rules and Regulations / Fire Chief's Message" to the Board of Fire Commissioners. The Board received and approved the report.

On or about November 20, 2012, Fire Chief Brian Cummings published the amended Rules and Regulations, which incorporates the Preamble.

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<b>Category</b>	<b>Disciplinary Guidelines</b>
<b>IA Recomm. No.</b>	<b>Four</b>
<b>Independent Assessor's Recommendation</b>	All Stakeholders should be formally advised and fully involved in the process undertaken to adopt appropriate disciplinary guidelines for all sworn members of the Department.
<b>Dept. Position</b>	No Position.
<b>Dept. Action</b>	See below.
<b>Status</b>	See below.
<b>Follow-Up</b>	See below.

On or about February 19, 2013, the Department met with Commission President Genethia Hudley-Hayes and Vice President Casimiro Tolentino to discuss what steps needed to take place in order to close out the recommendations made by the Commission in its 2008 Audit Implementation Plan. One of the steps discussed was whether the Stakeholders should be reconvened to discuss the progress made since 2008 regarding the disciplinary process.

After an extended dialogue with the Department, President Hudley-Hayes and Vice-President Tolentino decided that the Board would direct the Independent Assessor to reach out to the Stakeholder groups and compile a "progress report" on the steps taken by the Department to address the concerns of the 2008 Audit Implementation Plan.



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<b>Category</b>	<b>Disciplinary Guidelines</b>
<b>IA Recomm. No.</b>	<b>Five</b>
<b>Independent Assessor's Recommendation</b>	The Department should be guided by the vision of the Stakeholders, as articulated in the meeting minutes, in formulating and managing the disciplinary system.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	See below.
<b>Status</b>	See below.
<b>Follow-Up</b>	See below.

On or about February 19, 2013, the Department met with Commission President Genethia Hudley-Hayes and Vice President Casimiro Tolentino to discuss what steps needed to take place in order to close out the recommendations made by the Commission in its 2008 Audit Implementation Plan. One of the steps discussed was whether the Stakeholders should be reconvened to discuss the progress made since 2008 regarding the disciplinary process.

After an extended dialogue with the Department, President Hudley-Hayes and Vice-President Tolentino decided that the Board would direct the Independent Assessor to reach out to the Stakeholder groups and compile a "progress report" on the steps taken by the Department to address the concerns of the 2008 Audit Implementation Plan.

As the Independent Assessor moves forward to complete his progress report, the Department has and continues to provide him with the information requested.

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<b>Category</b>	<b>Disciplinary Guidelines</b>
<b>IA Recomm. No.</b>	<b>Six</b>
<b>Independent Assessor's Recommendation</b>	The Department should be required to advise, consult with and obtain direction/authority from the Board of Fire Commissioners on how items subject to the "meet and confer" process will impact the specific goals of the April 25, 2006 <i>Audit Action Plan</i> , the Stakeholder recommendations and prior actions of the Board of Fire Commissioners.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department has regularly presented to and updated the Board of Fire Commissioners as to modifications to the disciplinary process.
<b>Status</b>	Ongoing.
<b>Follow-Up</b>	The Department will update the Board of Fire Commissioners about modifications or changes to the Disciplinary Guidelines and present the revised guidelines to the Board of Fire Commissioners prior to their adoption.

Either on its own initiative or at the request of the Board of Fire Commissioners, the Department has regularly updated the Board of Fire Commissioners on disciplinary issues and challenges facing the Professional Standards Division. These include:

1. BFC Report No. 12-040 - "Proposed City Charter Amendments - Charter Sec. 1060 - Sworn Fire Disciplinary Statute of Limitations" (presented February 29, 2012).
2. BFC Report No. 12-145 - "Discipline Philosophy" (presented to the HRDC/Personnel Committee on September 28, 2012).
3. BFC Report No. 12-146 - "Updates to the Discrimination Prevention Policy Handbook" (presented to the HRDC/Personnel Committee on September 28, 2012).
4. BFC Report No. 12-148 - "Amended Rules and Regulations/Fire Chiefs Message" (presented to the HRDC/Personnel Committee on September 28, 2012).
5. BFC Report No. 12-149 - "Summary of Proposed Amendments to City Charter Section 1060" (presented to the HRDC/Personnel Committee on September 28, 2012).
6. BFC Report No. 13-062 - "Learning and Education Alternatives to Discipline" (presented to the Board of Fire Commissioners on June 4, 2013).
7. Verbal Report by the Department on Charter Amendments (presented to the Board of Fire Commissioners on July 9, 2013).
8. Updates to the Board of Fire Commissioners on the status of labor issues during closed session.

Additionally, the Department, upon request, regularly provides information to the Independent Assessor on disciplinary issues.

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<b>Category</b>	<b>Disciplinary Guidelines</b>
<b>IA Recomm. No.</b>	<b>Seven</b>
<b>Independent Assessor's Recommendation</b>	Adopt disciplinary guidelines that set standards of conduct for sworn members of the Department that are higher than the standards of conduct set forth in the Civil Service Guidelines for non-sworn members of the Department. Sworn managers and supervisors should also be held to a higher standard than other sworn members of the Department.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	Modifying the existing Disciplinary Guidelines is subject to the "meet and confer" process involving the collaborative efforts of the Employee Relations Officer and the Professional Standards Division.
<b>Status</b>	Ongoing.
<b>Follow-Up</b>	The Department will update the Board of Fire Commissioners about modifications or changes to the Disciplinary Guidelines and present the revised guidelines to the Board of Fire Commissioners prior to their adoption.

The Department agrees that sworn members should be held to a higher standard of conduct than civilian employees. The Department agrees that supervisors and managers should also be held to a higher standard of conduct than rank and file members.

Because legal counsel has advised that the Disciplinary Guidelines are a matter within the scope of representation by the appropriate bargaining unit under the Meyers-Milias-Brown Act, the Department can modify the existing Disciplinary Guidelines only after complying with the "meet and confer" process. To do so will require the joint effort of the Fire Chief and the Employee Relations Officer to determine what steps are necessary to amend the Disciplinary Guidelines, either through the "meet and confer" process or, after meeting and conferring in good faith, declaring an impasse and imposing the Department's final offer.

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<b>Category</b>	<b>Disciplinary Guidelines</b>
<b>IA Recomm. No.</b>	<b>Eight</b>
<b>Independent Assessor's Recommendation</b>	Any reference to a statute of limitations should be eliminated from the disciplinary guidelines.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	Modifying the existing Disciplinary Guidelines is subject to the "meet and confer" process involving the collaborative efforts of the Employee Relations Officer and the Professional Standards Division.
<b>Status</b>	Ongoing.
<b>Follow-Up</b>	The Department will update the Board of Fire Commissioners about modifications or changes to the Disciplinary Guidelines and present the revised guidelines to the Board of Fire Commissioners prior to their adoption.

The Department agrees that having quantified statute of limitations identified in the Disciplinary Guidelines may be inappropriate. Disregarding past discipline because of a statute of limitations may cause the Department to make an inappropriate penalty determination in a new case. An employee may have demonstrated related behavior during the gap between the previous and current incidents which makes the prior discipline relevant to a higher penalty. A blanket elimination of a prior disciplinary action merely because of when it happened is not a best practice.

The Department recognizes that even when progressive discipline is considered, the member's last reprimand or punitive action may be too far in the past and/or may be separated by a period of excellent or outstanding service. Instead, the Department would like to consider the personnel history in total, marrying the member's performance documented in his or her evaluations, commendations and disciplinary actions as they relate to the current charges.

Because legal counsel has advised that the disciplinary guidelines are a matter within the scope of representation by the appropriate bargaining unit under the Meyers-Milias-Brown Act, the Department can modify the existing Disciplinary Guidelines only after complying with the "meet and confer" process. To do so will require the joint effort of the Fire Chief and the Employee Relations Officer to determine what steps are necessary to install the 2006 Disciplinary Guidelines, either through the "meet and confer" process or, after meeting and conferring in good faith, declaring an impasse and imposing the Department's final offer.

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<b>Category</b>	<b>Disciplinary Guidelines</b>
<b>IA Recomm. No.</b>	<b>Nine</b>
<b>Independent Assessor's Recommendation</b>	The Department should eliminate any statute of limitations connected with guideline offenses that prevents using prior offenses in calculating penalties.
<b>Dept. Position</b>	Agree, in part.
<b>Dept. Action</b>	The Department would like to consider the personnel history in total, marrying the member's performance documented in his or her evaluations, commendations and disciplinary actions as they relate to the current charges.
<b>Status</b>	Ongoing.
<b>Follow-Up</b>	The Department will update the Board of Fire Commissioners about modifications or changes to the Disciplinary Guidelines and present the revised guidelines to the Board of Fire Commissioners prior to their adoption.

The Department agrees that having quantified statute of limitations identified in the Disciplinary Guidelines may be inappropriate. Disregarding past discipline because of a statute of limitations may cause the Department to make an inappropriate penalty determination in a new case. An employee may have demonstrated related behavior during the gap between the previous and current incidents which makes the prior discipline relevant to a higher penalty. A blanket elimination of a prior disciplinary action merely because of when it happened is not a best practice.

The Department recognizes that even when progressive discipline is considered, the member's last reprimand or punitive action may be too far in the past and/or may be separated by a period of excellent or outstanding service. Instead, the Department would like to consider the personnel history in total, marrying the member's performance documented in his or her evaluations, commendations and disciplinary actions as they relate to the current charges.

Because legal counsel has advised that the disciplinary guidelines are a matter within the scope of representation by the appropriate bargaining unit under the Meyers-Milias-Brown Act, the Department can modify the existing Disciplinary Guidelines only after complying with the "meet and confer" process. To do so will require the joint effort of the Fire Chief and the Employee Relations Officer to determine what steps are necessary to install the 2006 Disciplinary Guidelines, either through the "meet and confer" process or, after meeting and conferring in good faith, declaring an impasse and imposing the Department's final offer.

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<b>Category</b>	<b>Disciplinary Guidelines</b>
<b>IA Recomm. No.</b>	<b>Ten</b>
<b>Independent Assessor's Recommendation</b>	Boating or operating a watercraft under the influence should be treated as a DUI.
<b>Dept. Position</b>	Agree, in part.
<b>Dept. Action</b>	The Department currently does not have a specific guideline for boating under the influence. Because of the difference between DUI and boating under the influence, the Department will not apply the DUI guideline to boating cases.
<b>Status</b>	Ongoing.
<b>Follow-Up</b>	The Department will continue to introduce necessary amendments to the current Disciplinary Guidelines into the "meet and confer" process and will apprise the Fire Commission of its progress

Although both driving under the influence and boating under the influence share some basic common elements to the offense, they are distinct in other aspects relevant to the disciplinary realm. California does not require the possession of a specific license in order to operate a boat. Further, California state law does not authorize the Department of Motor Vehicles to automatically suspend the driver's licenses of individuals convicted of boating while intoxicated. See *Cinquegrani v. Department of Motor Vehicles* (2008) 163 Cal.App.4th 741. Finally, the Department has no requirement regarding maintaining proficiency in boating, as it does with driving a motor vehicle. As such, applying a penalty guideline specific to driving under the influence may not be appropriate for use in a boating under the influence case.

Although members occasionally are charged with boating under the influence offenses, the Department does not have a specific disciplinary guideline for boating under the influence. Instead of applying the DUI guideline to boating cases, the Department is considering either enacting a separate guideline which takes into account the true nexus of that crime to the member's employment or create a broader guideline encompassing misdemeanor convictions (alcohol related).

Because legal counsel has advised that the disciplinary guidelines are a matter within the scope of representation by the appropriate bargaining unit under the Meyers-Milias-Brown Act, the Department can modify the existing disciplinary guidelines only after complying with the "meet and confer" process.

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<b>Category</b>	<b>Disciplinary Guidelines</b>
<b>IA Recomm. No.</b>	<b>Eleven</b>
<b>Independent Assessor's Recommendation</b>	The Department should eliminate the "wet reckless" offense from the disciplinary guidelines and rely on "driving while under the influence" guidelines.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department agrees that because the underlying facts of a driving under the influence case is the same whether it results in a conviction for DUI or a "wet reckless", the appropriate guideline would be the "driving while under the influence" guidelines.
<b>Status</b>	Ongoing.
<b>Follow-Up</b>	The Department will continue to introduce necessary amendments to the current Disciplinary Guidelines into the "meet and confer" process and will apprise the Fire Commission of its progress

Because a plea of guilty or nolo contendere to a charge of a violation of reckless driving under California Vehicle Code Section 23103 is made in satisfaction of, or as a substitute for, an original charge of a violation of driving under the influence under California Vehicle Code Section 23152, the criminal prosecution relies on the same underlying facts for both cases. (See California Vehicle Code Section 23103.5). The Department believes that the same should hold true for disciplinary actions where the underlying facts constitute a DUI. Likewise, previous "wet reckless" offenses should be considered by the Department as a prior offense for subsequent DUI and/or alcohol related offenses.

Because legal counsel has advised that the Disciplinary Guidelines are a matter within the scope of representation by the appropriate bargaining unit under the Meyers-Milias-Brown Act, the Department can modify or eliminate the existing disciplinary guidelines only after complying with the "meet and confer" process. Until the disciplinary guideline for "Reckless Driving (Alcohol Related)" is eliminated, the Department cannot arbitrarily use the higher penalty ranges for DUI.

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<b>Category</b>	<b>Disciplinary Guidelines</b>
<b>IA Recomm. No.</b>	<b>Twelve</b>
<b>Independent Assessor's Recommendation</b>	The Department should take the steps necessary to add an offense guideline governing making false and/or misleading statements to a supervisor to the disciplinary guidelines, as was recommended by the Stakeholders and approved by the Board of Fire Commissioners in 2006.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department agrees that additional guidelines are necessary regarding the making of false and misleading statements, not only to supervisors but to law enforcement.
<b>Status</b>	Ongoing.
<b>Follow-Up</b>	The Department will continue to introduce necessary amendments to the current Disciplinary Guidelines into the "meet and confer" process and will apprise the Fire Commission of its progress.

The 2008 Disciplinary Guidelines which were subject to "meet and confer" with UFLAC contains two provisions related to the making of false and misleading statements:

- C10 – Made false and/or misleading statements during a Department inquiry
- C11 – Made false statement while under oath

There are no other specific guidelines addressing other scenarios which PSD has encountered since 2008 including making false statements to law enforcement and making false statements to a supervisor. Where there is no specific guideline, PSD must use the broad guideline of "R3 – Violation of Department or City work rule or policy". This broad provision limits the punishment from a verbal notice to a 10 day suspension.

Although PSD believes that creating a separate disciplinary guideline for every potential scenario of misconduct would be impossible, it does support adding guidelines for situations where the misconduct happens with some frequency and/or is significant to the Department and its core values. Sworn members who make false and/or misleading statements to law enforcement or to a supervisor fall into the latter category.

Because legal counsel has advised that the Disciplinary Guidelines are a matter within the scope of representation by the appropriate bargaining unit under the Meyers-Milias-Brown Act, the Department can modify the existing disciplinary guidelines only after complying with the "meet and confer" process.



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**CONDUCTING INVESTIGATIONS**

**RECOMMENDATIONS  
THIRTEEN  
TO  
THIRTY-SIX**

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<b>Category</b>	<b>Conducting Investigations</b>
<b>IA Recomm. No.</b>	<b>Thirteen</b>
<b>Independent Assessor's Recommendation</b>	The Department should limit who in the field is assigned investigations to the greatest extent possible so that the smaller pool of field investigators is more manageable and field supervisors, such as captains and chief officers, can be held accountable for providing active and responsible supervision.
<b>Dept. Position</b>	Agree, in part.
<b>Dept. Action</b>	Assigning minor complaints to the immediate supervisor to handle was intended to make the supervisor more accountable for their personnel proactively to remedy behaviors before they turn into complaints.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

The implementation of the current disciplinary model envisioned that the immediate supervisor would handle minor complaints against their subordinates involving performance, behavior, lost equipment and absenteeism/tardy. The intent of this model was to make the supervisor more accountable for their personnel proactively to remedy behaviors before they turn into complaints. The staffing and processes within the Professional Standards Division is based on the assignment of those kinds of cases to the member's chain of command for investigation.

The creation of a "pool" of field investigators and/or assigning all complaints to the Professional Standards Division would require substantive modifications to training, staffing and priorities and would not further the intent of making the supervisor more accountable for their personnel proactively to remedy behaviors before they turn into complaints by handling the lower level complaints against their staff.

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<b>Category</b>	<b>Conducting Investigations</b>
<b>IA Recomm. No.</b>	<b>Fourteen</b>
<b>Independent Assessor's Recommendation</b>	The Department should ensure those conducting and supervising investigations understand the admissibility of such things as police reports and the information such reports contain, as well as the ability to recognize the sufficiency and insufficiency of information contained in such reports to support disciplinary action.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	Conducting investigations in general and administrative or disciplinary investigations specifically involves an investment in training, coupled with experience developed from having properly conducted investigations of different types over time.
<b>Status</b>	Ongoing.
<b>Follow-Up</b>	The Department will continue to provide continuing education and training to its sworn and non-sworn Advocates to maintain their expertise.

As with any skill and expertise, conducting investigations (and disciplinary or administrative investigations specifically) requires a foundation of proper training. This training is valuable only if it is then coupled with experience, based on doing multiple investigations of different types and complexity over time.

The non-sworn investigators assigned to the Professional Standards Division were selected because they already have the foundational training and experience, given their backgrounds. Sworn Advocates assigned to PSD are given basic investigative training, coupled with hands-on experience working with the non-sworn investigators. Additionally, PSD conducts in-house Roundtable training on investigative and evidentiary issues and sends its staff to outside training in these areas.

The Department provided 8 hours of basic investigative training to the 700+ officers in 2008 when the disciplinary process was introduced. It has been unable to replicate this training since that time because of staffing issues and available training time under the recent economic woes. The Department requested staffing for a Field Support Section within PSD but this Section has not been implemented given PSD backlogs in investigations and Board of Rights hearings.

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<b>Category</b>	<b>Conducting Investigations</b>
<b>IA Recomm. No.</b>	<b>Fifteen</b>
<b>Independent Assessor's Recommendation</b>	The Department's investigations should be conducted to determine if knowing violations of Department policy have occurred without reasonable excuse for non-compliance.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	A thorough investigation will look for admissible evidence supporting or refuting each element of an allegation of misconduct. This would include justification for non-compliance of a policy, rule or regulation or the lack of such justification.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

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<b>Category</b>	<b>Conducting Investigations</b>
<b>IA Recomm. No.</b>	<b>Sixteen</b>
<b>Independent Assessor's Recommendation</b>	The Department should conduct complete and thorough investigations of alleged dishonesty, including making false and misleading statements, involving both sworn and non-sworn members of the Department.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department investigates allegations that members have been dishonest and/or have made false and/or misleading statements in their statements and/or written documents.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

Every complaint that is entered into the Complaint Tracking System is reviewed during intake and assignment. If the complaint states, with sufficiency, an allegation or allegations, which if true, would violate a rule, regulation, policy or statute that could result in punitive action, the complaint is investigated.

Because the Department's Core Values places an emphasis on "Professionalism", "Integrity" and "Trust", cases of alleged dishonesty are prioritized and assigned to the Professional Standards Division for investigation.

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<b>Category</b>	<b>Conducting Investigations</b>
<b>IA Recomm. No.</b>	<b>Seventeen</b>
<b>Independent Assessor's Recommendation</b>	<p>The Department should develop a case management process that results in investigators and supervisors conducting an initial complaint analysis and developing an investigative plan that:</p> <ol style="list-style-type: none"> <li>Identifies the issues, allegations, policies and training requirements;</li> <li>Identifies, evaluates and addresses the statute of limitations, legal, evidentiary, investigative conflict and procedural issues anticipated in the execution of an investigation;</li> <li>Identifies an investigative case strategy;</li> <li>Identifies the policy and work rules involved;</li> <li>Identifies the documents, scene visits, evidence, legal opinions and other work or preparation required before beginning interviews;</li> <li>Identifies witnesses and the issues they are to be asked about; and</li> <li>Sets timelines within which investigations are to be completed.</li> </ol>
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	In 2009, the Department instituted an "Investigative Strategy Matrix" for its Advocates to use when assigned to a complaint. The introduction of the Matrix was followed up with periodic in-house training on investigative strategy.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

As part of its efforts to professionalize and standardize the manner in which disciplinary investigations are conducted, the Department instituted a framework for cases assigned to the Professional Standards Division. Within this framework is the "Investigative Strategy" process, which is used by the Advocate when they are assigned an investigation. The "Investigative Strategy" requires the Advocate to carefully review the "four corners" of the complaint to determine whether there is sufficient information to determine what the complainant is alleging and whether those allegations amount to misconduct. If there is insufficient information to make that determination, the Advocate will probably need to interview the complainant. If a valid complaint of misconduct has been made, the Advocate will identify what policies, rules, regulations or statutes that the conduct would violate, determine the relevant dates associated with the statute of limitations under the Firefighters Procedural Bill of Rights and the City Charter, what evidence exists that may need to be seized, what persons are material to the acts underlying the complaint or to credibility, and determine where, in their existing caseload, this particular complaint lies in terms of priority.

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<b>Category</b>	<b>Conducting Investigations</b>
<b>IA Recomm. No.</b>	<b>Eighteen</b>
<b>Independent Assessor's Recommendation</b>	<p>The Department should ensure the complaint/disciplinary tracking systems are used to document case progress. This includes entering all complaints of misconduct and investigation materials in a regular and timely manner. Investigation materials include:</p> <ul style="list-style-type: none"> <li>a. All interview recordings, including interviews conducted in the field;</li> <li>b. All documents related to an investigation, including investigations reports, status reports, photographs, diagrams, other exhibits, etc.;</li> <li>c. Timekeeping records, case notes and descriptions of investigative activities;</li> <li>d. Recordings of <i>Skelly</i> hearings; and</li> <li>e. Other communications related to the case.</li> </ul>
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	<p>Complaints are entered into CTS when the complaint is received. The tasks of digitizing hard copy documents and uploading digital files into CTS are generally done once the hard copy investigative report has been submitted and the complaint is closed. Because of other priorities for support staff, digitizing and uploading the information contained in the hard copy is not a critical priority for the Professional Standards Division at this time.</p>
<b>Status</b>	Ongoing.
<b>Follow-Up</b>	<p>The Department will digitize and upload the relevant reports, documents and exhibits into CTS with the objective of minimizing the amount of hard copy documents that it retains in paper files, in favor of digital storage.</p>

Since the implementation of the Complaint Tracking System, complaints are entered into CTS upon receipt. Advocates are encouraged to keep a log of their investigative progress either on paper or in CTS. Because the final investigative reports completed by PSD are submitted in hard copy, the tasks of scanning the report and uploading audio recordings into CTS are ministerial tasks generally assigned to support staff after the investigation has been submitted. (PSD Management has made a conscious decision not to assign the Advocate the responsibility to scan the report and upload digital files into CTS because of their caseloads).

Because the information already exists in the hard copy file, the digitizing of the report and uploading information contained in the hard copy file remains a secondary priority for PSD at this time.

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<b>Category</b>	<b>Conducting Investigations</b>
<b>IA Recomm. No.</b>	<b>Nineteen</b>
<b>Independent Assessor's Recommendation</b>	<p>The Department should ensure investigators, investigative supervisors and investigative managers conduct investigations and prepare reports as if they were preparing a case for a legal proceeding, such as a Board of Rights hearing, which includes but is not limited to:</p> <ul style="list-style-type: none"> <li>a. Collecting and analyzing all written, recorded and electronic information before interviews are conducted;</li> <li>b. Conducting all necessary field inspections before interviews are conducted;</li> <li>c. Asking about all the allegations;</li> <li>d. Thoroughly questioning witnesses to obtain their complete knowledge of the facts;</li> <li>e. Resolving all discrepancies to the extent possible;</li> <li>f. Having witnesses provide a complete timeline of activities;</li> <li>g. Addressing anticipated defense questions and arguments; and</li> <li>h. Obtaining admissible evidence.</li> </ul>
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	In 2009, the Department instituted an "Investigative Strategy Matrix" for its Advocates to use when assigned to a complaint. The introduction of the Matrix was followed up with periodic in-house training on investigative strategy.
<b>Status</b>	Ongoing.
<b>Follow-Up</b>	The Department reinforces the importance of adequate preparation during an investigation in its training and in its review of investigations in progress and at adjudication.

The Department's response to Recommendation Number 17 discusses the "Investigative Strategy" by the assigned Advocate when they are assigned to a new complaint.

As part of its efforts to professionalize and standardize the manner in which disciplinary investigations are conducted, the Department instituted a framework for cases assigned to the Professional Standards Division. Within this framework is the "Investigative Strategy" process, which is used by the Advocate when they are assigned an investigation. The "Investigative Strategy" requires the Advocate to carefully review the "four corners" of the complaint to determine whether there is sufficient information to determine what the complainant is alleging and whether those allegations amount to misconduct. If there is insufficient information to make that determination, the Advocate will probably need to interview the complainant. If a valid complaint of misconduct has been made, the Advocate will identify what policies, rules, regulations or statutes that the conduct would violate, determine the relevant dates associated with the statute of



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limitations under the Firefighters Procedural Bill of Rights and the City Charter, what evidence exists that may need to be seized, what persons are material to the acts underlying the complaint or to credibility, and determine where, in their existing caseload, this particular complaint lies in terms of priority.

The intent is that the Advocate will be familiar with the Department policies, rules and regulations which apply to the alleged misconduct will have collected and reviewed all relevant documentary evidence and is as prepared as reasonably possible before beginning the interviews of the other witnesses and subjects. This familiarity will allow the Advocate to assess the credibility of the involved parties by comparing their statement against the other evidence.

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<b>Category</b>	<b>Conducting Investigations</b>
<b>IA Recomm. No.</b>	<b>Twenty</b>
<b>Independent Assessor's Recommendation</b>	The Department should ensure all potential allegations have been identified at the start of the investigation, and should seek the assistance of a subject matter expert, as necessary, to assist in forming allegations, identifying what evidence needs to be obtained and what witnesses should be asked during their interviews, and preparing a thorough and comprehensive investigative plan.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department's investigators identify areas of where they require additional expertise and seek out the required information so that their investigations are complete and accurate.
<b>Status</b>	Ongoing.
<b>Follow-Up</b>	The Department reinforces the importance of consulting with the proper experts to gain a proper understanding of the complaint and its issues in its training and in its review of investigations in progress and at adjudication.

The Department's response to Recommendation Number 17 discusses the "Investigative Strategy" by the assigned Advocate when they are assigned to a new complaint.

The 2006 Controller and Personnel Audits and the Stakeholders supported introducing civilian investigators into the Fire Department's disciplinary process to enhance the quality of the investigative work product. It was also recognized that civilian investigators would lack both the technical expertise and the historical knowledge of the LAFD and the Fire Service. As such, PSD Advocates have been trained and are encouraged to consult with subject matter experts on any issues that might arise during their investigative strategizing. This includes reaching out to sworn personnel within PSD and within the Department, law enforcement, emergency medical and lawyers so that their understanding of the potential allegations and the investigative roadmap is clear during the early stages on the case.

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<b>Category</b>	<b>Conducting Investigations</b>
<b>IA Recomm. No.</b>	<b>Twenty-One</b>
<b>Independent Assessor's Recommendation</b>	Obtain and thoroughly review all training records to determine if the employee accused of misconduct received actual or constructive notice of the specific work rule, policy, protocol or guideline at the start of the investigation.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department has emphasized that the Department must be able to prove that a member had prior knowledge of the rule and the consequence of violating that rule and has provided Advocates with training in this area. PSD supervisors are trained to advise investigators about notice and to make sure that evidence of notice is contained in the investigative report.
<b>Status</b>	Ongoing.
<b>Follow-Up</b>	The Department will continue to reinforce the importance of "notice" with Advocates with ongoing training, in progress reports on ongoing investigation and during the review of investigative reports.

The Department's response to Recommendation Number 17 discusses the "Investigative Strategy" by the assigned Advocate when they are assigned to a new complaint.

The Seven Rules of Just Cause is often cited by arbitrators in disciplinary arbitrations. They require that the employer show not only that it established a rule and that the rule was reasonably related to the orderly and efficient operation of the business, but that the employer provided notice of the rule and the consequences of violating the rule to the employee.

Advocates have been instructed that evidence of notice of the rule and its consequences can be established a number of ways during the investigation, including training records. As such, reviewing training records has been emphasized in training as a step in the investigative strategy process of an investigation.

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<b>Category</b>	<b>Conducting Investigations</b>
<b>IA Recomm. No.</b>	<b>Twenty-Two</b>
<b>Independent Assessor's Recommendation</b>	The Department should ensure its investigators obtain all relevant legal guidance at the start of an investigation to be sure all evidence is obtained and interviews are complete. For example, legal guidance on what conduct constitutes gross negligence should be obtained before interviews are conducted.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department has provided both in-house and outside training on the legal concepts and parameters involved in the investigation of misconduct by firefighters. Advocates have trained experts within the Professional Standards Division to seek guidance on these issues. When legal advice is needed, PSD has reached out to the City Attorney to obtain that advice.
<b>Status</b>	Ongoing.
<b>Follow-Up</b>	The Department will consider the legal issues involved in complaint investigations and to encourage Advocates to seek clarification from PSD supervisors and/or obtain legal advice from the City Attorney.

The Department's response to Recommendation Number 17 discusses the "Investigative Strategy" by the assigned Advocate when they are assigned a new complaint.

If the Investigative Strategy analysis reveals that the investigation may involve a scenario requiring legal guidance or advice, the Department will consult with the appropriate subject matter experts, including the City Attorney's Office to obtain legal advice, in order to resolve those issues in a timely manner.

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<b>Category</b>	<b>Conducting Investigations</b>
<b>IA Recomm. No.</b>	<b>Twenty-Three</b>
<b>Independent Assessor's Recommendation</b>	The Department should ensure its investigators obtain all basic information before conducting interviews. This includes document collection, scene visits or inspections, policies, protocols, guidelines, dispatch records, unit histories, station logs/journals, patient care records, training records, reports, memos, emails, and all other materials of any type related to the date and time of the incident and the conduct under investigation.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department has provided Advocates with both in-house and outside training on best practices in administrative investigations. This includes obtaining all reasonably available information before commencing interviews. Where practical, Advocates are encouraged to invest the time during investigative strategy and pre-interviewing to do so.
<b>Status</b>	Ongoing.
<b>Follow-Up</b>	The Department will continue to encourage Advocates to obtain all reasonably available information before commencing interviews balanced against their existing caseload demands and other PSD priorities and will continue to emphasize this point in in-house training and supervisory review of completed reports.

The Department's response to Recommendation Number 17 discusses the "Investigative Strategy" by the assigned Advocate when they are assigned a new complaint.

Under ideal circumstances, investigators should have as much knowledge about the complaint, the documentary and physical evidence material to the act or event and the substance of prior statements made by all parties, prior to conducting interview. The Department has and will continue to stress the importance of having as much information prior to beginning interviews of witnesses and subjects.

However, the Department also realizes that operational necessities may not allow for an Advocate to have sufficient time to engage in pre-interview preparation in every case. Because of investigator vacancies, caseload demands and priorities and PSD's responsibility to present Boards of Rights, PSD management may reassign cases from one Advocate to another to address compelling Department needs. PSD management already places extraordinary demands on its staff in getting investigations completed within statute. As such, there may be occasions where an Advocate may not have the time to prepare prior to interviews as fully as he or she would like.

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<b>Category</b>	<b>Conducting Investigations</b>
<b>IA Recomm. No.</b>	<b>Twenty-Four</b>
<b>Independent Assessor's Recommendation</b>	The Department's investigators should engage in pre-interview preparation, and conduct interviews in a fashion that results in investigators knowing about prior statements made by a witness or subject concerning the matter under investigation.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department has stressed the importance of the best practice of preparing for interviews, including the statements made by other witnesses or subjects on the same issue or prior statements made by the subject.
<b>Status</b>	Ongoing.
<b>Follow-Up</b>	The Department will continue to encourage Advocates about the importance of preparing for interviews, including the statements made by other witnesses or subjects or prior statements by the subject. However, if PSD continues to experience extraordinary demands on its current resources as to caseload, the Department realizes there may be limits to the amount of pre-interview preparation that is reasonably possible.

The Department's response to Recommendation Number 17 discusses the "Investigative Strategy" by the assigned Advocate when they are assigned a new complaint.

Under ideal circumstances, investigators should have as much knowledge about the complaint, the documentary and physical evidence material to the act or event and the substance of prior statements made by all parties, prior to conducting interview. The Department has and will continue to stress the importance of having as much information, including the knowledge of prior statements made by other witnesses or subjects or the specific member and using that information strategically during the investigation.

However, the Department also realizes that operational necessities may not allow for an Advocate to have sufficient time to engage in pre-interview preparation in every case. Because of investigator vacancies, caseload demands and priorities and PSD's responsibility to present Boards of Rights, PSD management may reassign cases from one Advocate to another to address a compelling Department needs. PSD management already places extraordinary demands on its staff in getting investigations completed within statute. As such, there may be occasions where an Advocate may not have the time to prepare as fully prior to interviews as he or she would like.

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<b>Category</b>	<b>Conducting Investigations</b>
<b>IA Recomm. No.</b>	<b>Twenty-Five</b>
<b>Independent Assessor's Recommendation</b>	Eliminate the rule that allows union representatives up to 7 business days to schedule interviews.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	Because the rule is part of a 2008 Letter of Agreement with UFLAC, the Department has and will continue to provide a member a minimum of seven business day period to obtain representation.
<b>Status</b>	Ongoing.
<b>Follow-Up</b>	The Department will continue to document the detriment to its ability to complete investigations in a timely manner caused by the seven business day rule and to seek either an amendment or elimination of that requirement through the recognized bargaining process.

Due process requires that a member requesting representation prior to an interview be given a reasonable time to secure a representative of his or her choice. The current Memorandums of Understanding with both UFLAC and COA allows union members to be represented at an investigatory interview, whether they are witnesses or subjects. The 2008 Letter of Agreement with UFLAC set the reasonable period for a member to secure representation to be a maximum of seven business days.

Under City Charter Section 1060, the Department must complete its investigation, serve a member with charges and file the charges with the Board of Fire Commissioners within one year of the discovery of the misconduct. Although the Firefighters Procedural Bill of Rights allows for reasonable extensions and/or tolling of the statute of limitations, no such provision applies to the City Charter. The Department has proposed amending the City Charter's statute of limitations to mirror those of the Firefighters Procedural Bill of Rights on two occasions without success. As such, the Department must abide by the one-year limitations period as stated in City Charter Section 1060.

In cases where there are multiple Department members who are witnesses and/or subjects, the seven business day period can delay the completion of an investigation to a point where it comes dangerously close to exceeding the one year limitations period. Because a member has the maximum of seven business days to secure representation under a valid labor agreement, the Department has and will continue to follow that until that provision is modified and/or eliminated via the bargaining process.

The Department will continue to seek a change to this provision through the labor bargaining process.

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<b>Category</b>	<b>Conducting Investigations</b>
<b>IA Recomm. No.</b>	<b>Twenty-Six</b>
<b>Independent Assessor's Recommendation</b>	The Department should ensure diagrams are properly prepared, marked and explained by witnesses when used during interviews. Diagrams should be prepared in a manner that ensures the investigator does not become a witness to what the diagram depicts or to establish a foundation for the diagram.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department has provided both in-service and outside training to its Advocates on best practices in conducting investigations, including the appropriate use of diagrams during interviews.
<b>Status</b>	Ongoing.
<b>Follow-Up</b>	The Department will continue to provide refresher training to its Advocates to stress best investigative practices and to reinforce their use by supervisory monitoring during investigations.

The Department recognizes that properly used, diagrams can be an invaluable investigatory tool to clearly communicate what actually occurred during an act or event as described by a witness or subject member. The Department also recognizes that done improperly can confuse those who listen to the interview recording and/or review the completed investigative report. The improper use of a diagram during an interview could force the investigator to take the stand during a Board of Rights or other hearing to explain what he or she recalls the diagram depicting, instead of allowing the diagram to “speak for itself” as direct evidence.



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<b>Category</b>	<b>Conducting Investigations</b>
<b>IA Recomm. No.</b>	<b>Twenty-Seven</b>
<b>Independent Assessor's Recommendation</b>	Investigators should obtain documents offered by, referred to or relied on by witnesses and subjects during their interviews.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department has provided both in-service and outside training to its Advocates on best practices in conducting investigations, including securing copies of documents which witness or subject members relied upon to refresh their recollection in anticipation of their investigatory interview.
<b>Status</b>	Ongoing.
<b>Follow-Up</b>	The Department will continue to provide refresher training to its Advocates to stress best investigative practices and to reinforce their use by supervisory monitoring during investigations.

The Department recognizes the value of documents prepared by a witness or subject about an event, especially if it was prepared at the time or shortly after an incident. That document may be a more accurate recordation of what actually happened than an interview statement obtained months later. The document may contradict what the member is now stating and thus, could go to credibility.

The Department's best opportunity to learn whether such documentation exists is generally at the interview, either by asking the member if he or she prepared any documents after the event or if the member admits they reviewed their "notes" in preparation for their interview.

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<b>Category</b>	<b>Conducting Investigations</b>
<b>IA Recomm. No.</b>	<b>Twenty-Eight</b>
<b>Independent Assessor's Recommendation</b>	The Department should adopt guidelines that address "off the record" statements concerning a matter under investigation, and how interview breaks are to be handled "on the record."
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	Although the Department has adopted guidelines and provided training as to how "off the record" statements are to be handled by Advocates, the Department has not codified this in written form.
<b>Status</b>	Ongoing.
<b>Follow-Up</b>	The Department will continue to provide refresher training to its Advocates to stress best investigative practices and continues to work on producing a PSD manual.

The Department recognizes the potential problems with statements that are made "off the record" between the Advocates and the members being interviewed and their representatives. The Department has adopted guidelines that limit "off the record" discussions with a member and/or their representative and has provided Advocates with training on this issue. The Department believes that if an "off the record" discussion occurs during a break in an interview, the Department will place the substance of that discussion on the record once the recorded interview reconvenes. The Department has instructed Advocates that after placing the summary on the record, the Department should obtain a verbal concurrence that the summary is true, correct and complete from the member and/or the representative with whom the discussion was had.

In instances where a routine break in an interview has occurred, the Department also instructs its Advocates that when returning from every break and going back on record they should ask the Member if any questioning occurred during the break. The Member's confirmation of this will preclude any assertion that the Department had "off the record" discussions involving threats, promises, coercion with the Member.

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<b>Category</b>	<b>Conducting Investigations</b>
<b>IA Recomm. No.</b>	<b>Twenty-Nine</b>
<b>Independent Assessor's Recommendation</b>	The Department should ensure interview summaries are accurate and complete.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department has followed the industry practice that interview summaries are accurate and complete with information relevant to the complaint.
<b>Status</b>	Ongoing.
<b>Follow-Up</b>	Through training and supervisory oversight, the Department will continue to prioritize that interview summaries are accurate and complete with information relevant to the complaint.

Disciplinary investigations which result in sustained findings and charges against a member could result in punitive action, which means that the member may suffer a suspension or, under certain circumstances, the loss of their job. When adjudicating a complaint, the decision made by the Professional Standards Division management is only as good as the investigative report produced by the Advocate.

How much information should be documented in the investigative report has been a source of discussion within the Professional Standards Division. If a key piece of recorded testimony is not summarized by the Advocate and included in the report, the adjudication may be incorrect. However, including irrelevant information in the report is a waste of time and effort that the Department and PSD cannot afford. When it is unclear what information may be relevant, the Advocate will generally include it in their summaries out of caution.

To avoid the inclusion of unnecessary or irrelevant information in the investigative report, PSD management has instructed its Advocates to focus on the alleged misconduct and include facts which either support or refute the elements of that misconduct. PSD management also urges its Advocates to include information reflective of the credibility of the witnesses and/or subject who provided statements in the complaint investigation.

As such, the Department does everything it can to ensure that interview summaries are accurate and complete, with the caveat that the summaries contain information that is relevant to the complaint itself. The Department reiterates this point with the Advocates repeatedly during in-house training sessions. Again, the PSD management who adjudicate the complaints must rely on investigative summaries that are complete, unbiased and accurate in order to make the right recommendations to the Fire Chief on disciplinary matters.

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<b>Category</b>	<b>Conducting Investigations</b>
<b>IA Recomm. No.</b>	<b>Thirty</b>
<b>Independent Assessor's Recommendation</b>	The Department should ensure credibility determinations are based on complete and thorough investigations and take into consideration all of the factors set forth in <i>Evidence Code</i> section 780, which provides guidance on how to assess the believability and credibility of witnesses in legal proceedings.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department has provided in-house and outside training on interviewing and interrogation to provide Advocates with a basis to assess the credibility of witnesses and how to document that basis in the investigative report.
<b>Status</b>	Ongoing.
<b>Follow-Up</b>	The Department will continue to train its Advocates on the value of credibility indicators and the appropriate documentation of those indicators in their investigation and report.

The Department recognizes the importance of assessing the credibility of witnesses, complainants and subjects when evaluating a complaint and adjudicating it on its merits. If the investigative report contains the only raw statements without mention of the indicators of credibility that the investigator saw or heard, such as the demeanor and the manner in which the interviewee acted, the adjudicator may not have all of the necessary information to make a correct decision. Likewise, if the adjudicator does not consider factors such as prior inconsistent statements, bias or motive, etc., an erroneous decision could be made.

The Department has and will continue to train its Advocates on noting the factors which are indicative of credibility and how to document those factors in the report. While it is inappropriate to say that someone lied, it is appropriate for the Advocate to note observed indicators of deception. Likewise, the report should note where the same person made inherently inconsistent statements about the same event or matter for the adjudicator to weigh. The inclusion of this information is consistent with the Equal Employment Opportunity Commission's Enforcement Guidance on Vicarious Employer Liability for Supervisor Harassment (1999).

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<b>Category</b>	<b>Conducting Investigations</b>
<b>IA Recomm. No.</b>	<b>Thirty-One</b>
<b>Independent Assessor's Recommendation</b>	The Department should ensure investigators attempt to thoroughly determine all reasons for why victims and complainants delay reporting misconduct.
<b>Dept. Position</b>	Agree
<b>Dept. Action</b>	The Department has provided in-house and outside training on interviewing and interrogation to provide Advocates an understanding of the dynamics involved in reporting misconduct and instruction on how to explore those issues during interviews.
<b>Status</b>	Ongoing
<b>Follow-Up</b>	The Department will continue to train its Advocates so that they understand the dynamics involved with complainants, victims, witnesses and subject members who are or become involved in an administrative investigation and the value of determining why a victim or complainant delayed reporting misconduct.

The Department recognizes that the credibility of a victim or complainant may be impacted by their motive or purpose for making a complaint. As such, why a victim or complainant delayed in reporting misconduct should be explored.

However, the Department is also cognizant that reporting misconduct is stressful for the victim or complainant, especially if that person is also a Department member. There are many factors, including "not wanting to get someone in trouble", retaliation, or the fear of being labeled an informant, a rat, or someone that cannot be trusted, that may delay the reporting of misconduct.

Although the Department has the authority to order Department members to provide information by virtue of their status as an employee, the Department balances its right as the employer to obtain the information against the voluntary nature of a complainant who is coming forth with their complaint and the dynamics involved in reporting misconduct.

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<b>Category</b>	<b>Conducting Investigations</b>
<b>IA Recomm. No.</b>	<b>Thirty-Two</b>
<b>Independent Assessor's Recommendation</b>	The Department should ensure investigators attempt to thoroughly determine why victims, complainants, witnesses or subjects change their prior statements or testimony, including but not limited to whether the change was the result of hazing, harassment, retaliation or other reasons.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department has provided in-house and outside training on interviewing and interrogation to provide Advocates an understanding of the dynamics involved in reporting misconduct and instruction on how to explore those issues during interviews.
<b>Status</b>	Ongoing.
<b>Follow-Up</b>	The Department will continue to train its Advocates so that they understand the dynamics involved with complainants, victims, witnesses and subject members who are or become involved in an administrative investigation and the value of determining why a prior inconsistent statement was made.

The Department recognizes that the credibility of a victim or complainant may be impacted by the consistency or inconsistency of their statements. As such, why statements made by a victim or complainant at different times are inconsistent should be explored. The Department will consider whether the inconsistencies were substantive and material, the passage of time between the inconsistent statements and whether the inconsistencies are accompanied by corroborative evidence suggesting intentional dishonesty.

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<b>Category</b>	<b>Conducting Investigations</b>
<b>IA Recomm. No.</b>	<b>Thirty-Three</b>
<b>Independent Assessor's Recommendation</b>	Investigators and supervisors should ensure investigations properly address inconsistent statements made in connection with a matter under investigation.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department has provided its Advocates with training on the legal and evidentiary significance of prior statements made by a witness or subject that contradict their current statement and how to use that information when assessing credibility of that person and the weight of their statement in the investigation.
<b>Status</b>	Ongoing.
<b>Follow-Up</b>	The Department will continue to train its Advocates on the value of credibility indicators and the appropriate documentation of those indicators in their investigation and report.

The Department recognizes that the credibility of a victim or complainant may be impacted by the consistency or inconsistency of their statements. As such, why statements made by a victim or complainant at different times are inconsistent should be explored. The Department will consider whether the inconsistencies were substantive and material, the passage of time between the inconsistent statements and whether the inconsistencies are accompanied by corroborative evidence suggesting intentional dishonesty.

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<b>Category</b>	<b>Conducting Investigations</b>
<b>IA Recomm. No.</b>	<b>Thirty-Four</b>
<b>Independent Assessor's Recommendation</b>	The Department should ensure its investigators and supervisors prepare and approve accurate, complete and thorough investigations and investigative reports, such that they are legally sufficient to sustain disciplinary action if warranted. The Department should also engage in rigorous reviews of investigative reports to ensure they accurately reflect the evidence obtained during an investigation. Insufficient investigations should not be accepted and should be returned for further investigation.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department has provided in-house and outside training on the documenting of investigative actions, including obtaining and paraphrasing interviews, collecting and reviewing evidence, and legal issues, including due process requirements, in investigative reports. Completed investigative reports are reviewed by PSD management for sufficiency and are returned for further investigation if needed, subject to statute of limitations concerns.
<b>Status</b>	Completed.
<b>Follow-Up</b>	The Department will continue to emphasize to its advocates the importance of properly documenting investigative actions and legal issues in investigative reports. The Department will also continue to review completed investigative reports for sufficiency, returning those deemed insufficient for further investigation, subject to statute of limitations concerns.



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<b>Category</b>	<b>Conducting Investigations</b>
<b>IA Recomm. No.</b>	<b>Thirty-Five</b>
<b>Independent Assessor's Recommendation</b>	Supervisors reviewing investigative reports should provide feedback to the investigator concerning the quality of the investigative work performed.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Professional Standards Division management routinely interacts with its Advocates during the initial assignment, investigative strategy, investigation, report creation and review of the final report. Issues which are identified subsequent to the closure of the case, including the quality of the investigation, are discussed with the Advocate.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

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<b>Category</b>	<b>Conducting Investigations</b>
<b>IA Recomm. No.</b>	<b>Thirty-Six</b>
<b>Independent Assessor's Recommendation</b>	The Department should encourage subject matter experts, including the Medical Director, to review completed investigations to ensure the sufficiency, thoroughness, adequacy and completeness of the investigation of those who have allegedly violated Department work rules, when appropriate, and encourage such experts to suggest additional allegations based on the information provided.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department currently allows certain subject matter experts whose opinions are crucial to the adjudication of the investigation to review the completed report. This routinely occurs with the Medical Director on issues involving the quality of emergency medical care. However, the final disciplinary decision is vested within the Fire Chief and the Professional Standards Division.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

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**PENALTY DETERMINATIONS**

**RECOMMENDATIONS  
THIRTY-SEVEN  
TO  
FIFTY**

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<b>Category</b>	<b>Penalty Determinations</b>
<b>IA Recomm. No.</b>	<b>Thirty-Seven</b>
<b>Independent Assessor's Recommendation</b>	Penalties should be applied consistently. Penalties should be based on an act of misconduct that can be proven by a preponderance of the evidence in an administrative proceeding, not necessarily on the plea in the criminal case.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department recognizes the importance of consistently applying the appropriate disciplinary guidelines based on the evidence, without regard for subjective opinions about the involved member.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

The Controller's 2006 "Review of the Los Angeles Fire Department Management Practices" spoke in depth about the perception that the subjective process to impose penalties resulted in inconsistencies in the level of discipline imposed by the LAFD, recommending that the Department develop a set of standard disciplinary guidelines and ensure that they are consistently applied and fairly administered. The Department's 2008 Audit Implementation Plan prioritized the development and the implementation of disciplinary guidelines as one of its goals.

The Professional Standards Division has implemented the disciplinary guidelines consistently, based on the facts provable by preponderance of the admissible evidence. The consistent application of the disciplinary guidelines and the Department's refusal to routinely negotiate penalties downward to avoid an appeal have resulted in a high number of member-requested Board of Rights, which in turn has led to an additional burden on PSD and Department resources.

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<b>Category</b>	<b>Penalty Determinations</b>
<b>IA Recomm. No.</b>	<b>Thirty-Eight</b>
<b>Independent Assessor's Recommendation</b>	Disciplinary action should take into consideration all mitigating and aggravating factors known at the time the penalty is first proposed, including conduct, actions and expressions of regret, remorse and responsibility.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department agrees that all <i>relevant</i> mitigating and aggravating factors known at the time the penalty is first proposed, should be taken into consideration. The Department has adopted an established criteria used by the United States Government's Merit Systems Protection Board to determine the proposed penalty once the appropriate disciplinary guideline has been determined. These factors allow for a uniform examination of mitigating and aggravating factors.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

The Department agrees that mitigating and aggravating factors known at the time the penalty is first proposed should be taken into consideration, provided that the factor is relevant to the penalty determination. The Department has adopted an established criteria used by the United States Government's Merit Systems Protection Board (see *Douglas vs. Veterans Administration*, 5 M.S.P.R. 280 (1981), when determining an appropriate penalty to impose for an act of employee misconduct once the appropriate disciplinary guideline is determined. These factors are:

1. The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
2. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
3. The employee's past disciplinary record;
4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
5. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties;
6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
7. Consistency of the penalty with any applicable agency table of penalties;
8. The notoriety of the offense or its impact upon the reputation of the agency;

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9. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
10. The potential for the employee's rehabilitation;
11. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

Using these factors allows the Department to uniformly apply recognized criteria which takes into account relevant aggravating and mitigating factors when determining the specific penalty within a disciplinary guideline range.

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<b>Category</b>	<b>Penalty Determinations</b>
<b>IA Recomm. No.</b>	<b>Thirty-Nine</b>
<b>Independent Assessor's Recommendation</b>	The Department and Stakeholders should adopt a set of standard mitigating and aggravating factors to be used in moving penalties within a range.
<b>Dept. Position</b>	Agree, in part.
<b>Dept. Action</b>	Because the Stakeholders process has not convened since the creation of the Professional Standards Division and because of the necessity to develop a uniform manner to determine penalties, the Department has adopted an established criteria used by the United States Government's Merit Systems Protection Board to determine the proposed penalty once the appropriate disciplinary guideline has been determined. These factors allow for a uniform examination of mitigating and aggravating factors. The Department has used this criteria since late 2008.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

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<b>Category</b>	<b>Penalty Determinations</b>
<b>IA Recomm. No.</b>	<b>Forty</b>
<b>Independent Assessor's Recommendation</b>	Multiple acts of misconduct should be considered as aggravating circumstances when setting a penalty.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	Instead of "stacking" penalties (i.e. adding suspension days for each sustained charge), the Department identifies the most serious penalty guideline and determines the proposed penalty within that guideline, using the fact there are multiple acts of misconduct as an aggravating factor.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

In cases where the evidence proved that a member committed multiple acts of misconduct, the Department does not "stack" the charges (add suspension days for each sustained charge). Instead the Department reviews the completed investigation, determines the most serious penalty guideline based on the sustained allegations and uses that guideline to determine the proposed penalty. The fact that the member committed multiple acts of misconduct is used as an aggravating factor when determining the proposed penalty.

As explained in its response to Recommendation Number Thirty-Eight, the Department adopted a criteria used by the United States Government's Merit Systems Protection Board (see *Douglas vs. Veterans Administration*, 5 M.S.P.R. 280 (1981), when determining an appropriate penalty to impose for an act of employee misconduct once the appropriate disciplinary guideline is determined. Among these factors is "[t]he nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense ... was frequently repeated".



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<b>Category</b>	<b>Penalty Determinations</b>
<b>IA Recomm. No.</b>	<b>Forty-One</b>
<b>Independent Assessor's Recommendation</b>	Disciplinary penalties should not be changed after initial service of the proposed penalty unless newly discovered information is provided. Expressing remorse, taking responsibility and apologies expressed for the first time at a <i>Skelly</i> hearing, when there was an opportunity to express and, more importantly, actually demonstrate remorse, regret and responsibility before the <i>Skelly</i> hearing should not qualify as newly discovered information.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department agrees that penalties should not be changed after initial service of the proposed penalty unless evidence is discovered that supports a modification of the proposed penalty.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

When the Department proposes disciplinary action against a member, that determination is based on the facts contained in the administrative investigation. The proposed penalty should remain as long as the facts known to the Department is contained in the administrative investigation. However, the process is not static and in fact, envisions that additional information will enter the process, either at the *Skelly* hearing or uncovered in preparation for a Board of Rights. As such, the Department should not be wedded to its initial proposed penalty based on evidence previously undiscovered.

The Department evaluates the information as it is discovered and/or learned. Thus, if a member has expressed remorse and takes responsibility for his or her action, during the investigation, that mitigation will be considered when proposing the initial penalty. The fact that the member expresses this again in the *Skelly* hearing should not result in additional mitigation. Likewise, the Department should be mindful that a member who refused to take responsibility throughout the investigation only to reluctantly express remorse after being charged may receive less mitigation because of the delayed timing or the appearance that the act of remorse is not sincere.

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<b>Category</b>	<b>Penalty Determinations</b>
<b>IA Recomm. No.</b>	<b>Forty-Two</b>
<b>Independent Assessor's Recommendation</b>	<p>The Department should cease mitigating penalties on the basis of the employee agreeing to attend training and education-based discipline. If further or remedial training is needed, it should be included as a part of the proposed penalty before the <i>Skelly</i> hearing takes place and not negotiated. This basis should not be utilized until the Stakeholders and Board of Fire Commissioners approves a policy governing such disciplinary practices, only after completion of the "meet and confer" process if applicable, and it should address at least the following issues:</p> <ul style="list-style-type: none"> <li>a. How such a program would fit in the Department's disciplinary system;</li> <li>b. What conduct or offenses would be eligible and on what basis;</li> <li>c. When it is most advantageous in the disciplinary process to offer such an alternative;</li> <li>d. What classes should be required in satisfaction of the misconduct and disciplinary action;</li> <li>e. What record keeping and documentation of the process should be required to effectuate the education or training and documentation in the personnel file;</li> <li>f. Should other classes be required in addition to or as a substitute for a decision making class in light of the misconduct engaged in;</li> <li>g. The proper ratio of suspension days that can be substituted for education-based discipline days.</li> </ul>
<b>Dept. Position</b>	Agree
<b>Dept. Action</b>	Since the incidents identified in the 2010 Audit, the Department has not used learning and education-based alternatives in its disciplinary process. The Department has proposed integrating "Learning and Education Alternatives to Discipline" into the LAFD disciplinary process.
<b>Status</b>	Ongoing
<b>Follow-Up</b>	Based on the direction of the Board of Fire Commissioners at its June 4, 2013 meeting, the Department is developing an implementation strategy for the Board's review and approval for "Learning and Education Alternatives to Discipline".

The Department has consistently used the disciplinary guidelines to determine a proposed penalty. At the same time, the Department has kept itself abreast of other practices developing in public sector discipline which may or may not be applicable to the Los Angeles Fire Department.

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In 2007, the Los Angeles County Sheriff's Department (LASD) began incorporating "Education Based Discipline" (EBD) into its disciplinary process. EBD acknowledged that the vast majority of first offenders in the disciplinary process made a "mistake", many times after years of unblemished service. Like many public safety agencies, LASD's process has no alternative but to impose punitive action. EBD allowed the LASD's to look at the underlying roots which may have led to the misconduct and offer the employee the option of attending training specific to those underlying issues, in exchange for a reduction of the penalty. Generally limited to first time offenders, EBD was viewed by the LASD as a "win-win" for both the Department and the employee by correcting the behavior by providing the employee with the tools and training to do so.

The LAFD first began examining EBD in 2009. On September 28, 2012, the Department introduced a learning and education-based alternative to discipline to the Board of Fire Commissioners HRDC/Personnel Committee. (BFC Report 12-145). The Committee asked the Department to provide the full Board with a more detailed briefing which was provided on June 4, 2013. (BFC Report 13-062). The Board ordered the Department to develop a more detailed implementation plan and seek City Attorney advice on that implementation and report back. Those steps are in progress.

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<b>Category</b>	<b>Penalty Determinations</b>
<b>IA Recomm. No.</b>	<b>Forty-Three</b>
<b>Independent Assessor's Recommendation</b>	The Department and Stakeholders should establish base penalties for each offense guideline range, to which mitigating and aggravating factors can be applied to move the discipline up or down in a range, instead of starting at a bottom third or mid-point of a range.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department has used either a one-third or one-half starting point within the appropriate disciplinary guideline based on agreements with labor. The Department has also presented a base penalty approach to the Board of Fire Commissioners for consideration.
<b>Status</b>	Ongoing.
<b>Follow-Up</b>	The Department continues to discuss the use and implementation of a base penalty approach to determining proposed penalties with the Board of Fire Commissioners and with labor.

During the formation of the current disciplinary process, the Department agreed to use specific starting points within a disciplinary guideline to determine a proposed penalty. The Department agreed to start at one-third of the appropriate disciplinary guideline range with UFLAC members and at one-half with COA members.

The Department has recognized that, based on the construction of the Disciplinary Guidelines and the wide range of potential punitive action within some of those ranges, following the guidelines using the one-third or one-half starting points has resulted in penalties which fail to recognize the importance of the guideline to the Department and its Core Values.

The Department has proposed that the starting point should be based on the significance of the underlying behavior to the Department, the City and the Fire Service. The Department has recommended a base penalty approach where the starting point is determined by the Fire Chief based on the Core Values. That proposal is pending before the Board of Fire Commissioners.

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<b>Category</b>	<b>Penalty Determinations</b>
<b>IA Recomm. No.</b>	<b>Forty-Four</b>
<b>Independent Assessor's Recommendation</b>	In an effort to achieve consistency at every level of the process when setting disciplinary penalties, the Department should ensure those recommending penalties prior to <i>Skelly</i> hearings, <i>Skelly</i> officers, those approving final penalties after <i>Skelly</i> hearings, the Fire Chief, and the Boards of Rights consider and articulate the factors of 1) harm to the public service, 2) the circumstances surrounding the misconduct, and 3) the likelihood of recurrence, when applying the applicable disciplinary guidelines and the Department's set of mitigating and aggravating standards.
<b>Dept. Position</b>	Agree, in part.
<b>Dept. Action</b>	Although the Department is mindful of the three prong analysis in <i>Skelly vs. State Personnel Bd.</i> (1975) 15 Cal. 3d 194 used by the courts to determine the appropriateness of the penalty in public sector discipline cases, the Department's consistent application of the Disciplinary Guidelines and of the aggravating and mitigating factors within the guideline takes away from further incorporating its subjectivity into its disciplinary decisions.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

The Department acknowledges that the Courts review the appropriateness of the penalty in public sector discipline cases under a three prong test in *Skelly vs. State Personnel Bd.* (1975) 15 Cal. 3d 194. However, when recommending penalties and approving final penalties after a *Skelly* hearing, the process used by the Professional Standards Division has become "mechanical", limiting the subjective interjection of any factors, including the *Skelly* factors, into its decision at that point beyond. Those decisions are dictated by the Disciplinary Guidelines and the use of the aggravating and mitigating factors once the appropriate disciplinary guideline is determined.

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<b>Category</b>	<b>Penalty Determinations</b>
<b>IA Recomm. No.</b>	<b>Forty-Five</b>
<b>Independent Assessor's Recommendation</b>	The Department should ensure all appropriate guideline offenses are cited when preparing disciplinary recommendations for both sworn and non-sworn members of the Department.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	A listing of the applicable disciplinary guidelines identified and considered by the Professional Standards Division in recommending disciplinary action is contained in the Internal Affairs Commander's memorandum which proposes disciplinary action against a member.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

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<b>Category</b>	<b>Penalty Determinations</b>
<b>IA Recomm. No.</b>	<b>Forty-Six</b>
<b>Independent Assessor's Recommendation</b>	The Department should comply with the disciplinary guidelines when imposing penalties for a first, second or third offense, such that the penalty for a second offense exceeds the penalty for a first offense and the penalty for a third offense exceeds the penalty for a second offense.
<b>Dept. Position</b>	Agree
<b>Dept. Action</b>	The Department follows the Disciplinary Guidelines, including the increased ranges for subsequent offenses within the same guideline and its established criteria examining aggravating and mitigating factors to determine the proposed penalty.
<b>Status</b>	Completed
<b>Follow-Up</b>	None

The Department's experience has been that a subsequent offense within the same disciplinary guideline results in a higher penalty for that subsequent offense. This is consistent with the theory of progressive discipline where the initial attempts at correcting behavior have not taken root with the employee.

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<b>Category</b>	<b>Penalty Determinations</b>
<b>IA Recomm. No.</b>	<b>Forty-Seven</b>
<b>Independent Assessor's Recommendation</b>	Belligerent, offensive, and disrespectful behavior, and similar misconduct, toward public safety personnel, including EMS providers, when intoxicated should be considered a basis for increasing the penalty. Later expressions of regret, remorsefulness and taking responsibility for engaging in such misconduct should only be considered mitigating if there is evidence the member took corrective actions with the public safety personnel involved.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department recognizes the egregiousness when an off-duty member acts in a manner disrespectful or offensive to on-duty public safety personnel. The Department has been hampered by the lack of specific guidelines involving offensive behavior toward on-duty public safety personnel.
<b>Status</b>	Ongoing.
<b>Follow-Up</b>	The Department has recommended adding specific disciplinary guidelines specific for improper conduct towards on-duty police or fire personnel.

The Department receives and sustains several complaints about inappropriate off-duty conduct towards on-duty public safety personnel annually. However, the Disciplinary Guidelines do not have specific guidelines addressing inappropriate conduct towards on-duty public safety personnel. As such, the Department is forced to use guidelines intended for "members of the public" in calculating a proposed penalty, despite the fact that the conduct occurred in the context of an incident involving on-duty public safety personnel.

The Department has recommended adding disciplinary guidelines for "improper remark/abusive language/gesture directed towards on-duty public safety personnel", "involved in verbal altercation with on-duty public safety personnel" and "made false and/or misleading statements to on-duty public safety personnel". Because changes to the Disciplinary Guidelines involve the "meet and confer" process, those changes have yet to occur.



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<b>Category</b>	<b>Penalty Determinations</b>
<b>IA Recomm. No.</b>	<b>Forty-Eight</b>
<b>Independent Assessor's Recommendation</b>	The Department should place much greater emphasis on conduct and actions that demonstrate remorse, regret and taking responsibility than on verbal expressions; particularly if the corrective conduct is engaged in near the time of the misconduct and involves the victim of the misconduct.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department recognizes that the sincerity and timing of acts of remorse, regret and responsibility should add or detract from the weight given to them during the adjudication of the complaint.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

The Department recognizes that conduct and actions consistent with remorse, regret and taking responsibility is a better indicator than verbal statements made after the member has been investigated and/or charged with misconduct.

However, the Department's experience is that such statements often carry tremendous weight with the *Skelly* officer, the Board of Rights and/or arbitration, even when their conduct prior to being charged is not consistent with remorse, regret and taking responsibility. Through its advocacy, the Department will continue to point out this inconsistency so that the hearing officer/Board member/arbitrator can give those statements their appropriate weight.

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
ASSESSMENT OF THE DEPARTMENT'S DISCIPLINARY PROCESS AND  
PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Penalty Determinations</b>
<b>IA Recomm. No.</b>	<b>Forty-Nine</b>
<b>Independent Assessor's Recommendation</b>	The Department should ensure disciplinary action is actually supported by facts that can be established at a Board of Rights by a preponderance of the evidence.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department agrees with and has followed this recommendation.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

The Department continues to reinforce to its Advocates and managers the importance of relying on admissible forms of evidence which either supports or refutes allegations of misconduct and to document them in the Advocate report so that the proper determination can be made at adjudication.

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ASSESSMENT OF THE DEPARTMENT'S DISCIPLINARY PROCESS AND  
PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Penalty Determinations</b>
<b>IA Recomm. No.</b>	<b>Fifty</b>
<b>Independent Assessor's Recommendation</b>	Until a more appropriate resolution is reached, the Department should initially set the penalty at the mid-range and then apply aggravating and mitigating factors to move the penalty within the range, if appropriate.
<b>Dept. Position</b>	Disagree as to UFLAC members.
<b>Dept. Action</b>	As to members of UFLAC, the Department is bound by its agreement to begin the penalty assessment at one-third of the applicable penalty guideline.
<b>Status</b>	Ongoing.
<b>Follow-Up</b>	The Department has recognized the issues with starting at either the one-half or one-third starting point as agreed to with COA and UFLAC. The Department has proposed a base penalty approach to calculating penalties within a disciplinary guideline.

The Department engaged in “meet and confer” with UFLAC and COA regarding the starting point for calculating discipline within the appropriate disciplinary guideline. As to UFLAC members, the Department places itself in a tenuous position from a labor-relations standpoint were it to start calculating penalties at the one-half starting point.

As stated in its response to Recommendation Number Forty-Three, the Department has proposed that the starting point should be based on the significance of the underlying behavior to the Department, the City and the Fire Service. The Department has recommended a base penalty approach where the starting point is determined by the Fire Chief based on the Core Values. That proposal is pending before the Board of Fire Commissioners.

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
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PROFESSIONAL STANDARDS DIVISION**

***SKELLY* HEARINGS**

**RECOMMENDATIONS  
FIFTY-ONE  
TO  
SEVENTY-EIGHT**

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
ASSESSMENT OF THE DEPARTMENT'S DISCIPLINARY PROCESS AND  
PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b><i>Skelly</i> Hearings</b>
<b>IA Recomm. No.</b>	<b>Fifty-One</b>
<b>Independent Assessor's Recommendation</b>	Bring the informal pre-disciplinary hearing process known as the <i>Skelly</i> hearing process into full compliance with the due process requirements under the Firefighters Procedural Bill of Rights Act, or the Peace Officers Procedural Bill of Rights Act if applicable.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department instituted a pre-deprivation hearing process which provides the due process required under California law prior to the imposition of discipline.
<b>Status</b>	Completed.
<b>Follow-Up</b>	The Department will continue to train prospective <i>Skelly</i> officers and ensure that the pre-deprivation <i>Skelly</i> hearings are conducted appropriately.

In 1975, the California Supreme Court in *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, held that public employees who enjoy permanent employment status have a property interest in their employment. The Court held that the employer can deprive the employee of that property interest only the public employer provides the employee with “due process of law”. The Court held that the employer must provide certain pre-disciplinary due processes prior to imposing disciplinary action:

1. Notice of proposed action;
2. Reasons for the proposed action;
3. A copy of the charges and materials upon which the proposed action is based;
4. A right to respond (orally or in writing) to the management authority initially imposing the discipline before the effective date of the action.

In 2006, the Controller recommended that the Fire Department “[e]liminate 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.” At the time, it was perceived that the *Skelly* process was commonly used by the Department and the member as a bargaining session to lower the penalty based on the artificially high proposed penalty.

The Department has instituted a pre-deprivation hearing process that provides members with the required due process prior to the imposition of discipline. The current process authorizes the *Skelly* hearing officer to uphold, modify or revoke the Department’s proposed discipline. It also eliminates settlement discussions from the *Skelly* hearing process.

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PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b><i>Skelly</i> Hearings</b>
<b>IA Recomm. No.</b>	<b>Fifty-Two</b>
<b>Independent Assessor's Recommendation</b>	Stop using the person who decides to sustain the charges, whether a penalty should be imposed and what the penalty should be as the <i>Skelly</i> officer.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department's current pre-deprivation hearing process uses impartial hearing officers who are not part of the complaint investigation or adjudication.
<b>Status</b>	Completed.
<b>Follow-Up</b>	The Department will continue its process of using <i>Skelly</i> hearing officers who are not part of the complaint investigation or adjudication.

The Department agrees that the *Skelly* Officer must be "reasonably impartial and uninvolved." The further removed an individual is from the circumstances giving rise to the misconduct and/or its investigation, the less likely there will be any perception of potential bias.

The Department has selected and trained a pool of sworn and civilian managers to conduct pre-deprivation *Skelly* hearings. The Department selects the actual *Skelly* hearing officer based on a review of the completed investigation and subject to an employee's challenge of the selected hearing officer based on evidence of an actual bias or conflict of interest.

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ASSESSMENT OF THE DEPARTMENT'S DISCIPLINARY PROCESS AND  
PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b><i>Skelly</i> Hearings</b>
<b>IA Recomm. No.</b>	<b>Fifty-Three</b>
<b>Independent Assessor's Recommendation</b>	Do not permit the person who <i>decided</i> to sustain the charges, whether a penalty should be imposed and the level of the penalty to be present at the <i>Skelly</i> hearing or communicate with the <i>Skelly</i> officer about the case, except to receive the <i>Skelly</i> officer's recommendation.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department's current pre-deprivation hearing process uses impartial hearing officers who are not part of the complaint investigation or adjudication.
<b>Status</b>	Completed.
<b>Follow-Up</b>	The Department will continue its process of using <i>Skelly</i> hearing officers who are not part of the complaint investigation or adjudication.

The Department agrees that the *Skelly* Officer must be "reasonably impartial and uninvolved." The further removed an individual is from the circumstances giving rise to the misconduct and/or its investigation, the less likely there will be any perception of potential bias.

However, a member of the Professional Standards Division assists the *Skelly* hearing officer with the scheduling, logistics and recording of the *Skelly* hearing. The PSD member is usually the Internal Affairs Commander whose primary role is to assist the *Skelly* officer with the conduct of the hearing itself but not to participate or assist in the conclusions and recommendations of the *Skelly* officer.

The Department manager who actually adjudicates a complaint and proposes the discipline is the Professional Standards Division Commander or the PSD Assistant Chief. The PSD Assistant Chief is not involved in the *Skelly* hearing process.

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PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b><i>Skelly</i> Hearings</b>
<b>IA Recomm. No.</b>	<b>Fifty-Four</b>
<b>Independent Assessor's Recommendation</b>	Do not permit the persons who participated in or supervised the investigation or approved the investigative report to serve as the <i>Skelly</i> officer or communicate with the <i>Skelly</i> officer about the case.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department's current pre-deprivation hearing process uses impartial hearing officers who are not part of the complaint investigation or adjudication. However, a Professional Standards Division member assists the <i>Skelly</i> officer with the scheduling and conduct of the hearing but is not involved in the conclusions and recommendations of the hearing officer.
<b>Status</b>	Completed.
<b>Follow-Up</b>	The Department will continue its process of using <i>Skelly</i> hearing officers who are not part of the complaint investigation or adjudication.

The Department agrees that the *Skelly* Officer must be "reasonably impartial and uninvolved." The further removed an individual is from the circumstances giving rise to the misconduct and/or its investigation, the less likely there will be any perception of potential bias.

However, a member of the Professional Standards Division assists the *Skelly* hearing officer with the scheduling, logistics and recording of the *Skelly* hearing. The PSD member is usually the Internal Affairs Commander whose primary role is to assist the *Skelly* officer with the conduct of the hearing itself but not to participate or assist in the conclusions and recommendations of the *Skelly* officer. The Internal Affairs Commander is made aware of the limitations of their role in assisting the *Skelly* Officer with the scheduling, logistics and recording of the hearing.

This support function is essential to the *Skelly* hearing officer. Because the complaint has reached the stage where punitive action has been proposed, there are a limited number of PSD members who are privy to that level of information. As such, the Department has chosen to continue to use the Internal Affairs Commander in the role of supporting the *Skelly* officer provided that he or she does not participate or assist in the conclusions and recommendations of the *Skelly* officer.

The Department manager who actually adjudicates a complaint and proposes the discipline is the Professional Standards Division Commander or the PSD Assistant Chief. The PSD Assistant Chief is not involved in the *Skelly* hearing process.



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<b>Category</b>	<b><i>Skelly</i> Hearings</b>
<b>IA Recomm. No.</b>	<b>Fifty-Five</b>
<b>Independent Assessor's Recommendation</b>	Do not permit those who may be parties or witnesses in the same case to serve the <i>Skelly</i> officer.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department's current pre-deprivation hearing process uses impartial hearing officers who are not part of the complaint investigation or adjudication. However, a Professional Standards Division member assists the <i>Skelly</i> officer with the scheduling and conduct of the hearing but is not involved in the conclusions and recommendations of the hearing officer.
<b>Status</b>	Completed.
<b>Follow-Up</b>	The Department will continue its process of using <i>Skelly</i> hearing officers who are not part of the complaint investigation or adjudication.

The Department agrees that the *Skelly* Officer must be "reasonably impartial and uninvolved." The further removed an individual is from the circumstances giving rise to the misconduct and/or its investigation, the less likely there will be any perception of potential bias.

The Department has selected and trained a pool of sworn and civilian managers to conduct pre-deprivation *Skelly* hearings. The Department selects the actual *Skelly* hearing officer based on a review of the completed investigation and subject to an employee's challenge of the selected hearing officer based on evidence of an actual bias or conflict of interest. This would include identifying whether the designated *Skelly* hearing officer was a party or a witness to the incident or the investigation.

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<b>Category</b>	<b><i>Skelly</i> Hearings</b>
<b>IA Recomm. No.</b>	<b>Fifty-Six</b>
<b>Independent Assessor's Recommendation</b>	Abandon the practice of requiring an affected employee to attend a <i>Skelly</i> hearing and adopt a uniform practice whereby the affected employee is offered and provided a <i>Skelly</i> hearing and automatically waives their right to a <i>Skelly</i> hearing if not requested within a set time.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department's current pre-deprivation hearing must include providing the accused employee with the "the right to respond, either orally or in writing, to the authority initially imposing the discipline."
<b>Status</b>	Completed.
<b>Follow-Up</b>	The Department will continue its process of using <i>Skelly</i> hearing officers who are not part of the complaint investigation or adjudication.

In *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, the California Supreme Court ruled that as a part of due process, public employees are entitled to certain procedural safeguards before discipline is imposed against them. These include: (1) notice of the disciplinary action proposed to be taken; (2) a statement of the reasons therefore; (3) a copy of the charges and materials upon which the action is based; and (4) the right to respond, either orally or in writing, to the authority initially imposing the discipline.

In the past, the Department automatically scheduled a pre-deprivation *Skelly* hearing when it proposed disciplinary action. However, due process is met when the employee has been given the opportunity to respond and has modified its practice to satisfy that requirement by notifying the member of their right to a pre-deprivation hearing when they are notified of the proposed disciplinary action. The Department provides the accused with five business days from service in which to request a pre-deprivation hearing. If the member does not make a timely request for a pre-deprivation hearing, the Department proceeds with its final action.

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<b>Category</b>	<b><i>Skelly</i> Hearings</b>
<b>IA Recomm. No.</b>	<b>Fifty-Seven</b>
<b>Independent Assessor's Recommendation</b>	Provide the affected employee with the identity of the <i>Skelly</i> officer at the time the employee is offered a <i>Skelly</i> hearing, or shortly after the offer is made, and in every case before the <i>Skelly</i> hearing, to ensure the affected employee has an opportunity to raise conflict issues.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department provides the accused member with the identity of the <i>Skelly</i> officer before the <i>Skelly</i> hearing.
<b>Status</b>	Completed.
<b>Follow-Up</b>	The Department will continue to provide the accused member with the identity of the <i>Skelly</i> officer before the <i>Skelly</i> hearing.

The Department agrees that the *Skelly* Officer must be “reasonably impartial and uninvolved.” The further removed an individual is from the circumstances giving rise to the misconduct and/or its investigation, the less likely there will be any perception of potential bias. The Department has selected and trained a pool of sworn and civilian managers to conduct pre-deprivation *Skelly* hearings. The Department selects the actual *Skelly* hearing officer based on a review of the completed investigation and subject to an employee’s challenge of the selected hearing officer based on evidence of an actual bias or conflict of interest.

The sworn *Skelly* hearing officers are of the rank of Deputy Chief or Chief Deputy. If the member voices a legitimate concern about the selected *Skelly* hearing officer, his or her concerns will be weighed and considered before proceeding with the hearing.

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<b>Category</b>	<b><i>Skelly</i> Hearings</b>
<b>IA Recomm. No.</b>	<b>Fifty-Eight</b>
<b>Independent Assessor's Recommendation</b>	Do permit an affected employee to waive the right to have an impartial and uninvolved <i>Skelly</i> officer and require all such waivers be in writing and recorded at the time of the <i>Skelly</i> hearing.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	In the event that a member consents to a hearing officer who was involved in the investigation and/or adjudication, the Department would obtain a written voluntary waiver from the member and memorialize the waiver in an audio recording.
<b>Status</b>	Completed.
<b>Follow-Up</b>	Where a member consents to a hearing officer who was involved in the investigation and/or adjudication, the Department would obtain a written voluntary waiver from the member and memorialize the waiver in an audio recording.

In other jurisdictions, a waiver to the right to an impartial and uninvolved *Skelly* officer is used where the *Skelly* hearing officer was directly involved in the investigation and/or adjudication and the accused employee consents to having that person remain as the *Skelly* hearing officer.

As of the date of this response, the Department has not encountered a situation where a waiver of the member's right to an impartial and uninvolved *Skelly* officer was needed. The Department has trained sufficient numbers of the hearing officers such that it has been able to provide an impartial party to conduct the hearing. The Department's first priority would be to assign a *Skelly* officer who was not directly involved in the investigation and/or adjudication.

However, should that situation arise, the Department would allow the member to make a voluntary and knowing waiver of their right to an impartial and uninvolved *Skelly* officer, ensure that the waiver was in writing and memorialize the voluntariness of the waiver in an audio recording.

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<b>Category</b>	<b><i>Skelly</i> Hearings</b>
<b>IA Recomm. No.</b>	<b>Fifty-Nine</b>
<b>Independent Assessor's Recommendation</b>	Adopt a training program for <i>Skelly</i> officers, limit the number of persons who serve as <i>Skelly</i> officers to ensure quality control, and only use <i>Skelly</i> officers who are trained and have the authority necessary to make meaningful recommendations to the Department on whether the discipline should be imposed, modified or revoked.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Fire Chief selected sworn and civilian <i>Skelly</i> hearing officers who have his authority to make meaningful recommendations regarding the proposed discipline and the Department has provided them with two hours of training on the conduct of <i>Skelly</i> hearings.
<b>Status</b>	Completed.
<b>Follow-Up</b>	The Department will maintain a cadre of <i>Skelly</i> hearing officers who have the authority to make meaningful recommendations regarding proposed discipline and provide them with a minimum of two hours of training in the conduct of <i>Skelly</i> hearings.

The Fire Chief determined that for pre-deprivation *Skelly* hearings involving sworn members, a Deputy Chief or Chief Deputy would serve as the *Skelly* hearing officer. The Fire Chief determined that for civilian members, the Personnel Director or the Senior Personnel Analyst II of the Personnel Services Section would serve as the *Skelly* hearing officer.

A two hour training curriculum, supported by handouts and PowerPoint presentation, was prepared by the Professional Standards Division. The members designated by the Fire Chief to serve as potential *Skelly* hearing officers were trained by the Chief Special Investigator as a prerequisite to actually conducting *Skelly* hearings.

Should additional or replacement *Skelly* hearing officers be necessary, those designates will be trained prior to be assigned hearings.

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<b>Category</b>	<b><i>Skelly</i> Hearings</b>
<b>IA Recomm. No.</b>	<b>Sixty</b>
<b>Independent Assessor's Recommendation</b>	Consider training a limited number of <i>Skelly</i> officers in each bureau and consider using a <i>Skelly</i> officer from the same bureau whose member is being considered for discipline.
<b>Dept. Position</b>	Agree, in part.
<b>Dept. Action</b>	The Fire Chief has decided that he would designate <i>Skelly</i> hearing officers of the rank of Deputy Chief and above. The Department assigns <i>Skelly</i> hearing officers outside of the Bureau of the accused member to avoid any perception of bias by involving the direct chain of command.
<b>Status</b>	Completed.
<b>Follow-Up</b>	The Department's practice of designate <i>Skelly</i> hearing officers of the rank of Deputy Chief and above and assigning <i>Skelly</i> hearing officers outside of the Bureau of the accused member to avoid any perception of bias by involving the direct chain of command will continue until modified by the Fire Chief.

The Fire Chief has designated that sworn *Skelly* hearing officers be of the rank of Deputy Chief or above. The Department has trained those members regarding the conduct of *Skelly* hearings. The Department generally assigns *Skelly* hearing officers who are not within the chain of command of the accused member to avoid the perception of bias that involving the chain of command could create.

The Department acknowledges that there may be advantages to having a *Skelly* hearing officer who has familiarity with technical or procedural issues within the Bureau of the accused. However, the Department believes that the knowledge and depth of the current *Skelly* hearing officer pool allows the Department to select a hearing officer outside of the chain of command and avoid the potential perception of bias.

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<b>Category</b>	<b><i>Skelly</i> Hearings</b>
<b>IA Recomm. No.</b>	<b>Sixty-One</b>
<b>Independent Assessor's Recommendation</b>	Require <i>Skelly</i> officers to thoroughly review the formal charges the affected employee has been served with and all supporting materials prior to the <i>Skelly</i> hearing.
<b>Dept. Position</b>	Agree
<b>Dept. Action</b>	Consistent with the training provided to them, Department <i>Skelly</i> hearing officers are expected to review the charges and the materials the Department relied upon in bringing the charges, prior to the <i>Skelly</i> pre-deprivation hearing.
<b>Status</b>	Completed
<b>Follow-Up</b>	The Department will continue to stress to the <i>Skelly</i> hearing officers of the expectation that they will review the charges and the materials the Department relied upon in bringing the charges, prior to the <i>Skelly</i> pre-deprivation hearing.

The *Skelly* hearing officer is responsible for evaluating whether there are reasonable grounds for believing that the member engaged in the alleged misconduct and that the misconduct supports the proposed disciplinary action. The *Skelly* officer then makes a recommendation as to whether the disciplinary action should be sustained, modified in some specified way, or revoked. In order to do so, the *Skelly* officer must be familiar with the charges proposed by the Department and materials that the Department relied upon to sustain the allegations.

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<b>Category</b>	<b><i>Skelly</i> Hearings</b>
<b>IA Recomm. No.</b>	<b>Sixty-Two</b>
<b>Independent Assessor's Recommendation</b>	Develop a standardized script for use by all <i>Skelly</i> officers that accurately reflects the content of legally compliant policies and procedures.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	Consistent with the training provided to them, Department <i>Skelly</i> hearing officers conduct hearings in a manner that affords due process to the accused member.
<b>Status</b>	Completed.
<b>Follow-Up</b>	The Department will continue to reinforce through training and experience at conducting hearings a uniform and consistent approach to handling <i>Skelly</i> hearings.

Prior to assuming their role, *Skelly* hearing officers received two hours of training regarding the *Skelly* decision, the purpose of the pre-deprivation hearing process and what the law requires of the hearing officer in that role. Because a designated member of the Professional Standards Division is providing support to the *Skelly* officers during the hearing, material disparities in the manner in which *Skelly* hearings are conducted are quickly identified and addressed. The initial introduction to the *Skelly* hearing is made by the PSD representative, leaving the substantive portion of the hearing to the *Skelly* officer to handle.

With these safeguards, the Department has achieved the consistency necessary to ensure that *Skelly* hearings are conducted consistently and within legal and procedural requirements.



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<b>Category</b>	<b><i>Skelly</i> Hearings</b>
<b>IA Recomm. No.</b>	<b>Sixty-Three</b>
<b>Independent Assessor's Recommendation</b>	Although <i>Skelly</i> officers may need to clarify or even resolve inconsistent information provided at the <i>Skelly</i> hearing, do not allow <i>Skelly</i> officers to question the subject of discipline at the <i>Skelly</i> hearing further than is necessary to obtain clarification.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	Consistent with the training provided to them, Department <i>Skelly</i> hearing officers conduct hearings in a manner that affords due process to the accused member without overstepping the boundaries of their role.
<b>Status</b>	Completed.
<b>Follow-Up</b>	The Department will continue to reinforce a uniform and consistent approach to handling <i>Skelly</i> hearings through training and experience at conducting hearings.

Prior to assuming their role, *Skelly* hearing officers received two hours of training regarding the *Skelly* decision, the purpose of the pre-deprivation hearing process and what the law requires of the hearing officer in that role. They are supported by a designated member of the Professional Standards Division responsible for ensuring that the *Skelly* hearing officer remains within their designated role and responsibilities.

The Department has emphasized with prospective *Skelly* hearing officers that their role is not to conduct a full trial-type hearing of all of the evidence but to provide an objective review of the proposed discipline and evaluate whether there are reasonable grounds for believing that the member engaged in the alleged misconduct and that the misconduct supports the proposed penalty. Because the *Skelly* hearing officer has within his or her authority the ability to request further investigation, they are afforded some discretion in clarifying the issues and determining where additional inquiries should be made.

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<b>Category</b>	<b><i>Skelly</i> Hearings</b>
<b>IA Recomm. No.</b>	<b>Sixty-Four</b>
<b>Independent Assessor's Recommendation</b>	Continue the practice of ensuring the subject understands the charges at the beginning of the <i>Skelly</i> hearing but cease the practice of asking the subject if they concur or do not concur with the charges.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	Consistent with the training provided to them, Department <i>Skelly</i> hearing officers conduct hearings in a manner that affords due process to the accused member without overstepping the boundaries of their role. One of the former practices that they are no longer trained to do and are no longer doing is to ask the accused if they concur with the charges.
<b>Status</b>	Completed.
<b>Follow-Up</b>	The Department will continue to reinforce a uniform and consistent approach to handling <i>Skelly</i> hearings through training and experience at conducting hearings.

Prior to assuming their role, *Skelly* hearing officers received two hours of training regarding the *Skelly* decision, the purpose of the pre-deprivation hearing process and what the law requires of the hearing officer in that role. They are supported by a designated member of the Professional Standards Division responsible for ensuring that the *Skelly* hearing officer remains within their designated role and responsibilities.

One practice which no longer occurs in *Skelly* hearings is asking the subject whether they concur or do not concur with the charges.

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<b>Category</b>	<b><i>Skelly</i> Hearings</b>
<b>IA Recomm. No.</b>	<b>Sixty-Five</b>
<b>Independent Assessor's Recommendation</b>	Do not permit <i>Skelly</i> officers to confront the subject of discipline with charge or penalty options or with ultimatums at the <i>Skelly</i> hearing.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	Consistent with the training provided to them, Department <i>Skelly</i> hearing officers conduct hearings in a manner that affords due process to the accused member without overstepping the boundaries of their role.
<b>Status</b>	Completed.
<b>Follow-Up</b>	The Department will continue to reinforce a uniform and consistent approach to handling <i>Skelly</i> hearings through training and experience at conducting hearings.

Prior to assuming their role, *Skelly* hearing officers received two hours of training regarding the *Skelly* decision, the purpose of the pre-deprivation hearing process and what the law requires of the hearing officer in that role. They are supported by a designated member of the Professional Standards Division responsible for ensuring that the *Skelly* hearing officer remains within their designated role and responsibilities.

*Skelly* hearing officers have been trained not to confront the subject of the discipline in an adversarial manner but instead, to hear the member's side, weigh it against the Department's disciplinary package and make a recommendation to the Fire Chief about the penalty. The PSD representative serves as a further safeguard to limit discussion in this area.

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<b>Category</b>	<b><i>Skelly</i> Hearings</b>
<b>IA Recomm. No.</b>	<b>Sixty-Six</b>
<b>Independent Assessor's Recommendation</b>	Require that <i>Skelly</i> officers remain objective and independent in conducting <i>Skelly</i> hearings, when requesting information or further investigation and in making recommendations.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	Consistent with the training provided to them, Department <i>Skelly</i> hearing officers conduct hearings in a manner that affords due process to the accused member without overstepping the boundaries of their role.
<b>Status</b>	Completed.
<b>Follow-Up</b>	The Department will continue to reinforce a uniform and consistent approach to handling <i>Skelly</i> hearings through training and experience at conducting hearings.

Prior to assuming their role, *Skelly* hearing officers received two hours of training regarding the *Skelly* decision, the purpose of the pre-deprivation hearing process and what the law requires of the hearing officer in that role. They are supported by a designated member of the Professional Standards Division responsible for ensuring that the *Skelly* hearing officer remains within their designated role and responsibilities.

The *Skelly* hearing officer may inquire of the PSD representative whether the missing information is already in the possession of the Department. However, determining the need for that information is solely the decision of the *Skelly* hearing officer. Likewise, determining the recommendation based on the *Skelly* hearing is also within the sole discretion of the *Skelly* hearing officer.

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PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b><i>Skelly</i> Hearings</b>
<b>IA Recomm. No.</b>	<b>Sixty-Seven</b>
<b>Independent Assessor's Recommendation</b>	After the initial <i>Skelly</i> hearing, and before making a recommendation, allow the <i>Skelly</i> officer to ask the Department for one or both of the following: 1) a response from the Department with regard to any issue raised by the affected employee, and 2) that additional investigation be conducted.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	Consistent with the training provided to them, Department <i>Skelly</i> hearing officers conduct hearings in a manner that affords due process to the accused member without overstepping the boundaries of their role.
<b>Status</b>	Completed.
<b>Follow-Up</b>	The Department will continue to reinforce a uniform and consistent approach to handling <i>Skelly</i> hearings through training and experience at conducting hearings.

Prior to assuming their role, *Skelly* hearing officers received two hours of training regarding the *Skelly* decision, the purpose of the pre-deprivation hearing process and what the law requires of the hearing officer in that role. They are supported by a designated member of the Professional Standards Division responsible for ensuring that the *Skelly* hearing officer remains within their designated role and responsibilities.

Should the *Skelly* hearing officer believe that he or she needs additional information or clarity before reaching a decision, the *Skelly* officer is free to make those requests of the Department through the PSD representative or directly to the Commander of Professional Standards Division.

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PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b><i>Skelly</i> Hearings</b>
<b>IA Recomm. No.</b>	<b>Sixty-Eight</b>
<b>Independent Assessor's Recommendation</b>	Require the <i>Skelly</i> officer to make one of the following recommendations to the Department: 1) the action should proceed without modification, 2) the action should be amended, modified, or reduced, or 3) the action should be dismissed in its entirety.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	Consistent with the training provided to them, Department <i>Skelly</i> hearing officers conduct hearings in a manner that affords due process to the accused member without overstepping the boundaries of their role.
<b>Status</b>	Completed.
<b>Follow-Up</b>	The Department will continue to reinforce a uniform and consistent approach to handling <i>Skelly</i> hearings through training and experience at conducting hearings.

Consistent with the training provided by the Department, the recommendation of the *Skelly* hearing officer generally falls within one of three categories: 1) the action should proceed without modification, 2) the action should be amended, modified, or reduced, or 3) the action should be dismissed in its entirety.

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<b>Category</b>	<b><i>Skelly</i> Hearings</b>
<b>IA Recomm. No.</b>	<b>Sixty-Nine</b>
<b>Independent Assessor's Recommendation</b>	Require <i>Skelly</i> officers to comply with the applicable penalty guidelines in making penalty recommendations.
<b>Dept. Position</b>	Agree, in part.
<b>Dept. Action</b>	Because <i>Skelly</i> officers have not made specific recommendations to reduce a penalty to a specific number of days, there has been no need to monitor their compliance with the applicable penalty guidelines.
<b>Status</b>	Completed.
<b>Follow-Up</b>	The Department will continue to reinforce a uniform and consistent approach to handling <i>Skelly</i> hearings through training and experience at conducting hearings.

In some cases, the *Skelly* hearing officer has recommended that the Department consider reducing the proposed penalty based on the *Skelly* hearing. However, the *Skelly* hearing officers generally does not recommend a specific penalty in their recommendation.

If a *Skelly* hearing officer were to make a specific penalty recommendation and the Department were to require that the *Skelly* officer comply with the applicable penalty guideline, the Department is concerned that could be viewed as interfering with the impartiality of the *Skelly* process.

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<b>Category</b>	<b><i>Skelly</i> Hearings</b>
<b>IA Recomm. No.</b>	<b>Seventy</b>
<b>Independent Assessor's Recommendation</b>	Adopt a practice whereby <i>Skelly</i> officers inform the affected employee that the <i>Skelly</i> officer's recommendation will not be announced at the <i>Skelly</i> hearing, will forever remain confidential and will be conveyed in confidence to only the Department.
<b>Dept. Position</b>	Agree, in part.
<b>Dept. Action</b>	The Department is in the process of implementing this recommendation, in part.
<b>Status</b>	Completed.
<b>Follow-Up</b>	The Department is in the process of implementing this recommendation, in part.

The Department is in the process of implementing this recommendation, in part. The Department will adopt as part of its *Skelly* hearing process a statement to the accused member that the *Skelly* officer's recommendation will not be announced at the *Skelly* hearing, but will be conveyed in writing to the Department in a confidential document.

Due to the possibility that the Department may be compelled through some legal process to release the *Skelly* recommendation, the Department's statement will convey the confidential nature of the recommendation without making any promises that confidentiality is absolute.



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<b>Category</b>	<b><i>Skelly</i> Hearings</b>
<b>IA Recomm. No.</b>	<b>Seventy-One</b>
<b>Independent Assessor's Recommendation</b>	The <i>Skelly</i> officer shall not be subject to examination by either the affected employee or the employee's representative and is not required to provide any response to the information submitted at the <i>Skelly</i> hearing, except to acknowledge receipt.
<b>Dept. Position</b>	Agree, in part.
<b>Dept. Action</b>	During the <i>Skelly</i> hearing itself, the <i>Skelly</i> officer, with the assistance of the PSD representative, is able to control the manner in which the hearing is conducted.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

The manner in which the *Skelly* hearing is conducted is controlled by the *Skelly* hearing officer with the support of the PSD representative. As such, it is within the purview of the *Skelly* hearing officer to allow the employee and/or the representative to "examine" the *Skelly* officer. Similarly, the *Skelly* Officer controls the extent of his or her response to the employee. These concerns, including the authority of the *Skelly* officer to control the manner in which the hearing is conducted, were addressed during the training provided to prospective *Skelly* officers.

Due to the possibility that the *Skelly* officer may be compelled through some legal process to testify at a hearing or court action, it should be understood that the degree in which this information is released is dependent upon the circumstances at hand.

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<b>Category</b>	<b><i>Skelly</i> Hearings</b>
<b>IA Recomm. No.</b>	<b>Seventy-Two</b>
<b>Independent Assessor's Recommendation</b>	In making their recommendations require <i>Skelly</i> officers to consider: 1) the timeliness of the proposed disciplinary action in terms of the statute of limitations, 2) whether the Department has reasonable grounds to proceed with the proposed discipline, 3) whether the proposed discipline is based on proper legal, policy or procedural grounds, 4) whether the disciplinary action is supported by the facts, 5) whether the employee was on adequate notice of the prohibited conduct before the alleged wrongdoing occurred, and 6) whether the penalty complies with the applicable penalty guidelines.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department has provided training which encourages the <i>Skelly</i> officer to consider the above factors, based on their reading of the <i>Skelly</i> package and the input of the accused member.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

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<b>Category</b>	<b><i>Skelly</i> Hearings</b>
<b>IA Recomm. No.</b>	<b>Seventy-Three</b>
<b>Independent Assessor's Recommendation</b>	Within three business days after the conclusion of the <i>Skelly</i> hearing, require <i>Skelly</i> officers to make all recommendations in writing, and include a summary of the charges; identification of who was present; what was said or provided in the way of explanation; and the recommendation and reasons therefore, including a statement of each mitigating or aggravating fact or factor considered relevant by the <i>Skelly</i> officer. The <i>Skelly</i> officer should also attach all materials presented by or on behalf of the affected employee to the written recommendation.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department has provided training which encourages the <i>Skelly</i> officer to make timely recommendations following the conclusion of the hearing.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

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<b>Category</b>	<b><i>Skelly</i> Hearings</b>
<b>IA Recomm. No.</b>	<b>Seventy-Four</b>
<b>Independent Assessor's Recommendation</b>	In the event the <i>Skelly</i> officer requests further information or investigation, the Department shall endeavor to provide the <i>Skelly</i> officer with the additional information or investigation within ten (10) business days. The <i>Skelly</i> hearing shall not be considered concluded until the Department provides the response to the <i>Skelly</i> officer, and affected employee. Only allow the Department to change the effective date of discipline if necessary to accommodate additional information and investigation requested by the <i>Skelly</i> officer.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	When requested to obtain further information or investigation by the <i>Skelly</i> officer, the Department prioritizes that request so that the <i>Skelly</i> process can be completed after that information has been received and reviewed by the <i>Skelly</i> officer.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

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<b>Category</b>	<b><i>Skelly</i> Hearings</b>
<b>IA Recomm. No.</b>	<b>Seventy-Five</b>
<b>Independent Assessor's Recommendation</b>	Permit the <i>Skelly</i> hearing to be suspended for settlement negotiations to take place if each side signs a written agreement to suspend the <i>Skelly</i> hearing. If settlement negotiations result in a settlement no further <i>Skelly</i> hearing is required and the <i>Skelly</i> officer's obligations are concluded without further resumption of the hearing. If no settlement is reached the <i>Skelly</i> hearing shall resume and the <i>Skelly</i> officer shall not be informed of what was said during negotiations.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	<i>Skelly</i> hearing officers are trained to not engage in settlement negotiations with the member. If the member demands to discuss settlement, the <i>Skelly</i> officers understand that the decision to suspend the <i>Skelly</i> hearing for purposes of discussing settlement must be consented to by the accused member and at the discretion of the <i>Skelly</i> hearing officer.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

The *Skelly* officers have been provided training that the decision to suspend the *Skelly* hearing for purposes of discussing settlement must be consented to by the accused member and at the discretion of the *Skelly* hearing officer. The *Skelly* officer knows that the consent of the Department and the accused to suspend the hearing should be made on the record verbally at a minimum, and in writing with the assistance of PSD. The *Skelly* officers are aware that they should consult with PSD to determine whether the *Skelly* hearing must proceed because of statute of limitations or other issues before consenting to suspending the hearing.

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<b>Category</b>	<b><i>Skelly</i> Hearings</b>
<b>IA Recomm. No.</b>	<b>Seventy-Six</b>
<b>Independent Assessor's Recommendation</b>	The Department's <i>Skelly</i> officers should not engage in settlement discussions related to charges or penalty at <i>Skelly</i> hearings. All settlement negotiations should be referred for private discussions between the affected employee and/or employee representative and an appropriate Department representative. This should not be construed to limit the affected employee from seeking and supporting a modification or dismissal of charges and/or penalty.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	<i>Skelly</i> hearing officers are trained to not engage in settlement negotiations with the member. If the member demands to discuss settlement, the <i>Skelly</i> officers understand that the decision to suspend the <i>Skelly</i> hearing for purposes of discussing settlement must be consented to by the accused member and at the discretion of the <i>Skelly</i> hearing officer.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

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<b>Category</b>	<b><i>Skelly</i> Hearings</b>
<b>IA Recomm. No.</b>	<b>Seventy-Seven</b>
<b>Independent Assessor's Recommendation</b>	Prohibit <i>Skelly</i> officers from engaging in their own independent investigations and fact finding, consultations with investigators, advocates, Department members or union representatives as they prepare for a <i>Skelly</i> hearing, hold a <i>Skelly</i> hearing or formulate and communicate their requests and recommendations.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	<i>Skelly</i> officers have been trained as to the limitations of their roles during the hearing, including requesting that the Department conduct further investigation at their direction. <i>Skelly</i> officers are also aware that their recommendations are to be based solely on their reading of the <i>Skelly</i> package and the input provided by the accused member.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

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<b>Category</b>	<i>Skelly</i> Hearings
<b>IA Recomm. No.</b>	Seventy-Eight
<b>Independent Assessor's Recommendation</b>	Permit an impartial Department representative to attend the <i>Skelly</i> hearing as a silent observer, and conduct a debriefing with investigators and advocates following the hearing as a training and feedback mechanism.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	<p>Generally, the Internal Affairs Section Commander provides support to the <i>Skelly</i> hearing officer. His/her capacity as a PSD manager also provides them with an opportunity to identify issues and concerns raised by the <i>Skelly</i> officer and use them as training topics to improve PSD investigations. However, the PSD manager must limit the information provided in the training context in order to avoid violating confidential statements provided by the accused.</p> <p>The Department would be open to having a truly independent observer observe the <i>Skelly</i> hearing process if the current practice does not satisfy the feedback and training need envisioned in this recommendation.</p>
<b>Status</b>	Completed
<b>Follow-Up</b>	None



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**BOARD OF RIGHTS**

**RECOMMENDATIONS  
SEVENTY-NINE  
TO  
NINETY-FOUR**

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
ASSESSMENT OF THE DEPARTMENT'S DISCIPLINARY PROCESS AND  
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<b>Category</b>	<b>Boards of Rights</b>
<b>IA Recomm. No.</b>	<b>Seventy-Nine</b>
<b>Independent Assessor's Recommendation</b>	Adopt a rule that prohibits the use of any <i>Skelly</i> officer requests, recordings, recommendations, or other materials in any future Board of Rights hearing involving the same case, or in any other case.
<b>Dept. Position</b>	Requires Further Research and Advice.
<b>Dept. Action</b>	The Department is unsure, given the discretion that the Board of Rights has to allow relevant evidence into the Board of Rights process, whether it can promulgate a rule prohibiting the use of any <i>Skelly</i> officer requests, recordings, recommendations, or other materials.
<b>Status</b>	In progress.
<b>Follow-Up</b>	The Department will consult with the City Attorney as to whether such a rule can be promulgated as part of the revised Board of Rights Manual and if so, draft and include such a rule

The Department this recommendation requires further research and discussion before it can be implemented.

The Board of Rights process is intended that once a member is directed to a Board of Rights and/or requests a Board of Rights, the Board acts independently to hear and weigh the evidence, adjudge guilt and if appropriate, impose a just penalty. The Board of Rights has the authority to decide what evidence it believes to be relevant, based on the specific hearing before them and the arguments of both sides. The Department is unaware of any specific statute, privilege or law that prohibits the use of *Skelly* officer requests, recordings, recommendations, or other materials.

Currently, if the accused were to move to introduce testimony from the *Skelly* hearing or the *Skelly* officer, the Department would most likely object and proffer arguments as to why that testimony should not be allowed.

Conversely, if the member admits to an act of misconduct during the *Skelly* hearing but then testifies differently at the time of the Board, the Department would want to introduce the *Skelly* hearing recording to impeach the accused. A rule prohibiting the use of *Skelly* officer requests, recordings, recommendations, or other materials in a Board of Rights would prohibit that.

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<b>Category</b>	<b>Boards of Rights</b>
<b>IA Recomm. No.</b>	<b>Eighty</b>
<b>Independent Assessor's Recommendation</b>	<p>In deciding to prosecute a case at a Board of Rights hearing, the Department needs to ensure it has the evidence to establish knowing violations of the Department's work rules and the defendant has no reasonable explanation for non-compliance. This includes doing the following during the investigation:</p> <ul style="list-style-type: none"> <li>a. Determine if those accused of violating work related rules will contend the were inadequately trained on the issues related to the matter under investigation, and the basis for such claims;</li> <li>b. Thoroughly question witnesses, and particularly the employee accused of violating a work related rule about their training on the specific rule they are accused of violating, and attempt to obtain admissions they were trained on the specific rule they are accused of violating;</li> <li>c. Thoroughly question witnesses, and particularly the employee accused of violating work related rules, about how their conduct did or did not conform to the specific work rule, and attempt to obtain admissions of the violations;</li> <li>d. Thoroughly question witnesses, and particularly employees accused of violating work related rules about all reasons for failing to fully comply with the rule alleged to have been violated; and</li> <li>e. Thoroughly question witnesses, and particularly the employees accused of violating work related rules, about the reasonableness of their explanations for violating work standards.</li> </ul>
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department's current investigative procedure is intended to provide the Department with admissible evidence to support the appropriate adjudication and, in the event that discipline is imposed, support that discipline before a Board of Rights and/or Civil Service Commission.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

The Department's investigative process (explained in previous Recommendation responses) is intended to collect relevant admissible evidence which supports or refutes allegations of misconduct made against Department members. The hallmarks of a complete investigation as stated above are part of the objectives of the Department's investigation. These factors are also benchmarks that PSD managers use to weight the sufficiency of the investigation when reviewing the report for adjudication.

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<b>Category</b>	<b>Boards of Rights</b>
<b>IA Recomm. No.</b>	<b>Eighty-One</b>
<b>Independent Assessor's Recommendation</b>	The Department should consider adopting a modified "vertical prosecution" approach to preparing and prosecuting disciplinary cases whereby the staff member assigned to prosecute cases at a Board of Rights hearing assists, advises and directs investigators in planning and conducting the investigation and the investigator assists the prosecutor in preparing and presenting the case at the Board of Rights hearing.
<b>Dept. Position</b>	Agree, in concept.
<b>Dept. Action</b>	Based on the current staffing levels in PSD, this model is impractical at this time.
<b>Status</b>	To be considered when staffing issues are resolved.
<b>Follow-Up</b>	The Department will revisit the use of a "vertical prosecution" model if and when staffing allows that model to be operationally feasible.

A "vertical prosecution" model allows the employer to assign the prosecutor to monitor an investigation while it is in progress so that the prosecutor can advise the investigators on the sufficiency of their investigation and evidence, and to address potential concerns that might be anticipated at the time of hearing. In larger agencies where the administrative prosecution is handled by an entity separate from the investigation (such as used in high profile or expertise criminal prosecutions such as major narcotics or gangs), the approach is very successful.

The Department currently uses Advocates to do investigations. Those who have the skill, ability and desire to present Board of Rights are used for that function. Generally, the selection of the Advocate to prosecute a Board of Rights is made after the investigation has been completed, the matter sustained and charges have been filed.

The Department currently uses the expertise of its management team to assist, advise and direct investigators in planning and conducting the investigation. This includes using the Internal Affairs Section Commander, the Board of Rights Section Commander, the Chief Special Investigator and the EEO coordinator to guide the Advocates during their investigation. With sufficient staffing, the Department envisions having Advocates assigned to the Board of Rights Section review all completed investigations prior to adjudication from the hearing perspective.

Although a "vertical prosecution" model has tremendous value, the current staffing and case loads at PSD do not allow for this to be used on a regular or routine basis.

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<b>Category</b>	<b>Boards of Rights</b>
<b>IA Recomm. No.</b>	<b>Eighty-Two</b>
<b>Independent Assessor's Recommendation</b>	The Department should adopt conflict rules that would prohibit an investigator who investigated a case, and is a potential witness, from also prosecuting the same case at a Board or Rights hearing.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department currently assigns an Advocate not connected to the investigation to be the lead prosecutor at the Board of Rights hearing.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

The former practice of the Department was to assign the investigating Advocate as the prosecutor at the time of the Board of Rights. This practice was designed to transfer the investigator's knowledge and familiarity of the case to the Board of Rights hearing.

With the creation of the Professional Standards Division, concerns were raised with this model. The investigator is often vested in the case and may not see the potential flaws in their investigation. A fresh set of eyes reviewing the completed investigation from a prosecutor's perspective is better situated to identify those weaknesses. Further, if the investigator-witness is presenting the Board of Rights, using that investigator-witness on the stand presents enormous difficulties. Who will conduct direct examination of the investigator if he or she is prosecuting the case?

As such, the Department remains with the model that the assigned prosecutor not be involved in the investigation of the case.

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<b>Category</b>	<b>Boards of Rights</b>
<b>IA Recomm. No.</b>	<b>Eighty-Three</b>
<b>Independent Assessor's Recommendation</b>	The Department should ensure appropriately qualified expert witnesses are designated and retained, and that advocates understand the difference between lay or percipient witnesses and expert witnesses in terms of preparation and testimony at hearing.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department is increasingly identifying and using expert witnesses to offer expert opinions about specific areas outside of a lay-person's knowledge or realm, including in domestic violence or discrimination cases.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

One of the limitations to the use of expert witnesses is the ability of the Department to compensate an expert witness for their preparation and testimony. The Department often has to rely on using in-house or pro bono experts in its cases to minimize the amount of expert witness fees it incurs.

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<b>Category</b>	<b>Boards of Rights</b>
<b>IA Recomm. No.</b>	<b>Eighty-Four</b>
<b>Independent Assessor's Recommendation</b>	When presenting cases at a Board of Rights or Civil Service hearing the Department should present the testimony of a Department representative or expert witness who can explain why disciplinary action and a particular penalty is necessary in light of the "penalty setting factors" articulated by the Supreme Court in <i>Skelly v. State Personnel Board</i> (1975) 15 C3d 194, 217-18, which include: 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.
<b>Dept. Position</b>	Agree, in part.
<b>Dept. Action</b>	The Department recognizes the <i>Skelly</i> factors used by the courts to support the appropriateness of the penalty. However, the Department needs to be cognizant that a member may seek arbitration following a Board decision and that arbitrators have the discretion to determine the penalty outside of the <i>Skelly</i> factors.
<b>Status</b>	Completed.
<b>Follow-Up</b>	The Department prepares its nexus witness to support the penalty in a number of ways, including but not limited to the penalty factors enunciated in the <i>Skelly</i> case.

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<b>Category</b>	<b>Boards of Rights</b>
<b>IA Recomm. No.</b>	<b>Eighty-Five</b>
<b>Independent Assessor's Recommendation</b>	The Department should encourage its Advocates to prepare appropriate pre-hearing motions and opposition, with factual representations that are properly supported, briefs and otherwise educate the Board of Rights about significant issues before testimony is taken.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department prepares pre-hearing motions regarding significant issues that it wishes the Board of Rights to rule upon and if allowed, prepares opposition briefs to refute motions brought by the accused.
<b>Status</b>	In progress.
<b>Follow-Up</b>	The Department intends to structure a motion briefing protocol in its revision of the Board of Rights Manual which would establish a timeline for the filing of motions, opposition and reply briefs and briefing rules and requirements. The Department also intends to pursue Charter changes which would appoint a civilian hearing officer to chair the Board of Rights process.

Currently the Board of Rights protocols do not specifically authorize the filing of motions at the onset of the hearing to resolve significant issues. In practice, the Board of Rights has the discretion to allow the filing of motions, to determine whether motions will be oral or written, allow or limit the ability and manner in which an opposition can be filed or heard, and when the Board has to render a decision. As such, motion practice in the Board of Rights is unpredictable, inconsistent and often done “on the fly”.

Because there is no requirement of notice prior to bringing a motion, the Department often faces numerous “motions” brought by the accused with no warning. A Board will commonly deny a request for a continuance to research the issues and file an opposing brief, forcing both sides to make their arguments with no research and little time for analysis and thought.

The Department will articulate a clear pre-hearing motion practice and briefing schedule in its revised Board of Rights Manual. The Department will seek to amend the City Charter allowing that the Board of Rights Chairperson is a civilian hearing officer with the legal knowledge to properly run a quasi-legal hearing, including how to properly conduct the penalty phase proceedings. However, as explained in detail in its response to Recommendation Number Ninety-Eight, amendments to the City Charter require that the Department engage in labor bargaining on meet and confer issues, the involvement of the City Council to break impasse and to place the matter on a citywide ballot and the voters to approve the amendment.



**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
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PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Boards of Rights</b>
<b>IA Recomm. No.</b>	<b>Eighty-Six</b>
<b>Independent Assessor's Recommendation</b>	The Department should streamline the way in which it presents pre-hearing motions and opposition. Serving motions and opposition before a hearing is set and brief oral arguments, if necessary, should be encouraged. Reading motions and opposition verbatim, including footnotes, is not necessary.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The current Board of Rights process has no set structure for allowing the filing of prehearing motions, briefing or argument.
<b>Status</b>	In progress.
<b>Follow-Up</b>	The Department intends to structure a motion briefing protocol in its revision of the Board of Rights Manual which would establish a timeline for the filing of motions, opposition and reply briefs and briefing rules and requirements. The Department also intends to pursue Charter changes which would appoint a civilian hearing officer to chair the Board of Rights process.

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<b>Category</b>	<b>Boards of Rights</b>
<b>IA Recomm. No.</b>	<b>Eighty-Seven</b>
<b>Independent Assessor's Recommendation</b>	The Department should adopt timeframes for timely pre-hearing preparation, including timeframes for drafting, filing and serving of motions and opposition to defense motions; preparing hearing witnesses, including expert witnesses; determining what defense witnesses will say; and preparing exhibits for the hearing.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The current Board of Rights process has no set structure for allowing the filing of prehearing motions, briefing or argument.
<b>Status</b>	In progress.
<b>Follow-Up</b>	The Department intends to structure a motion briefing protocol in its revision of the Board of Rights Manual which would establish a timeline for the filing of motions, opposition and reply briefs and briefing rules and requirements. The Department also intends to pursue Charter changes which would appoint a civilian hearing officer to chair the Board of Rights process.

Currently the Board of Rights protocols do not specifically authorize the filing of motions at the onset of the hearing to resolve significant issues. In practice, the Board of Rights has the discretion to allow the filing of motions, to determine whether motions will be oral or written, allow or limit the ability and manner in which an opposition can be filed or heard, and when the Board has to render a decision. As such, motion practice in the Board of Rights is unpredictable, inconsistent and often done “on the fly”.

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The Department will articulate a clear pre-hearing motion practice and briefing schedule in its revised Board of Rights Manual. The Department will seek to amend the City Charter allowing that the Board of Rights Chairperson is a civilian hearing officer with the legal knowledge to properly run a quasi-legal hearing, including how to properly conduct the penalty phase proceedings. However, as explained in detail in its response to Recommendation Number Ninety-Eight, amendments to the City Charter require that the Department engage in labor bargaining on meet and confer issues, the involvement of the City Council to break impasse and to place the matter on a citywide ballot and the voters to approve the amendment.

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<b>Category</b>	<b>Boards of Rights</b>
<b>IA Recomm. No.</b>	<b>Eighty-Eight</b>
<b>Independent Assessor's Recommendation</b>	The Department should adopt rules that prohibit the Board of Rights that has been appointed to hear and decide the facts of a case from becoming involved in settlement discussions and issues.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	If either the member or the Department requests to settle the disciplinary action while a Board of Rights is in progress, the parties will move for a continuance so that settlement discussions can occur. The Board of Rights is not involved in settlement discussions or concerns. If it appears that the Board is contemplating engaging in such discussions, Advocates are trained to advise the Board that discussing settlement is not within their authority.
<b>Status</b>	In progress.
<b>Follow-Up</b>	This area will be codified in the upcoming Board of Rights Manual.

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<b>Category</b>	<b>Boards of Rights</b>
<b>IA Recomm. No.</b>	<b>Eighty-Nine</b>
<b>Independent Assessor's Recommendation</b>	The Department should adopt written rules that permit and set reasonable time limitations on pre-hearing discovery including but not limited to exchanging witness and exhibit lists, allowing for the interviews of hearing witnesses, the production of documents, and discovery requests.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The current Board of Rights process has no set structure for allowing the filing of prehearing motions, briefing or argument.
<b>Status</b>	In progress.
<b>Follow-Up</b>	The Department intends to structure a motion briefing protocol in its revision of the Board of Rights Manual which would establish a timeline for the filing of motions, opposition and reply briefs and briefing rules and requirements. It would also address the timeframe and responsibilities involved in the production and exchanging of witness lists or exhibit lists or discovery. The Department also intends to pursue Charter changes which would appoint a civilian hearing officer to chair the Board of Rights process.

Currently the Board of Rights protocols do not specifically authorize the filing of motions at the onset of the hearing to resolve significant issues. In practice, the Board of Rights has the discretion to allow the filing of motions, to determine whether motions will be oral or written, allow or limit the ability and manner in which an opposition can be filed or heard, and when the Board has to render a decision. As such, motion practice in the Board of Rights is unpredictable, inconsistent and often done "on the fly".

Likewise, there are currently no clear timeframes for the production and exchanging of witness lists or exhibit lists or discovery. All of these issues will be addressed in the revision of the Board of Rights Manual.

The Department will seek to amend the City Charter allowing that the Board of Rights Chairperson is a civilian hearing officer with the legal knowledge to properly run a quasi-legal hearing, including how to properly conduct the penalty phase proceedings. However, as explained in detail in its response to Recommendation Number Ninety-Eight, amendments to the City Charter require that the Department engage in labor bargaining on meet and confer issues, the involvement of the City Council to break impasse and to place the matter on a citywide ballot and the voters to approve the amendment.

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<b>Category</b>	<b>Boards of Rights</b>
<b>IA Recomm. No.</b>	<b>Ninety</b>
<b>Independent Assessor's Recommendation</b>	The Department should provide training to, and develop a "bench book" for chief officers who may be appointed to sit on a Board of Rights that addresses such issues as; their role and responsibilities, the role and responsibility of the City Attorney's Office; the difference between the "fair administrative hearing standard" of Boards of Rights and the "fair trial" requirements synonymous with constitutional due process; the order in which the parties present their cases; the manner in which evidence is received; basic rules of evidence, including the definition of basic terms, direct and cross-examination; recurring legal issues; commonly seen law and motion issues; criminal conflict issues; frequently asked questions, controlling difficult and obstreperous subjects, witnesses, representatives and attorneys; expert witness issues; legal issues related to compelling testimony from subjects at a Board of Rights hearing; the burden of proof; penalty setting issues; and the drafting of decisions, among others.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The current Board of Rights process has no set structure for allowing the filing of prehearing motions, briefing or argument.
<b>Status</b>	In progress.
<b>Follow-Up</b>	The Department intends to structure a motion briefing protocol in its revision of the Board of Rights Manual which would establish a timeline for the filing of motions, opposition and reply briefs and briefing rules and requirements. It would also address the timeframe and responsibilities involved in the production and exchanging of witness lists or exhibit lists or discovery. The Department also intends to pursue Charter changes which would appoint a civilian hearing officer to chair the Board of Rights process.

The Department will seek to amend the City Charter allowing that the Board of Rights Chairperson is a civilian hearing officer with the legal knowledge to properly run a quasi-legal hearing, including how to properly conduct the penalty phase proceedings. However, as explained in detail in its response to Recommendation Number Ninety-Eight, amendments to the City Charter require that the Department engage in labor bargaining on meet and confer issues, the involvement of the City Council to break impasse and to place the matter on a citywide ballot and the voters to approve the amendment.

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<b>Category</b>	<b>Boards of Rights</b>
<b>IA Recomm. No.</b>	<b>Ninety-One</b>
<b>Independent Assessor's Recommendation</b>	The Department should adopt written rules that allow for both parties to present evidence and argument during the penalty phase of a Board of Rights hearing on what disciplinary action should be taken against a member who has been found guilty. That evidence and argument should include: 1) the extent to which the affected member's 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.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The current Board of Rights process has no clear "penalty phase" and has no set structure for the hearing of evidence relevant to the penalty once guilt has been determined.
<b>Status</b>	In progress.
<b>Follow-Up</b>	The Department intends to structure a motion briefing protocol in its revision of the Board of Rights Manual which would establish a timeline for the filing of motions, opposition and reply briefs and briefing rules and requirements. It would also address the timeframe and responsibilities involved in the production and exchanging of witness lists or exhibit lists or discovery. The Department also intends to pursue Charter changes which would appoint a civilian hearing officer to chair the Board of Rights process.

Currently the Board of Rights protocols do not clearly identify a "penalty phase" if the accused is found guilty by the Board. Further, the Board of Rights protocols are vague on what actually occurs in the penalty phase. In practice, different Boards handle the penalty phase in different ways. This will be included in the revised Board of Rights Manual.

The Department will also continue its efforts to amend the City Charter allowing that the Board of Rights Chairperson is a civilian hearing officer with the legal knowledge to properly run a quasi-legal hearing, including how to properly conduct the penalty phase proceedings. However, as explained in detail in its response to Recommendation Number Ninety-Eight, amendments to the City Charter require that the Department engage in labor bargaining on meet and confer issues, the involvement of the City Council to break impasse and to place the matter on a citywide ballot and the voters to approve the amendment.

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<b>Category</b>	<b>Boards of Rights</b>
<b>IA Recomm. No.</b>	<b>Ninety-Two</b>
<b>Independent Assessor's Recommendation</b>	When determining an appropriate disciplinary penalty a Board of Rights should be required to consider and articulate in writing: 1) the extent to which the affected member's 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 when applying the Department's disciplinary guidelines and set of mitigating and aggravating standards because these " <i>Skelly</i> factors" will be used to determine if the Department has abused its discretion in setting a disciplinary penalty.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department recognizes the <i>Skelly</i> factors used by the courts to support the appropriateness of the penalty. However, the Department needs to be cognizant that a member may seek arbitration following a Board decision and that arbitrators do not strictly follow the <i>Skelly</i> factors in determining the appropriateness of the discipline.
<b>Status</b>	Completed.
<b>Follow-Up</b>	The Department provides the Board with facts and arguments which support the penalty, including but not limited to the penalty factors enunciated in the <i>Skelly</i> case. The Department will provide additional training in the area of formulating the Penalty Rationale during its Board briefings and in Board of Rights training.

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<b>Category</b>	<b>Boards of Rights</b>
<b>IA Recomm. No.</b>	<b>Ninety-Three</b>
<b>Independent Assessor's Recommendation</b>	Chief officers who may serve on Boards of Rights should receive training on how to appropriately set disciplinary penalties and how the term "harm to the public service" is defined in California law, particularly as it relates to the fire service.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department will incorporate this into their Board of Rights briefing and Board of Rights training.
<b>Status</b>	In progress.
<b>Follow-Up</b>	The Department will incorporate this into their Board of Rights briefing and Board of Rights training.



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<b>Category</b>	<b>Boards of Rights</b>
<b>IA Recomm. No.</b>	<b>Ninety-Four</b>
<b>Independent Assessor's Recommendation</b>	Eliminate the provision that allows a Board of Rights decision to be submitted to arbitration.
<b>Dept. Position</b>	Agree; Subject to Labor Bargaining Process.
<b>Dept. Action</b>	The Memorandums of Understanding with UFLAC and COA allow the accused member to request arbitration following a decision of a Board of Rights.
<b>Status</b>	No action at this time.
<b>Follow-Up</b>	Further action subject to prioritization of this issue by the Fire Chief and the Board of Fire Commissioners.

The Memorandums of Understanding with UFLAC and COA allow the accused member to request arbitration following a decision of a Board of Rights. Because this provision is contained in a bargaining agreement with labor, any change of the provision must be part of labor negotiations between management and labor. Further action on this recommendation is subject to the prioritization of this issue by the Fire Chief.

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**SETTLING DISCIPLINARY CASES**

**RECOMMENDATIONS  
NINETY-FIVE  
TO  
NINETY-SEVEN**

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
ASSESSMENT OF THE DEPARTMENT'S DISCIPLINARY PROCESS AND  
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<b>Category</b>	<b>Settling Disciplinary Cases</b>
<b>IA Recomm. No.</b>	<b>Ninety-Five</b>
<b>Independent Assessor's Recommendation</b>	<p>The Department should adopt a policy or guideline governing the standards or factors that should be considered in settling disciplinary cases after the proposed penalty has been served on the affected member. Some of the factors that should be considered before settling a case include:</p> <ul style="list-style-type: none"> <li>a. Flaws and risks in the case (such as evidentiary problems, witness unavailability, questions of law) that could not be reasonably considered or were not known at the time the charges were served on the affected member, or which have been significantly exacerbated since the service of charges;</li> <li>b. Whether conditions can be obtained through settlement that cannot be obtained solely through continued prosecution of the charges;</li> <li>c. The member's record of disciplinary action;</li> <li>d. Whether in accordance with the principle of progressive discipline, the settlement continues to have the effect of preventing future misconduct;</li> <li>e. Whether any court orders or corrective action plans have an impact on the decision to settle the disciplinary case;</li> <li>f. The risk of harm to the public service if such misconduct reoccurs; and</li> <li>g. The gravity of the conduct that brought about disciplinary action.</li> </ul>
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department is currently drafting a manual for the Professional Standards Division which includes the procedures for settling disciplinary cases and consideration of factors during that process.
<b>Status</b>	In progress.
<b>Follow-Up</b>	The Department will complete drafting and take the necessary steps to approve and implement the PSD Manual, which includes the aforementioned provisions.

The Department has drafted a preliminary version of its procedures for settling disciplinary cases outside of the Charter 1060 mandated processes. The Department's process incorporates consideration of relevant factors, including those in the above recommendation. Once completed and approved, these procedures will be part of the Professional Standards Division Manual.

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<b>Category</b>	<b>Settling Disciplinary Cases</b>
<b>IA Recomm. No.</b>	<b>Ninety-Six</b>
<b>Independent Assessor's Recommendation</b>	The Department should continue to ensure settlements are reduced to writing and include all essential settlement language, including but not limited to, a waiver of future appeals.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department developed a settlement agreement document that was approved by the City Attorney and is used as the final agreement for disciplinary actions that are memorialized outside of the formal City Charter processes.
<b>Status</b>	Completed.
<b>Follow-Up</b>	The Department will use the settlement agreement as the final step to memorialize the settlement of disciplinary cases outside of the formal City Charter processes.

The Department developed a draft settlement agreement template designed to memorialize settlements of disciplinary actions outside of the Board of Rights process. The draft agreement template was vetted by the City Attorney for legal sufficiency. The settlement agreement has been used consistently by the Department since 2010.

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<b>Category</b>	<b>Settling Disciplinary Cases</b>
<b>IA Recomm. No.</b>	<b>Ninety-Seven</b>
<b>Independent Assessor's Recommendation</b>	When the Department has previously informed the Board of Fire Commissioners of disciplinary action taken against a member pursuant to section 1060 of the City Charter and later settles, reduces or modifies the penalty in the same case, the Department should inform the Board of Fire Commissioners of the reasons requiring a settlement, reduction or modification being careful to advise the Board of Fire Commissioners it involves the same case.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	When a disciplinary action previously taken by the Department is later settled and results in a modification of the penalty, the Department files the disciplinary documents with the Board of Fire Commissioners as required by the City Charter. The confidential settlement agreement, which is part of the Disciplinary Tracking System file, is available to the Commission for review. However, it is not filed with the Board of Fire Commissioners.
<b>Status</b>	Completed.
<b>Follow-Up</b>	The Department will continue to file disciplinary documents regarding a disciplinary action that has been settled and changes in the penalty, with the Board of Fire Commissioners as required by the City Charter.

Whenever the Department imposes punitive action against a sworn member, specific documents including the complaint containing the charges against the member, are lodged with the Board of Fire Commissioners pursuant to the City Charter.

When the Department settles a disciplinary action which results in a modification of either the charges and/or the penalty, the Department files the required documentation reflecting the settlement with the Board of Fire Commissioners under the same CTS number. However, the Department does not provide the reasons for the settlement and/or justification for changes to the charges and/or the penalties because that information is part of a confidential settlement discussion with the member.

The Department does maintain the settlement agreement and other related documentation in the Disciplinary Tracking System (DTS) file within the Professional Standards Division. Upon request, the Disciplinary Tracking System (DTS) file is available to the Board of Fire Commissioners and/or the Independent Assessor as any other disciplinary file.

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
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**CHARTER AMENDMENTS**

**RECOMMENDATIONS  
NINETY-EIGHT  
TO  
ONE-HUNDRED ONE**

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
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<b>Category</b>	<b>Charter Amendments</b>
<b>IA Recomm. No.</b>	<b>Ninety-Eight</b>
<b>Independent Assessor's Recommendation</b>	Amend the City Charter (section 1060(a)) to mirror the Firefighter Procedural Bill of Rights Act on the <b>one-year statute of limitations and its tolling provisions</b> (Government Code section 3254(d)(1-7)).
<b>Dept. Position</b>	Agree, in progress.
<b>Dept. Action</b>	The Department has drafted specific proposed amendments to City Charter Section 1060 so that the limitations provisions mirror those contained in the Firefighters Procedural Bill of Rights and has attempted to move them forward twice between 2010 and 2013.
<b>Status</b>	In progress.
<b>Follow-Up</b>	The Department will continue to work with labor, City officials and the City Council to have the proposed charter amendments placed on an upcoming municipal ballot.

The City Charter can be amended either through a charter commission or by motion of the governing board of the City. In either case, the Charter is not amended and adopted by the City until it is ratified by a majority vote of the City's voters. The Department is proposing amendments to City Charter Section 1060 so that the City Council can place the amendment on a municipal ballot.

The Department has been advised that amendments to the City Charter are subject to the "meet and confer" process with the affected labor organizations. If a "meet and confer" process conducted in good faith does not result in an agreement and if the appropriate impasse resolution procedures have been exhausted, management may implement its last offer to end the process. Under the Employee Relations Ordinance, Section 4.840(a)(1), an impasse involving an amendment to the City Charter is presented to the City Council for final determination.

The Department has attempted to place amendments to the City Charter regarding City Charter Section 1060 on a municipal ballot in 2010 and 2012 without success. The Department will attempt to do so for an upcoming 2015 ballot.

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
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PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Charter Amendments</b>
<b>IA Recomm. No.</b>	<b>Ninety-Nine</b>
<b>Independent Assessor's Recommendation</b>	<p>The Department should take all necessary action to ensure the City Charter is amended in relation to the Board of Rights process as follows:</p> <ol style="list-style-type: none"> <li>a. Change the composition of the Board of Rights to include one chief officer, one administrative law judge, and one non-sworn member. The ALJ shall preside at the hearing, ruling on the admission of evidence, and providing advice to the Board on matters of law.</li> <li>b. Define the role of the administrative law judge so the duties are consistent with the Administrative Procedures Act;</li> <li>c. Select the administrative law judge in accordance with procedures established by the State of California's Office of Administrative Hearings;</li> <li>d. Choose members of the Board of Rights by establishing a pool of chief officers who remain available to serve for two year terms and allow the Department and the defense to make a series of peremptory challenges that would result in a final selection;</li> <li>e. Select the civilian member of the Board in a manner similar to how a civilian is chosen to sit on Boards of Rights at the Police Department;</li> <li>f. The Board of Rights be required to determine discipline in accordance with the Department's penalty guidelines in effect at the time of the misconduct if a member is found guilty;</li> <li>g. Add language similar to City Charter section 1070 that would prohibit ex parte communications with the Board of Rights;</li> <li>h. Add language similar to City Charter section 1070 that would provide the Fire Department with pre-hearing internal investigation subpoena power, and specify the Board of Fire Commissioners have the power to compel compliance to a subpoena;</li> <li>i. Add language similar to City Charter section 1070 requiring Board of Rights decisions be based solely on the evidence before the Board, including the Department's disciplinary guidelines in effect at the time of the misconduct;</li> <li>j. Section 1060(d) of the City Charter concerning service of disciplinary action should reflect disciplinary action may be taken if the Department files the complaint with the Board of Fire Commissioners within one year of discovery;</li> <li>k. Section 1060(n) of the City Charter should be amended to add limitations on the access to medical records and stress the confidentiality of personnel records used in the penalty phase of a Board of Rights hearing;</li> <li>l. Add subsections to section 1060 of the City Charter specifying the use of calendar days and specifying what are public records; and</li> <li>m. Allow the Board of Rights to be adjourned without further hearing when the Board loses jurisdiction by resignation, retirement, or death.</li> </ol>
<b>Dept. Position</b>	Agree, in part; In progress.
<b>Dept. Action</b>	The proposed amendments to City Charter Section 1060 that are currently being considered were presented to the Board of Fire Commissioners for their consideration and approval. (See BFC 12-040 (02/29/2012) and BFC 12-149 (09/25/2012).
<b>Status</b>	In progress.
<b>Follow-Up</b>	The proposed Charter amendments are being finalized with the City Attorney and will then be discussed with the appropriate labor organizations.



**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
ASSESSMENT OF THE DEPARTMENT'S DISCIPLINARY PROCESS AND  
PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Charter Amendments</b>
<b>IA Recomm. No.</b>	<b>One Hundred</b>
<b>Independent Assessor's Recommendation</b>	The Department should take the action necessary to have the City Charter amended so that demotions and loss of pay are adopted as authorized methods of discipline.
<b>Dept. Position</b>	Agree; In progress.
<b>Dept. Action</b>	The Department has drafted specific proposed amendments to City Charter Section 1060 which includes empowering the Fire Chief to demote or authorize a temporary salary reduction when charges are filed against a sworn member for alleged misconduct. (See BFC 12-040 (02/29/2012) and BFC 12-149 (09/25/2012)).
<b>Status</b>	In progress.
<b>Follow-Up</b>	The Department will continue to work with labor, City officials and the City Council to have the proposed charter amendments placed on an upcoming municipal ballot.

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
ASSESSMENT OF THE DEPARTMENT'S DISCIPLINARY PROCESS AND  
PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Charter Amendments</b>
<b>IA Recomm. No.</b>	<b>One Hundred and One</b>
<b>Independent Assessor's Recommendation</b>	The Department should seek a legislative solution that deletes the immunity language of section 3253(e)(1) of the Government Code so it mirrors the language of the Public Safety Officers Procedural Bill of Rights Act.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department agrees that a legislative change amending the language of Government Code Section 3253(e)(1) to conform to the language of the Public Safety Officers Procedural Bill of Rights Act is appropriate.
<b>Status</b>	For future consideration.
<b>Follow-Up</b>	The Department will continue to follow the advice of the City Attorney's Office as to how to comply with the existing language of Section 3253(e)(1).

The language regarding the "grant of immunity" contained in Government Code Section 3253(e)(1) is inconsistent with that contained in the Public Safety Officers Procedural Bill of Rights. However, the City Attorney has provided the Department with clear advice on how to comply with Section 3253(e)(1), which the Department has and will continue to follow.

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
ASSESSMENT OF THE DEPARTMENT'S DISCIPLINARY PROCESS AND  
PROFESSIONAL STANDARDS DIVISION**

**REQUEST FOR LEGAL ADVICE &  
LEGAL SERVICES**

**RECOMMENDATIONS  
ONE-HUNDRED TWO  
TO  
ONE-HUNDRED FIFTEEN**

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
ASSESSMENT OF THE DEPARTMENT'S DISCIPLINARY PROCESS AND  
PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Requests for Legal Advice &amp; Legal Services</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Two</b>
<b>Independent Assessor's Recommendation</b>	The Board of Fire Commissioners and Department should adopt and adhere to a client-attorney model and philosophy whereby the Board and Department are the clients who provide direction and make decisions and the City Attorney provides prompt legal services, advice and opinions without making decisions or providing supervisory or management direction.
<b>Dept. Position</b>	No Position.
<b>Dept. Action</b>	None.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

The Department has no position as to this recommendation.

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
ASSESSMENT OF THE DEPARTMENT'S DISCIPLINARY PROCESS AND  
PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Requests for Legal Advice &amp; Legal Services</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Three</b>
<b>Independent Assessor's Recommendation</b>	Ensure the Professional Standards Division, and the Department as a whole, receives timely and quality legal service on a consistent basis, including advice and formal opinions provided in writing with legal analysis and citations to legal authority.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department agrees with this recommendation.
<b>Status</b>	Ongoing.
<b>Follow-Up</b>	The Department will work with the City Attorney's Office to assist in receiving timely legal advice.

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
ASSESSMENT OF THE DEPARTMENT'S DISCIPLINARY PROCESS AND  
PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Requests for Legal Advice &amp; Legal Services</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Four</b>
<b>Independent Assessor's Recommendation</b>	The Department should quickly elevate poor service issues, the failure to provide timely legal services, and quality control issues to City Attorney managers and executives as they occur.
<b>Dept. Position</b>	Disagree.
<b>Dept. Action</b>	The Department understands the workload demands on all City Departments, including the City Attorney's Office. When there are issues, the Department first works with the assigned attorney. The Department also briefs the Fire Chief and a City Attorney representative about the status of legal requests at the bi-weekly discipline meetings.
<b>Status</b>	Ongoing.
<b>Follow-Up</b>	The Department will continue to first discuss questions about legal advice with the assigned attorney and to brief the City Attorney representative about the status of legal requests at the bi-weekly discipline meetings. If appropriate, the Department will elevate its concerns if these initial steps are unsuccessful.

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
ASSESSMENT OF THE DEPARTMENT'S DISCIPLINARY PROCESS AND  
PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Requests for Legal Advice &amp; Legal Services</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Five</b>
<b>Independent Assessor's Recommendation</b>	The Department should insist on a single point of contact with the City Attorney's Office when seeking legal service so Department members are not required to find the person in the City Attorney's Office, or elsewhere, who can answer their questions.
<b>Dept. Position</b>	Disagree.
<b>Dept. Action</b>	The Department consults with the Fire General Counsel on matters involving legal advice unless it involves labor relations issues. For those issues, the Department directs its requests for legal services to the Labor Relations Section. Once the request is assigned, the Department works with the assigned Labor Relations attorney.
<b>Status</b>	Completed.
<b>Follow-Up</b>	The Department will continue to request legal services as stated above.

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
ASSESSMENT OF THE DEPARTMENT'S DISCIPLINARY PROCESS AND  
PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Requests for Legal Advice &amp; Legal Services</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Six</b>
<b>Independent Assessor's Recommendation</b>	The Department should provide the Board of Fire Commissioners and the Independent Assessor with a report each month concerning any request for legal assistance, advice or opinion to which a timely, thorough, complete and adequate response has not been provided.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The status of requests for legal assistance made to the City Attorney is available to the Board of Fire Commissioners upon request.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.



**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
ASSESSMENT OF THE DEPARTMENT'S DISCIPLINARY PROCESS AND  
PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Requests for Legal Advice &amp; Legal Services</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Seven</b>
<b>Independent Assessor's Recommendation</b>	The Board of Fire Commissioners should direct its general counsel to provide the Board of Fire Commissioners and the Department with written legal advice, with appropriate legal citations, describing the legal requirements that must be met to fully satisfy the obligation to ““meet and confer”,” the extent to which disciplinary guidelines, how proposed penalties are initially set within a range, and the factors used to move the penalty within a range, are negotiable; under what conditions, if any, the Stakeholder's process may be used to satisfy the “meet and confer” requirements; and at what point the Department may adopt disciplinary guidelines if unions fail to agree with the Board of Fire Commissioners' direction to the Department on what disciplinary guidelines should be adopted. The Department should direct its general counsel to provide the written advice in no more than 30 calendar days from the date it is requested.
<b>Dept. Position</b>	No Position.
<b>Dept. Action</b>	None.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

The Department has no position as to this recommendation.

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
ASSESSMENT OF THE DEPARTMENT'S DISCIPLINARY PROCESS AND  
PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Requests for Legal Advice &amp; Legal Services</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Eight</b>
<b>Independent Assessor's Recommendation</b>	The Department should direct the City Attorney's Office to provide written advice to the Department and to the Board of Fire Commissioners with legal analysis and citations to legal authorities concerning the extent to which oral agreements are binding and enforceable.
<b>Dept. Position</b>	No Position.
<b>Dept. Action</b>	None.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

The Department has no position as to this recommendation.

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
ASSESSMENT OF THE DEPARTMENT'S DISCIPLINARY PROCESS AND  
PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Requests for Legal Advice &amp; Legal Services</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Nine</b>
<b>Independent Assessor's Recommendation</b>	The Department should insist the City Attorney's Office provide timely written advice with legal analysis and citations to legal authorities concerning how the Department should satisfy the immunity language of Government Code, section 3253(e)(1).
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department requested and received advice from the City Attorney's Office on this issue.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

The Department requested and received advice from the City Attorney's Office on this issue. The Department's procedures reflect the advice given by the City Attorney.

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
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PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Requests for Legal Advice &amp; Legal Services</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Ten</b>
<b>Independent Assessor's Recommendation</b>	The Department should request the City Attorney's Office provide written advice with legal analysis and citations to legal authority explaining why the Fire Department may not adopt a "house dues" policy and should request the written advice be provided in 15 calendar days.
<b>Dept. Position</b>	No Position.
<b>Dept. Action</b>	None.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

The Department has no position as to this recommendation.

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
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PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Requests for Legal Advice &amp; Legal Services</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Eleven</b>
<b>Independent Assessor's Recommendation</b>	The Board of Rights should not hesitate in requiring a deputy city attorney legal advisor be more immediately available, if not physically present during hearings to provide legal advice, particularly when motions or other legal issues will be heard.
<b>Dept. Position</b>	No Position.
<b>Dept. Action</b>	The Department has no position as to requests made by a Board of Rights and the degree of response that independent entity believes will satisfy its specific needs.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

The Department has no position as to this recommendation.

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
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PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Requests for Legal Advice &amp; Legal Services</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Twelve</b>
<b>Independent Assessor's Recommendation</b>	Direct the City Attorney's Office to provide the Independent Assessor with reports and information concerning the current status of all claims, lawsuits and appeals pending against the Fire Department and any of its members every thirty (30) days.
<b>Dept. Position</b>	No Position.
<b>Dept. Action</b>	None.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

The Department has no position as to this recommendation.

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
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<b>Category</b>	<b>Requests for Legal Advice &amp; Legal Services</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Thirteen</b>
<b>Independent Assessor's Recommendation</b>	Direct the City Attorney's Office to provide the Independent Assessor with complete reports and information concerning any ruling, order or decision involving all claims, lawsuits and appeals in matters where the Department or any of its employees are defendants or respondents within 72 hours of the ruling, order or decision being made known to the City Attorney's Office.
<b>Dept. Position</b>	No Position.
<b>Dept. Action</b>	None.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

The Department has no position as to this recommendation.

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
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<b>Category</b>	<b>Requests for Legal Advice &amp; Legal Services</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Fourteen</b>
<b>Independent Assessor's Recommendation</b>	If the City Attorney's Office is concerned about a legal issue, and believes the Board needs advice or an opinion on any issue, the City Attorney's Office is to inform the Board of Fire Commissioners or the Board's President, whichever is most expedient, directly and immediately, and shall not engage in the practice of sending or leaving messages through or with others indicating the Board should seek a legal opinion from the City Attorney's Office or waiting for the Board to ask for such advice. Such advice should be timely, in writing and contain complete legal analysis and citations to legal authority supporting the opinion.
<b>Dept. Position</b>	No Position.
<b>Dept. Action</b>	None.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

The Department has no position as to this recommendation.



**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
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PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Requests for Legal Advice &amp; Legal Services</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Fifteen</b>
<b>Independent Assessor's Recommendation</b>	If the City Attorney's Office believes the Independent Assessor does not have access to any Fire Department records or files, the City Attorney's Office is to provide a written memorandum, within thirty (30) calendar days, that fully explains every impediment to access and sets forth the action needed to remove all impediments to full access. The memorandum should also identify each of those records or files, and contain a complete legal analysis and citations to legal authority supporting the opinion.
<b>Dept. Position</b>	No Position.
<b>Dept. Action</b>	None.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

The Department has no position as to this recommendation.

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
ASSESSMENT OF THE DEPARTMENT'S DISCIPLINARY PROCESS AND  
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**PSD STAFFING & SUPPORT**

**RECOMMENDATIONS  
ONE-HUNDRED SIXTEEN  
TO  
ONE-HUNDRED TWENTY-THREE**

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
ASSESSMENT OF THE DEPARTMENT'S DISCIPLINARY PROCESS AND  
PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>PSD Staffing &amp; Support</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Sixteen</b>
<b>Independent Assessor's Recommendation</b>	<p>Except for the Fire Chief and <i>Skelly</i> officers, whose recommendations should be advisory only, the Department should employ a sufficient number of non-sworn staff with the demonstrated expertise, experience, training and proficiency to:</p> <ul style="list-style-type: none"> <li>a. Conduct, supervise and manage a wide range of investigations;</li> <li>b. Ensure investigations are: <ul style="list-style-type: none"> <li>1. Complete, thorough and detailed;</li> <li>2. Address knowing violations of policy;</li> <li>3. Fully address all reasons for failing to comply with policies;</li> <li>4. Fully address anticipated defenses; and</li> <li>5. Establish all elements of the applicable offenses.</li> </ul> </li> <li>c. Accurately reflect the evidence obtained during an investigation in preparing investigative reports;</li> <li>d. Propose and set disciplinary penalties;</li> <li>e. Prosecute disciplinary hearings with permanent, non-sworn advocates;</li> <li>f. Manage the Department's disciplinary system; and</li> <li>g. Meet established timeframes for timely completion of investigations and each step of the subsequent disciplinary process.</li> </ul>
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	In 2010, the Department requested and received approval to hire eight Special Investigator IIs for the Professional Standards Division.
<b>Status</b>	Ongoing.
<b>Follow-Up</b>	The Department continues to examine its staffing based on its ability to handle complaint intake, investigations and adjudications within the statutory limitations period, in addition to providing support for field investigation and conducting Board of Rights hearings.

The 2008 Audit Plan outlined the Fire Chief and Commission's intent to staff the Professional Standards Division with an increasing number of non-sworn professionals with the expertise, experience, training and proficiency to handle the investigative and/or prosecutorial functions. In 2008, the City authorized the hiring of a Chief Special Investigator and three Special Investigator IIs to staff the newly created Professional Standards Division. Based on workload demands and the need to put on Board of Rights hearings, the City authorized eight additional Special Investigator II positions within PSD.

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
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The Department continues to examine its ability to handle complaint intake, investigations and adjudications within the statutory limitations period, in addition to providing support for field investigation and conducting Board of Rights hearings. This may entail a request for additional Special Investigator II or similar authorized positions in the future.

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
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PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>PSD Staffing &amp; Support</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Seventeen</b>
<b>Independent Assessor's Recommendation</b>	The Department should place a non-sworn manager with demonstrated expertise, experience and training in public safety disciplinary systems in charge of the Department's Professional Standards Division, including setting proposed penalties, and with the full backing and authority of the Fire Chief.
<b>Dept. Position</b>	Disagree.
<b>Dept. Action</b>	The multitude of issues involved with the disciplinary process and the significance that discipline has on the entire Department warrants a sworn commanding officer, supported by a non-sworn Chief Special Investigator having the knowledge, training and expertise in the employment, discipline and legal issues inherent in the disciplinary process.
<b>Status</b>	Completed.
<b>Follow-Up</b>	The Department will continue to assign an Assistant Chief as the Commander, Professional Standards Division.

As recommended by the Personnel Department's January 11, 2008 Report entitled "Development of a Professional Standards Division within the Los Angeles Fire Department", Fire Chief Douglas Barry created the Professional Standards Division with an Assistant Chief as the Commander. This is the model which is currently in place.

The 2006 Personnel Department report noted that assigning an Assistant Fire Chief as the commander with a civilian Assistant Commander would balance the need for Department knowledge and the need for legal and investigative expertise and would avoid challenges by the unions.

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PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>PSD Staffing &amp; Support</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Eighteen</b>
<b>Independent Assessor's Recommendation</b>	Provide non-sworn Professional Standards Division staff the necessary tools, equipment, facilities and authority to effectively conduct, supervise and manage the Department's disciplinary system, including investigations and prosecutions. This includes providing non-sworn investigators with the authority to order sworn members of the Department to tell the truth; provide sworn members with the necessary admonitions when conducting investigations; ensuring non-sworn supervisors and managers have the authority to direct, supervise and manage sworn staff; ensuring the confidentiality of the investigative work and strictly limiting access to the PSD facility.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Fire Chief has authorized non-sworn investigators to admonish sworn members prior to an interview, including an order to tell the truth; provide sworn members with the necessary admonitions when conducting investigations. If the sworn member objects to the authority of the non-sworn investigator to give the order, the member is presented with a letter from the Fire Chief stating that the investigator is acting under his authority.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
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PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>PSD Staffing &amp; Support</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Nineteen</b>
<b>Independent Assessor's Recommendation</b>	Except for <i>Skelly</i> officers, Boards of Rights and the Fire Chief, the role of sworn members in investigations and the disciplinary process should be limited to support and subject matter expertise.
<b>Dept. Position</b>	Strongly disagree.
<b>Dept. Action</b>	The Department has continued to use sworn Captains to perform Advocate investigations and assist in presenting Boards of Rights, as well as providing necessary subject matter expertise because of case load demands. However, the intent is to shift the majority of the investigative responsibilities to non-sworn investigators with the training, knowledge and expertise for that role.
<b>Status</b>	No action.
<b>Follow-Up</b>	The role of sworn members assigned to PSD cannot be overemphasized and goes far beyond providing support and subject matter expertise. Their recognized sworn status fosters immediately cooperation and facilitates better relations with individual members and union representatives. The presence in specific investigations involving long-standing Department policies, practices and traditions is critical to ensure that the right questions are asked during interviews and the right evidence is discovered during the investigation.

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
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<b>Category</b>	<b>PSD Staffing &amp; Support</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Twenty</b>
<b>Independent Assessor's Recommendation</b>	The Department should ensure EEO investigations are conducted by qualified EEO investigators assigned to the Professional Standards Division and should not assign such investigations to the field.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department assigns EEO related investigations to trained investigators in the Professional Standards Division. EEO related investigations are not knowingly assigned to the field.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.



**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
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<b>Category</b>	<b>PSD Staffing &amp; Support</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Twenty-One</b>
<b>Independent Assessor's Recommendation</b>	Sworn advocates assigned to conduct investigative activities should not be assigned as "process servers" assigned to serve documents and to notices such as <i>Skelly</i> packages, complaints, and other papers. The Department should consider using light or modified duty personnel, emailing documents for service by station or battalion officers, or other alternatives.
<b>Dept. Position</b>	Disagree.
<b>Dept. Action</b>	The Department continues to use Sworn Advocates to serve documents and notices in the field.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

The Department considered and attempted on a limited scale to use light duty or modified duty sworn personnel to serve documents and notices to field personnel. This was implemented by providing the light duty member with a sealed envelope with written instructions on how to effectuate service. It was determined that placing light or modified firefighters in the role of serving disciplinary documents put them in an awkward position. Further, they were unable to respond to or answer the many questions which are asked when disciplinary documents are served. Finally, training and retraining the rotating door of light duty or modified duty personnel on what needed to be done proved to be time-consuming.

The Department continues to use Department Advocates assigned to PSD to serve documents and notices. Using sworn Department advocates of the rank of Captain eliminates the potential for pushback or animosity that may be present when documents are served. Their knowledge of the disciplinary process allows for immediately responses to a member's questions.

The Department has also used civilian investigators to serve documents on a limited basis with success. Again, the familiarity with the process and their association with PSD allows for the service of documents to occur with minimal problems.

As the Department moves towards providing members with individual City email accounts, the Department will explore using the email system for the service of notices and documents which are not mandated by Charter for a specified manner of service.

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
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<b>Category</b>	<b>PSD Staffing &amp; Support</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Twenty-Two</b>
<b>Independent Assessor's Recommendation</b>	The Department should complete an analysis to determine the number of non-sworn investigators, prosecutors and supervisors it requires in executing its responsibility to conduct, supervise and manage the Department's disciplinary system, including investigations and Board of Rights prosecutions, in full compliance with the law and the Audit Action Plan.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department conducted an assessment of its staffing needs in 2010 and requested eight additional Special Investigator II positions and one Management Analyst II position. The Department's request was approved by the City and with approval of Managed Hiring; the Special Investigator vacancies were filled.
<b>Status</b>	Ongoing.
<b>Follow-Up</b>	The Department continues to evaluate its staffing needs against the current and future demands on the Division to complete the disciplinary process, including conducting investigations, providing support to the field on disciplinary matters and field investigations and presenting Boards of Rights.

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<b>Category</b>	<b>PSD Staffing &amp; Support</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Twenty-Three</b>
<b>Independent Assessor's Recommendation</b>	The Department should continue preparing a Professional Standards Division guidebook.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department has prepared drafts of sections of the Professional Standards Division Manual but has not completed the entire document.
<b>Status</b>	Ongoing.
<b>Follow-Up</b>	When priorities allow, the Chief Special Investigator, Professional Standards Division, will continue the updating of the Professional Standards Division Manual.

The Department recognizes the need to update the current Advocate Manual, Board of Rights Manual and other policies and procedures regarding the disciplinary process. The Manual in total would contain provisions not currently addressed, included detailed guidelines on the complaint intake and assignment process, adjudication of complaints based on the current disciplinary guidelines, settling disciplinary matters, use of settlement agreements and contracts with conditions of continuing employment.

The Chief Special Investigator has written several initial drafts of some portions of the PSD Manual as time permits.

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
ASSESSMENT OF THE DEPARTMENT'S DISCIPLINARY PROCESS AND  
PROFESSIONAL STANDARDS DIVISION**

**ALCOHOL & SUBSTANCE ABUSE  
EMPLOYMENT CONTRACTS**

**RECOMMENDATIONS  
ONE-HUNDRED TWENTY-FOUR  
TO  
ONE-HUNDRED TWENTY-SEVEN**

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
ASSESSMENT OF THE DEPARTMENT'S DISCIPLINARY PROCESS AND  
PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Alcohol and Substance Abuse Employment Contracts</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Twenty-Four</b>
<b>Independent Assessor's Recommendation</b>	The Department should develop written policies, procedures and guidelines governing who is placed on an employment contract for alcohol and substance abuse.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department is currently drafting a revision to its substance abuse policy, which includes guidelines on the use of employment contracts for alcohol and substance abuse.
<b>Status</b>	Ongoing.
<b>Follow-Up</b>	The Department will draft, seek approval for and implement its revised substance abuse policy, including guidelines on the use of employment contracts for alcohol and substance abuse.

The Department is revising its Substance Abuse Policy which was adopted in 1989. This revision will include proposed language regarding the use of last chance agreements and contracts regarding continued conditions of employment which may be used to resolve less serious allegations involving chemical dependence. The updating of the Substance Abuse Policy is currently with the Employee Relations Officer.

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PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Alcohol and Substance Abuse Employment Contracts</b>
<b>IA Recomm. No.</b>	<b>One Hundred Twenty Five</b>
<b>Independent Assessor's Recommendation</b>	The Department should consider the best interests of the City and the Department when entering into an employment contract for alcohol and substance abuse.
<b>Dept. Position</b>	Agree
<b>Dept. Action</b>	Where possible, the Department will consider the interests of all parties, including the accused member, when making decisions regarding misconduct and disciplinary action. However, what is in the best interests of the City and the Department will carry greater weight in evaluating and deciding which option to pursue.
<b>Status</b>	Completed
<b>Follow-Up</b>	The Department will continue to consider the interests of all parties when making its disciplinary decisions but will give the interests of the City and the Fire Department the most weight.

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PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Alcohol and Substance Abuse Employment Contracts</b>
<b>IA Recomm. No.</b>	<b>One Hundred Twenty Six</b>
<b>Independent Assessor's Recommendation</b>	The Department should consider only entering into alcohol and substance abuse contracts for first time offenders.
<b>Dept. Position</b>	Agree in part
<b>Dept. Action</b>	Where possible, the Department will consider the interests of all parties, including the accused member, when making decisions regarding misconduct and disciplinary action. However, the disciplinary guidelines and the City Charter do not allow the Department to impose a contract unless it is the result of a settlement.
<b>Status</b>	Completed
<b>Follow-Up</b>	The Department will draft, seek approval for and implement its revised substance abuse policy, including guidelines on the use of employment contracts for alcohol and substance abuse.

From a policy standpoint, evidence that a member is dependent on drugs or alcohol presents serious issues in evaluating whether the member should continue as a sworn firefighter. Because of the heightened standard of conduct expected from the sworn members, the Department agrees that a last chance agreement is a valuable tool to ensure that a returning member does not continue their behavior.

When evaluating whether to offer a last chance agreement with conditions of continued employment, the Department looks at a myriad of factors, including the seriousness of the offense, the member's length of service, the member's documented work history, the member's past disciplinary record, the circumstances surrounding the incident, how others who have committed similar offenses have been treated and the potential for a reoccurrence of the incident or behavior if the member is reinstated.

The Department will also consider whether the disciplinary guidelines and the evidence will allow the Department the opportunity to offer a last chance agreement with conditions of continued employment at all. Under City Charter Section 1060, the Fire Chief has the authority to suspend a member for up to thirty days or refer the member to a Board of Rights. The Board of Rights has the authority, upon a guilty verdict, to do nothing, to issue a reprimand, to suspend or to terminate the member.

The Department has entered into a last chance agreement in the course of settlement discussions to resolve a disciplinary matter without the Board of Rights process. However, there are some first offenses under the alcohol/narcotics and drug use category of the current Disciplinary Guidelines that allow a maximum penalty well below a Board of Rights. In these situations, the opportunity to offer a last chance agreement with conditions of continued employment may never present itself after a first offense.

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PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Alcohol and Substance Abuse Employment Contracts</b>
<b>IA Recomm. No.</b>	<b>One Hundred Twenty Seven</b>
<b>Independent Assessor's Recommendation</b>	The Department should continue to monitor and require full compliance with employment contracts.
<b>Dept. Position</b>	Agree
<b>Dept. Action</b>	The Department monitors compliance with its employment contracts through a collaborative effort between the Department and Medical Services Division.
<b>Status</b>	Completed
<b>Follow-Up</b>	The Department will continue to utilize the available resources within the Department and the City to ensure that members on employment contracts remain compliant with the conditions for the duration of the agreement.

The Department assigns the monitoring of the employment contracts related to disciplinary matters to a Captain II-Advocate in the Professional Standards Division. The Advocate is responsible for receiving and reviewing the compliance documents forwarded by the member on a quarterly basis and to ensure that the member is randomly tested once a quarter.

The Department is considering the use of the Personnel Department, Medical Services Division (MSD) to conduct "reasonable suspicion" and substance abuse contract testing for the Fire Department. MSD has a mechanism in place for collecting and handling collected samples and sending them for analysis through a proven chain of custody. MSD doctors trained in reviewing test results would become a vital component in recommending further steps that the Department should consider once the member tests positive. The Department will incorporate the role of MSD in the Department's Substance Abuse Policy in the upcoming update.



**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
ASSESSMENT OF THE DEPARTMENT'S DISCIPLINARY PROCESS AND  
PROFESSIONAL STANDARDS DIVISION**

**CRIMINAL CASE ISSUES**

**RECOMMENDATIONS  
ONE-HUNDRED TWENTY-EIGHT  
TO  
ONE-HUNDRED THIRTY-SIX**

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
ASSESSMENT OF THE DEPARTMENT'S DISCIPLINARY PROCESS AND  
PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Criminal Case Issues</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Twenty-Eight</b>
<b>Independent Assessor's Recommendation</b>	The Department should continue to carefully monitor the prosecution of criminal cases that may serve as a basis for disciplinary action and be prepared to proceed with its own investigation in the event the statute of limitations may expire before disciplinary action can be taken on the basis of a conviction.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department monitors the progress of a criminal investigation and prosecution for a variety of reasons, including the evidence obtained by law enforcement, the potential of the filing of criminal charges and whether the disposition of the criminal case might serve as an additional basis for discipline.
<b>Status</b>	Completed.
<b>Follow-Up</b>	The Department will continue to monitor the progress of a criminal investigations and prosecution for information that affects member's employment status and disciplinary issues.

The Department recognizes the interplay between criminal investigations and administrative investigations into the same underlying incident. The Department is particularly aware that without the ability to toll the statute of limitations under the City Charter, the Department generally has one year to impose punitive action against a member. In cases involving a significant criminal investigation and/or prosecution, the Department will generally have to move forward before the criminal process has ended.

In order to make the correct decision, the Department must monitor the progress of the criminal prosecution. The Department must be cognizant of the separation between the criminal and administrative investigations, especially after a compelled statement is obtained. The Department does so by assigning a separate criminal liaison to monitor the criminal investigation, separate and distinct from the administrative investigator.

Any information which may be obtained from the criminal investigation and/or prosecution through the criminal liaison will be examined for use by the Department in its administrative case, including the existence of a conviction, a guilty plea and/or a nolo contendere plea to a felony.

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PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Criminal Case Issues</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Twenty-Nine</b>
<b>Independent Assessor's Recommendation</b>	The Department should adopt and comply with written guidelines concerning how disciplinary cases involving criminal conduct are to be handled so conflicts are avoided.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	Although the Department has adopted guidelines and provided training as to how disciplinary cases involving criminal conduct are to be handled by Advocates, the Department has not codified this in written form.
<b>Status</b>	Ongoing.
<b>Follow-Up</b>	The Department will continue to provide refresher training to its Advocates to stress best investigative practices and continues to work on producing a PSD manual.

The Department recognizes the interplay between criminal investigations and administrative investigations into the same underlying incident. The Department is particularly aware that without the ability to toll the statute of limitations under the City Charter, the Department generally has one year to impose punitive action against a member. In cases involving a significant criminal investigation and/or prosecution, the Department will generally have to move forward before the criminal process has ended.

In order to make the correct decision, the Department must monitor the progress of the criminal prosecution. The Department must be cognizant of the separation between the criminal and administrative investigations, especially after a compelled statement is obtained. The Department does so by assigning a separate criminal liaison to monitor the criminal investigation, separate and distinct from the administrative investigator.

The process of how to handle disciplinary cases involving criminal conduct has been communicated to PSD managers, supervisors and staff and has been followed since 2009. The process will be codified in the PSD Manual.

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<b>Category</b>	<b>Criminal Case Issues</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Thirty</b>
<b>Independent Assessor's Recommendation</b>	The Department should ensure investigators, supervisors and managers are knowledgeable about criminal and administrative conflicts before assignment to an investigation, and trained in and comply with adopted guidelines.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department recognizes the inherent conflict between a criminal investigation and prosecution and an administrative investigation and penalty which is based on a compelled administrative interview. The Department has provided training to all of its investigators on the importance of maintaining a separation between the criminal and administrative tracks. PSD managers assign separate Advocates to those two issues when appropriate.
<b>Status</b>	Completed.
<b>Follow-Up</b>	The Department will continue to train its personnel on the separation between the criminal and administrative investigations and to assign separate investigators when appropriate to maintain that separation.

The Department recognizes the inherent conflict between a criminal investigation and prosecution and an administrative investigation and penalty which is based on a compelled administrative interview. The Department is particularly aware that without the ability to toll the statute of limitations under the City Charter, the Department generally has one year to impose punitive action against a member. The Department must be cognizant of the separation between the criminal and administrative investigations, especially after a compelled statement is obtained. The Department does so by assigning a separate criminal liaison to monitor the criminal investigation, separate and distinct from the administrative investigator.

The issues involving the separation of the criminal and administrative cases and the potentially devastating impact of a *Kastigar* taint has been the subject of at least four training sessions in PSD since 2010. PSD managers and supervisors are constantly reminded about enforcing the separation between the criminal and administrative sides and encouraged to use a separate criminal liaison to avoid any conflict.

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<b>Category</b>	<b>Criminal Case Issues</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Thirty-One</b>
<b>Independent Assessor's Recommendation</b>	The Department should not assign alleged misconduct that involves law enforcement action to the field for an administrative investigation.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	During intake review and assignment, complaints that allege allegations which, if true, would be criminal, are assigned to the Professional Standards Division.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

Complaints that are entered into the Complaint Tracking System are reviewed by the Commander of the Professional Standards Division. During that review, the PSD Commander reviews the allegation and determines whether it warrants further review and consideration prior to assignment. Among the factors which may warrant further review is the potential for criminal investigation or charges.

A complaint where the allegations, if true, would constitute a criminal offense, are assigned to the Professional Standards Division for investigation. This is because PSD staff members are specifically trained and are experienced in dealing with the issues where there is a concurrent criminal investigation tied to a PSD administrative case.

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<b>Category</b>	<b>Criminal Case Issues</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Thirty-Two</b>
<b>Independent Assessor's Recommendation</b>	The Department must not proceed with disciplinary action on the sole basis of a <i>nolo contendere</i> plea in a misdemeanor case.
<b>Dept. Position</b>	Agree
<b>Dept. Action</b>	The Department understands the limitations of a plea of <i>nolo contendere</i> to a misdemeanor.
<b>Status</b>	Completed
<b>Follow-Up</b>	The Department will continue to train its personnel on the significance and limitations of a <i>nolo contendere</i> plea to a misdemeanor.

California Penal Code Section 1016 (c) provides that as to a plea of *nolo contendere*, “[T]he legal effect of such a plea, to a crime punishable as a felony, shall be the same as that of a plea of guilty for all purposes. In cases other than those punishable as felonies, the plea and any admissions required by the court during any inquiry it makes as to the voluntariness of, and factual basis for, the plea may not be used against the defendant as an admission in any civil suit based upon or growing out of the act upon which the criminal prosecution is based.” See *Cartwright v. Board of Chiropractic Examiners* (1976) 16 Cal 3d 762 (prohibiting using a nolo plea as evidence that a member engaged in misconduct.)

The Department understands that while a *nolo contendere* plea to a misdemeanor may not be used as an admission, evidence in the criminal case may be useful to the administrative case.

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<b>Category</b>	<b>Criminal Case Issues</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Thirty-Three</b>
<b>Independent Assessor's Recommendation</b>	The Department should adopt guidelines concerning what a member will be told about being charged with a crime.
<b>Dept. Position</b>	Agree, in part
<b>Dept. Action</b>	The Department will investigate allegations of misconduct involving acts that could be criminal. However, the Department will not conduct a criminal investigation and does not become a "partner" with law enforcement in its criminal case. As such, the nature of any notification made to a member about being charged with a crime will be in the context of alleged misconduct.
<b>Status</b>	Completed
<b>Follow-Up</b>	None

When the Department learns of misconduct involving a criminal act, it will notify the appropriate law enforcement agency so that the agency can evaluate what action, if any, the criminal justice process will take. The Department will also conduct an administrative investigation based on the acts or events.

The current Memorandum of Understanding with UFLAC and COA require that a member be notified that he or she is involved in an administrative investigation upon assignment of Advocates. This notification requirement involves investigations of members by the Fire Department for alleged misconduct and not investigations conducted by law enforcement of criminal allegations. The Department defers any notification that a member is being investigated by law enforcement to that law enforcement agency.

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<b>Category</b>	<b>Criminal Case Issues</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Thirty-Four</b>
<b>Independent Assessor's Recommendation</b>	The Department should ensure it has the ability to conduct administrative investigations and contemporaneously monitor criminal investigations without conflict between the two separate cases, when necessary.
<b>Dept. Position</b>	Agree
<b>Dept. Action</b>	The Department recognizes the inherent conflict between a criminal investigation and prosecution and an administrative investigation and penalty which is based on a compelled administrative interview. The Department has provided training to all of its investigators on the importance of maintaining a separation between the criminal and administrative tracks. PSD managers assign separate Advocates to those two issues when appropriate.
<b>Status</b>	Completed
<b>Follow-Up</b>	The Department will continue to train its personnel on the separation between the criminal and administrative investigations and to assign separate investigators when appropriate to maintain that separation.

The Department recognizes the inherent conflict between a criminal investigation and prosecution and an administrative investigation and penalty which is based on a compelled administrative interview. The Department is particularly aware that without the ability to toll the statute of limitations under the City Charter, the Department generally has one year to impose punitive action against a member. The Department must be cognizant of the separation between the criminal and administrative investigations, especially after a compelled statement is obtained. The Department does so by assigning a separate criminal liaison to monitor the criminal investigation, separate and distinct from the administrative investigator.

The issues involving the separation of the criminal and administrative cases and the potentially devastating impact of a *Kastigar* taint has been the subject of at least four training sessions in PSD since 2010. PSD managers and supervisors are constantly reminded about enforcing the separation between the criminal and administrative sides and encouraged to use a separate criminal liaison to avoid any conflict.



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<b>Category</b>	<b>Criminal Case Issues</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Thirty-Five</b>
<b>Independent Assessor's Recommendation</b>	The Department should continue to refer suspected criminal conduct to appropriate law enforcement agencies for investigation.
<b>Dept. Position</b>	Agree
<b>Dept. Action</b>	Since 2008, the Department has followed the policy of referring allegations which, if true, would constitute a criminal offense, to the appropriate law enforcement agency for investigation.
<b>Status</b>	Completed
<b>Follow-Up</b>	The Department will continue to follow the policy of referring allegations which, if true, would constitute a criminal offense, to the appropriate law enforcement agency for investigation.

A review of Fire Department investigations pre-dating the creation of the Professional Standards Division showed that the Department was inconsistent in how it handled allegations which, if true, would constitute criminal conduct. That review raised the concern that the Fire Department, without having trained law enforcement or criminal justice professionals, was making decisions about criminal matters and that might raise the appearance that it was covering up potential criminal acts when those were not reported.

In 2008, Fire Chief Douglas Barry approved the policy that if the Professional Standards Division became aware of an allegation of misconduct against a Department member which, if true, would constitute a crime, it would notify the appropriate law enforcement agency of the allegation. Chief Barry's policy mandated that the law enforcement agency was free to handle the allegation as it saw fit and that the Fire Department would not involve itself in the criminal investigation. Chief Barry's 2008 policy decision is still followed by the Professional Standards Division.

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<b>Category</b>	<b>Criminal Case Issues</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Thirty-Six</b>
<b>Independent Assessor's Recommendation</b>	Those conducting investigations should obtain certified copies of court records when the alleged misconduct also results in the filing of criminal charges.
<b>Dept. Position</b>	Agree
<b>Dept. Action</b>	The Department obtains certified copies of court records when used as evidence in a Board of Rights or Civil Service hearing.
<b>Status</b>	Completed
<b>Follow-Up</b>	The Department will continue to obtain certified copies of court records when used as evidence in a Board of Rights or Civil Service hearing.

The Department recognizes documentary evidence "documents" events perceived by other human beings, present special problems not presented by other forms of real evidence, such as when they contain hearsay. The Department also recognizes that some documents, such as certified copies of public records, are, to one extent or another, self authenticating under either California law or the federal rules. See *Evidence Code* Section 1522(a)(4), "A copy of a writing that is recorded in the public records, if the record or a certified copy of it is made evidence of the writing by statute."

As such, when the Department intends to utilize a court record as part of its Board of Rights process, it will obtain certified copies of the court records to ensure that the records are properly admitted.

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**TIMEFRAMES &  
STATUTE OF LIMITATIONS**

**RECOMMENDATIONS  
ONE-HUNDRED THIRTY-SEVEN  
TO  
ONE-HUNDRED THIRTY-EIGHT**

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
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PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Timeframes and Statute of Limitations</b>
<b>IA Recomm. No.</b>	<b>One Hundred and Thirty Seven</b>
<b>Independent Assessor's Recommendation</b>	<p>The Department should establish timeframes within which investigations and each step of the disciplinary process is to be concluded, including:</p> <ul style="list-style-type: none"> <li>a. Interviewing complainants and victims within 10 days of discovering alleged misconduct;</li> <li>b. Concluding most investigations in 90 days and more complex investigations in 150 days; and</li> <li>c. <i>Skelly</i> hearings should be concluded and final disciplinary action should be filed within 30 days after the member is served with a proposed penalty.</li> </ul>
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	<p>The Department agrees that timeframes for contacting the complainant and victims and completing the investigations are needed. The Department attempts to interview the complainant within two weeks of the assignment of the complaint to an Advocate. The Department is attempting to complete complex investigations by the 10th month. The Department completes the disciplinary process within 30 days of the member's service of the proposed penalty.</p>
<b>Status</b>	In progress.
<b>Follow-Up</b>	<p>The Department continues to manage a backlog of open investigations based on caseload and staffing issues and intends to work towards meeting the timeframes recommended above.</p>

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<b>Category</b>	<b>Timeframes and Statute of Limitations</b>
<b>IA Recomm. No.</b>	<b>One Hundred and Thirty Eight</b>
<b>Independent Assessor's Recommendation</b>	<p>The Department should carefully analyze and note the statute of limitations at the start of an investigation and continue to analyze and collect information about the statute of limitations throughout the investigation, particularly when the date of discovery does not match the date of incident by:</p> <ul style="list-style-type: none"> <li>a. Determining when and how the Department first learned of or discovered the incident;</li> <li>b. Take affirmative steps to investigate when and how an incident was first discovered when the date of discovery and the date of incident do not match;</li> <li>c. Investigate possibilities the Department may have discovered alleged wrongdoing earlier than assumed; and</li> <li>d. Treat the date of incident as the date of discovery whenever there is any doubt about the discovery date.</li> </ul>
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	When an investigation is assigned, the Department expects that the assigned Advocate will review the complaint and evaluate it in order to strategize his or her investigation. One of the elements of this investigative strategy is to determine the dates relevant to the statute of limitations. This requirement has been in place since 2009.
<b>Status</b>	Completed.
<b>Follow-Up</b>	The Department will continue to prioritize the importance of the correct statute determination, not only upon receipt of the complaint but throughout the investigation.

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**ORAL AGREEMENTS**

**RECOMMENDATIONS  
ONE-HUNDRED THIRTY-EIGHT  
TO  
ONE-HUNDRED FORTY-TWO**

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<b>Category</b>	<b>Oral Agreements</b>
<b>IA Recomm. No.</b>	<b>One Hundred and Thirty Nine</b>
<b>Independent Assessor's Recommendation</b>	<p>The Department should provide the Board of Fire Commissioners with a report concerning all oral agreements currently in effect that impact how investigations are to be conducted and the disciplinary process is to be applied or administered, including but not limited to agreeing not to obtain compelled written reports, and the report should include the following information at a minimum:</p> <ul style="list-style-type: none"> <li>a. The terms of the agreement;</li> <li>b. The date the agreement was reached;</li> <li>c. The effective dates of the agreement;</li> <li>d. The parties bound by the agreement;</li> <li>e. The identity of the persons who negotiated the agreements, and</li> <li>f. A description of authority the Department's negotiators had to enter into such oral agreements.</li> </ul>
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	<p>The Department is aware of two oral agreements between the Department and the unions regarding the disciplinary process: Not to compel written statements; and, the starting point in determining discipline within the appropriate penalty range. The Department has discussed both of these agreements with the Independent Assessor, including the information specified above.</p>
<b>Status</b>	Completed.
<b>Follow-Up</b>	<p>The Department understands oral agreements between the Department and the unions regarding the conduct of the disciplinary process that are subject to the "meet and confer" process should be avoided.</p>

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<b>Category</b>	<b>Oral Agreements</b>
<b>IA Recomm. No.</b>	<b>One Hundred Forty</b>
<b>Independent Assessor's Recommendation</b>	The Department should not enter into oral agreements concerning matters subject to the "meet and confer" process.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department understands that matters that are agreed upon by management and labor based on a "meet and confer" process should be memorialized in writing.
<b>Status</b>	Completed.
<b>Follow-Up</b>	As to agreements related to the disciplinary process which are subject to the "meet and confer" process between management and labor, the Department will strive to memorialize the agreement in writing.

The Department recognizes the value of a signed written agreement to memorialize the terms of the agreement between management and labor. Although there may be disagreements, discussions and grievances over the interpretation of specific terms or passages, a written agreement eliminates questions about the existence, structure and intent of the actual agreement itself. Further, a written agreement serves to provide notice to management, labor and the members as to what was agreed upon.



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<b>Category</b>	<b>Oral Agreements</b>
<b>IA Recomm. No.</b>	<b>One Hundred Forty-One</b>
<b>Independent Assessor's Recommendation</b>	The Department should not enter into oral agreements governing how misconduct allegations are to be investigated.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department understands that matters that are agreed upon by management and labor based on a "meet and confer" process should be memorialized in writing.
<b>Status</b>	Completed.
<b>Follow-Up</b>	As to agreements related to the disciplinary process which are subject to the "meet and confer" process between management and labor, the Department will strive to memorialize the agreement in writing.

The Department recognizes the value of a signed written agreement to memorialize the terms of the agreement between management and labor. Although there may be disagreements, discussions and grievances over the interpretation of specific terms or passages, a written agreement eliminates questions about the existence, structure and intent of the actual agreement itself. Further, a written agreement serves to provide notice to management, labor and the members as to what was agreed upon.

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<b>Category</b>	<b>Oral Agreements</b>
<b>IA Recomm. No.</b>	<b>One Hundred Forty-Two</b>
<b>Independent Assessor's Recommendation</b>	The Department should explain why it orally agreed to not ask for or compel written reports from its members.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department concludes that based on both a lack of understanding of what the Firefighters Procedural Bill of Rights allowed and the belief that written memorandums often contained limited information, the Department decided to eliminate the practice of requesting a written report from members.
<b>Status</b>	Completed.
<b>Follow-Up</b>	The Department is considering whether the written memorandum is a legitimate tool to be used when investigating minor allegations of misconduct, provided that the member is provided with any requisite due process protections.

The Department, as a common practice, used to request or compel a member to prepare a written memorandum regarding their actions at an incident as part of a complaint investigation. The Department believed that some of the memorandums were vague and failed to provide the information that had been asked for. Further, when the Firefighters Procedural Bill of Rights was enacted in 2008, it was widely believed that the Department was precluded under FFBOR from compelling a written statement from members.

Based on these factors, the Department decided to eliminate the practice of requesting a written report from members and instead, interview members following the FFBOR and the applicable MOU.

The Department is currently considering whether the written memorandum is a legitimate tool to be used when investigating minor allegations of misconduct, provided that the member is provided with any requisite due process protections.

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
ASSESSMENT OF THE DEPARTMENT'S DISCIPLINARY PROCESS AND  
PROFESSIONAL STANDARDS DIVISION**

**RIGHT TO REPRESENTATION  
ISSUES**

**RECOMMENDATIONS  
ONE-HUNDRED FORTY-THREE  
TO  
ONE-HUNDRED FORTY-FIVE**

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
ASSESSMENT OF THE DEPARTMENT'S DISCIPLINARY PROCESS AND  
PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Right to Representation Issues</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Forty-Three</b>
<b>Independent Assessor's Recommendation</b>	The Department should continue to provide training to Department supervisors about the right to representation.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department provides training to officers who request clarification on representation issues on a daily basis or when an issue is identified based on a review of a specific investigation.
<b>Status</b>	Ongoing.
<b>Follow-Up</b>	The Department is working on developing either online or DVD training on specific disciplinary issues which can be distributed to the field to address ongoing training issues.

The Department agrees there is a need for training on disciplinary issues, including representation.

In 2008-2009, the Professional Standards Division provided eight hours of OCEP training on disciplinary investigations to over 700 officers and chief officers. This live training has not been repeated since that time due to caseload and staffing issues at PSD. In its 2010 staffing plan, PSD had requested staffing for a Field Training and Support Unit. However, because of managed hiring, caseloads and other critical demands, that Unit has never become operational.

The Department is moving towards an online or DVD based training program on disciplinary issues which can be distributed to the field to address ongoing training issues. Additionally, PSD maintains a help function on the Complaint Tracking System and provides assistance during normal business hours to the field.

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
ASSESSMENT OF THE DEPARTMENT'S DISCIPLINARY PROCESS AND  
PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Right to Representation Issues</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Forty-Four</b>
<b>Independent Assessor's Recommendation</b>	When the Department learns a supervisor questioned a member suspected of misconduct that may lead to discipline without complying with the law concerning the right to representation, the Department should, at a minimum, provide the supervisor with remedial training on the issue.
<b>Dept. Position</b>	Agree
<b>Dept. Action</b>	The Department agrees that when an officer interviews a member without affording them their due process protections, including the right to representation, training is one of the first avenues that the Department takes to remedy the issue, provided that the officer did not act with malice.
<b>Status</b>	Completed
<b>Follow-Up</b>	The Department is working on developing either online or DVD training on specific disciplinary issues which can be distributed to the field to address ongoing training issues.

The Department agrees there is a need for training on disciplinary issues, including representation. Although the law and the process have remained unchanged since the 2008-2009 OCEP training, there is confusion among the field officers as to when a member is afforded representation and their other due process rights. This is attributed to (1) the fact that prior to the introduction of the Firefighters Procedural Bill of Rights, officers would routinely question and resolve potential disciplinary issues "in-house", (2) the Department has not conducted continued reinforcement of its 2008-2009 training to the field and (3) misinformation that is given to the field by other parties.

The Department is moving towards an online or DVD based training program on disciplinary issues which can be distributed to the field to address ongoing training issues. Additionally, PSD maintains a help function on the Complaint Tracking System and provides assistance during normal business hours to the field.

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
ASSESSMENT OF THE DEPARTMENT'S DISCIPLINARY PROCESS AND  
PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Right to Representation Issues</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Forty-Five</b>
<b>Independent Assessor's Recommendation</b>	The Department should not assist in providing or retaining representatives for members appearing at interviews, <i>Skelly</i> hearings, or other proceedings. If reasonable notice of the time, place and the right to representation has been provided, the interview, hearing or proceeding should go forward when a member appears without a representative. A clear and accurate record of what occurred in such circumstances should be maintained.
<b>Dept. Position</b>	Agree
<b>Dept. Action</b>	The Department understands and respects that the member has the right to a representative of his or her choice who is reasonably available and physically able to represent the member at a reasonably scheduled interview.
<b>Status</b>	Completed
<b>Follow-Up</b>	None.

Under the 2008 Letter of Agreement with UFLAC, the Department currently provides a sworn member with a maximum of seven business days to obtain representation prior to an investigatory interview. The member must choose a representative who is reasonably available to represent the member and who is physically able to represent the member at a reasonably scheduled interview. It is the member's responsibility to secure the attendance of his or her chosen representative at the interrogation. If he or she is unable to do so, the member should select another representative so that the interrogation may proceed "at a reasonable hour. See *Upland POA v. City of Upland* (2003) 111 Cal.App.4th 1294, 1305. Provided that the Department can prove that the member was given that time period to secure representation, the Department will not delay the interview if the member claims they were unable to secure representation and/or that their representative was not available.

Were the Department to select a representative for the member or "find" an available representative, the member may claim they did not have the representative of their choice to assist them.

As such, the Department provides the member with the agreed upon time to secure a representative of their choice and may elect to move forward on that date, even if the member claims they were unable to secure representation absent extraordinary circumstances.

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
ASSESSMENT OF THE DEPARTMENT'S DISCIPLINARY PROCESS AND  
PROFESSIONAL STANDARDS DIVISION**

**NEGLIGENT PATIENT CARE ISSUES**

**RECOMMENDATIONS  
ONE-HUNDRED FORTY-SIX  
TO  
ONE-HUNDRED FORTY-EIGHT**

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
ASSESSMENT OF THE DEPARTMENT'S DISCIPLINARY PROCESS AND  
PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Negligent Patient Care Cases</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Forty-Six</b>
<b>Independent Assessor's Recommendation</b>	The Department should develop and comply with a uniform policy of reporting emergency medical technicians and paramedics who have potentially engaged in grossly negligent patient care, incompetence and dishonesty that is substantially related to the qualifications, functions and duties of pre-hospital personnel to the local emergency medical services agencies and to the State of California Emergency Medical Services Authority that certify, accredit and license them.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	Validated actions of Department members that are reportable under Health and Safety Code Section 1798.200(c) are reported to the appropriate licensing agency.
<b>Status</b>	Ongoing.
<b>Follow-Up</b>	The Department continues to work to make timely notifications to EMSA or DHS and to provide them with the information they request to assist them with their licensing and/or certification issues.

The California Emergency Medical Services Agency (EMSA) and the County of Los Angeles Department of Health Services (DHS) both mandate that the employer report the actions of certificated or licenses emergency medical services personnel that violates Health and Safety Code Section 1798.200(c) or where there is an apparent deficiency of patient care. Through the Medical Director, the EMS Division and PSD, the Department makes the required notifications to these licensing agencies to assist them with their internal disciplinary processes as to the member's license or certification. Those agencies have also requested the Department's investigation and documentation which will generally be released upon a request on official letterhead and/or subpoena.



**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
ASSESSMENT OF THE DEPARTMENT'S DISCIPLINARY PROCESS AND  
PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Negligent Patient Care Cases</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Forty-Seven</b>
<b>Independent Assessor's Recommendation</b>	The Department should refer the facts involving this section of this Assessment to the Department's medical director for an opinion concerning whether the patient care was grossly negligent as that term is defined in <i>Wright v. City of Los Angeles</i> (1990) 219 CA3d 318, 345-347.
<b>Dept. Position</b>	Disagree.
<b>Dept. Action</b>	The Department does not believe that obtaining a potentially damaging legal determination on a sustained investigation that resulted in disciplinary action is in its best interest.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

The incident reported by the Independent Assessor occurred on October 26, 2008. It was investigated by the Department and discipline was imposed. Remedial training was provided to the members.

The Department does not believe that obtaining a potentially damaging legal determination on a sustained investigation that resulted in disciplinary action is in its best interest.

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
ASSESSMENT OF THE DEPARTMENT'S DISCIPLINARY PROCESS AND  
PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Negligent Patient Care Cases</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Forty-Eight</b>
<b>Independent Assessor's Recommendation</b>	If the Department's Medical Director determines the medical care in this case was grossly negligent or there was a potential violation of Health and Safety Code, section 1798, the matter should be referred to the County of Los Angeles Department of Health Services for their consideration.
<b>Dept. Position</b>	Disagree.
<b>Dept. Action</b>	The Department does not believe that obtaining a potentially damaging legal determination on a sustained investigation that resulted in disciplinary action is in its best interest.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

The incident reported by the Independent Assessor occurred on October 26, 2008. It was investigated by the Department and discipline was imposed. Remedial training was provided to the members.

The Department is responsible for a delay of three years in responding to this Audit. To continue with this recommendation at this time is untimely.

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
ASSESSMENT OF THE DEPARTMENT'S DISCIPLINARY PROCESS AND  
PROFESSIONAL STANDARDS DIVISION**

**MISCELLANEOUS - GENERAL**

**RECOMMENDATIONS  
ONE-HUNDRED FORTY-NINE  
TO  
ONE-HUNDRED SIXTY-ONE**

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
ASSESSMENT OF THE DEPARTMENT'S DISCIPLINARY PROCESS AND  
PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Miscellaneous – General</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Forty-Nine</b>
<b>Independent Assessor's Recommendation</b>	<p>The Fire Chief should be held accountable, as a part of his or her annual evaluation, for the disciplinary system and process, including:</p> <ul style="list-style-type: none"> <li>a. Proposed disciplinary decisions, both before and after <i>Skelly</i> hearings, and final disciplinary decisions;</li> <li>b. Appropriate disciplinary guidelines;</li> <li>c. How investigations are conducted, supervised and managed.</li> </ul>
<b>Dept. Position</b>	No opinion.
<b>Dept. Action</b>	None.
<b>Status</b>	None.
<b>Follow-Up</b>	None.

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
ASSESSMENT OF THE DEPARTMENT'S DISCIPLINARY PROCESS AND  
PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Miscellaneous – General</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Fifty</b>
<b>Independent Assessor's Recommendation</b>	The Department should cease the use of “working” days when ordering a suspension without pay. Only calendar days should be used.
<b>Dept. Position</b>	Disagree.
<b>Dept. Action</b>	The Department's computation of suspension days takes into consideration the differences between the number of days worked on special duty and platoon duty and the impact that a suspension on platoon duty has on anniversary dates for longevity, vacation or pension purposes.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

The Department formalized its current practice of computing disciplinary leaves based either on working days (for suspensions of 1-12 days) or calendar days (14 days and above) in 1991. The rationale for establishing this practice was based primarily on the tangential impact that platoon duty schedules have for suspensions calculated for calendar days.

For instance, a platoon duty member who serves a two calendar day suspension where the intervening day off was a holiday would not be paid for that holiday, based on the City's requirement that the member be on paid status on at least one of the days preceding or subsequent to the holiday.

A suspension can also have an unintended impact on a member's anniversary date for vacation, longevity and pension purposes. For instance, a member serving a two working day suspension that begins on the last day of the segment and ends on the first day of the segment would have his or her anniversary date for vacation, longevity and pension purposes impact by six calendar days.

The Department practice was developed to minimize the unintended effects that the platoon duty schedule has when a suspension is imposed.

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
ASSESSMENT OF THE DEPARTMENT'S DISCIPLINARY PROCESS AND  
PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Miscellaneous – General</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Fifty-One</b>
<b>Independent Assessor's Recommendation</b>	The Department should not enter into agreements that would prevent the Department from asking for or compelling written reports, assuming the right to representation is protected when doing so.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	Because there may be value to obtaining written statements from members during minor disciplinary investigation, the Department will keep this option available.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

The Department, as a common practice, used to request or compel a member to prepare a written memorandum regarding their actions at an incident as part of a complaint investigation. The Department believed that some of the memorandums were vague and failed to provide the information that had been asked for. Further, when the Firefighters Procedural Bill of Rights was enacted in 2008, it was widely believed that the Department was precluded under FFBOR from compelling a written statement from members.

Based on these factors, the Department decided to eliminate the practice of requesting a written report from members and instead, interview members following the FFBOR and the applicable MOU.

The Department is currently considering whether the written memorandum is a legitimate tool to be used when investigating minor allegations of misconduct, provided that the member is provided with any requisite due process protections.

As such, the Department agrees that an agreement that prevents the Department from asking for or compelling written reports, assuming the right to representation is protected when doing so, would not be in its best interests.

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
ASSESSMENT OF THE DEPARTMENT'S DISCIPLINARY PROCESS AND  
PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Miscellaneous – General</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Fifty-Two</b>
<b>Independent Assessor's Recommendation</b>	The Department should take the steps necessary to ensure all employees are placed on actual notice of the Department's policies, procedures, rules, regulations and applicable disciplinary guidelines, and the Department should obtain written confirmation or other evidence that employees have received actual notice.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department has placed most of its Department library online for access to all members. When critical policies are disseminated, the Department gives direction to the officers to train their members on the policy and to record that training in the member's record. However, with the massive system of Rules and Regulations, Manual of Operations and varying level of orders, having a written confirmation of notice and service for all Department policies has not been achieved.
<b>Status</b>	Partial compliance.
<b>Follow-Up</b>	Online codification of Department Manual and Orders is underway as part of increasing the use of technology within the Los Angeles Fire Department.

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
ASSESSMENT OF THE DEPARTMENT'S DISCIPLINARY PROCESS AND  
PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Miscellaneous – General</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Fifty-Three</b>
<b>Independent Assessor's Recommendation</b>	Records of remedial training provided as a part of disciplinary action should be placed in the employee's file to evidence the employee was placed on actual notice of work standards he or she violated.
<b>Dept. Position</b>	Agree in part.
<b>Dept. Action</b>	The Department agrees that remedial training provided pursuant to a disciplinary action should be documented.
<b>Status</b>	Partial compliance.
<b>Follow-Up</b>	None.

The Department agrees that remedial training provided pursuant to a disciplinary action should be documented. However, the Department does not agree it should be contained in the Personnel Services Section file. Instead, this can be documented in the member's Training Record. Record of that training can also be contained in the Professional Standards Division disciplinary file so that if the member claims a lack of notice in a subsequent discipline file, the training record can be located and used.



**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
ASSESSMENT OF THE DEPARTMENT'S DISCIPLINARY PROCESS AND  
PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Miscellaneous – General</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Fifty-Four</b>
<b>Independent Assessor's Recommendation</b>	The Department should use the complaint and/or the disciplinary tracking systems to provide management reports that will provide information concerning the statute of limitations, time keeping and other necessary case management information.
<b>Dept. Position</b>	Agree with limitations.
<b>Dept. Action</b>	The Department agrees that complaint and disciplinary information have value by in providing LAFD management with information that will enhance operations, identify potential problem locations or policy issues, etc.
<b>Status</b>	Partial compliance.
<b>Follow-Up</b>	None.

As stated in the 2008 Audit Implementation Plan, the Department's Complaint Tracking System and Disciplinary Tracking Systems were intended to track the intake of complaints, the investigation, the adjudication and if discipline was imposed, the imposition and appeal of the discipline.

The Department has added reports to utilize the information contained in CTS and DTS for analysis. However, the Department has found that because of the manner by which information flow was controlled and entered into the system, several different results can be obtained from CTS or DTS when different queries are run. This is because CTS and DTS were intended to track complaints and discipline, not to conduct statistical analysis of trends or allegations.

The Department has reported this issue to the Board of Fire Commissioners and is currently performing a needs assessment of stakeholders who would benefit from the information contained in CTS and DTS. Based on this assessment, the Department will determine if CTS and DTS can be modified to handle its needs and if not, determine where the proper system can be found.

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
ASSESSMENT OF THE DEPARTMENT'S DISCIPLINARY PROCESS AND  
PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Miscellaneous – General</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Fifty-Five</b>
<b>Independent Assessor's Recommendation</b>	The Department should adopt and enforce guidelines for how to handle obstreperous representatives.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department has provided training to its Advocates on the role of the representative and how to deal with representatives whose behavior exceeds those boundaries.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

The *Weingarten* case which provides for a member's right to representation and subsequent appellate and National Labor Relations Board opinions interpreting *Weingarten* have defined the parameters of the representative's role in a disciplinary hearing. The Department has provided its Advocates with training on what those parameters are, how to deal with them and if the conduct continues to interfere or obstruct the investigation, and how to resolve the issue without violating the member's right to representation.

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
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PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Miscellaneous – General</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Fifty-Six</b>
<b>Independent Assessor's Recommendation</b>	The Department should adopt a guideline whereby representatives are asked to provide legal authority for their legal claims and assertions.
<b>Dept. Position</b>	Agree
<b>Dept. Action</b>	The Department has provided training to its Advocates on the role of the representative and how to deal with representatives who assert new or novel positions during the investigation.
<b>Status</b>	Completed
<b>Follow-Up</b>	None

The Department has provided its Advocates with training on how to deal with representatives who assert new or novel positions during the investigation. This includes asking the representative to clearly state their issue and to request the authority upon which their request is based. This approach will assist both the Department and the accused in understanding what the issue is and allow the Department to research whether the assertion has any merit.

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
ASSESSMENT OF THE DEPARTMENT'S DISCIPLINARY PROCESS AND  
PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Miscellaneous – General</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Fifty-Seven</b>
<b>Independent Assessor's Recommendation</b>	The Department should do what is necessary to adopt an appeal process for reprimands and when doing so the Department should specify the time within which an appeal of a reprimand may be taken.
<b>Dept. Position</b>	Agree
<b>Dept. Action</b>	The Firefighters Procedural Bill of Rights requires that the employer provide an administrative appeal for punitive action. The Bill of Rights includes the written reprimand as "punitive action".
<b>Status</b>	In progress.
<b>Follow-Up</b>	The Department is working on developing a process which provides the member with the required due process for a written reprimand. The Department will consult with the City Attorney as to whether its proposed process requires negotiation with labor, once that process is identified.

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
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PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Miscellaneous – General</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Fifty-Eight</b>
<b>Independent Assessor's Recommendation</b>	It is strongly recommended the Department review how its resources are being used. To the extent the Department's helicopters, ambulances, cars, trucks, fireboats and fire apparatus, and other resources are being used improperly, the Department should take all appropriate steps to ensure that such unnecessary and unreasonable uses are stopped and employees are placed on notice.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The improper use of City and Department resources is a violation of the public trust. Complaints of such allegations are investigated. Reinforcement of this issue to the members through the officers continues through training and supervision.
<b>Status</b>	Ongoing.
<b>Follow-Up</b>	Department supervisors and managers will continue to monitor their members as to the appropriate use of City and Department resources and to take appropriate action, including reporting the conduct in the Complaint Tracking System when warranted.

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
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PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Miscellaneous – General</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Fifty-Nine</b>
<b>Independent Assessor's Recommendation</b>	The Department should review its policies and practices governing take-home vehicles.
<b>Dept. Position</b>	Agree.
<b>Dept. Action</b>	The Department reviewed its policies and practices governing take-home vehicles and reported its findings to the Board of Fire Commissioners. (See Board of Fire Commissioners Reports 12-005 and 12-021).
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
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PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Miscellaneous – General</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Sixty</b>
<b>Independent Assessor's Recommendation</b>	Direct the Department to provide the Independent Assessor with copies of all Government Tort Claims, all Department of Fair Employment and Housing claims, all Equal Employment Opportunity Commission claims, and all other claims, pleadings or lawsuits of any kind asserting a legal claim against the Fire Department or its members within 72 hours of receipt by the Department.
<b>Dept. Position</b>	Requires further discussion.
<b>Dept. Action</b>	The Department has not been directed to provide the Independent Assessor with all Government Tort Claims, all Department of Fair Employment and Housing claims, all Equal Employment Opportunity Commission claims, and all other claims, pleadings or lawsuits of any kind asserting a legal claim against the Fire Department or its members within 72 hours of receipt by the Department. However, that information is made available to the Independent Assessor when requested if it can be lawfully released.
<b>Status</b>	In progress.
<b>Follow-Up</b>	In progress

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
ASSESSMENT OF THE DEPARTMENT'S DISCIPLINARY PROCESS AND  
PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Miscellaneous – General</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Sixty-One</b>
<b>Independent Assessor's Recommendation</b>	Direct the Department to provide the Independent Assessor immediate and unrestricted access to all Department personnel and payroll records and files regardless of format unless the City Attorney's Office can provide written advice with citations to legal authority citing a valid legal basis for not providing access in no more than thirty (30) calendar days.
<b>Dept. Position</b>	No position.
<b>Dept. Action</b>	The Department currently provides the Independent Assessor access to Department records and files upon approval of the Board of Fire Commissioners and at the direction of the Fire Chief.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None.



**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
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PROFESSIONAL STANDARDS DIVISION**

**MISCELLANEOUS –  
SPECIFIC CASES**

**RECOMMENDATIONS  
ONE-HUNDRED SIXTY-TWO  
TO  
ONE-HUNDRED SIXTY-EIGHT**

**RESPONSE TO THE INDEPENDENT ASSESSOR'S 2010  
ASSESSMENT OF THE DEPARTMENT'S DISCIPLINARY PROCESS AND  
PROFESSIONAL STANDARDS DIVISION**

<b>Category</b>	<b>Miscellaneous – Specific Cases</b>
<b>IA Recomm. No.</b>	<b>One-Hundred Sixty-Two through One-Hundred Sixty-Eight</b>
<b>Independent Assessor's Recommendation</b>	See below.
<b>Dept. Position</b>	None
<b>Dept. Action</b>	Because of the Department's failure to respond to the Independent Assessor's 2010 Audit in a timely manner, the Department believes that acting upon and responding to these "specific case" recommendations is untimely. The Department will move towards ensuring that any policy, judgment or systemic failures that led to the situations identified in these recommendations have been addressed to avoid similar future instances.
<b>Status</b>	Completed.
<b>Follow-Up</b>	None

**Independent Assessor's Recommendations**

162. The Department should determine if there was an intentional failure to cite the guideline offense of falsifying work related documents when recommending and approving a penalty for the chief officer five months after the offense guideline of falsifying work related documents was cited in the clerk-typist's case.
163. The Department should consult with both the District Attorney's Office and prosecutors in the City Attorney's Office to determine if the Department should take any action in connection with potential Brady issues involving the chief officer.
164. The Department should determine if members of the Department knowingly obtained the January 8, 2008 report from the chief officer in violation of an agreement to not ask for or compel written reports, and take appropriate action if they did so.
165. The Department should ensure a thorough and complete investigation of all issues related to the misconduct allegations received on January 23, 2009, is conducted, including, but not necessarily limited to the following:
  - a. What happened at the hospital on January 22, 2009, and did anything else occur to cause the April 29, 2009 letter of complaint;

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- b. What were the advocates told by Department supervisors and managers, the City Attorney's Office, and the attorney's for the hospital and the member whose records were sought about the legal basis for and objections to serving a subpoena before they went to the hospital on January 22, 2009, and did they confirm the subpoena they served provided a valid legal basis for obtaining the medical record(s) they sought;
  - c. If Department advocates engaged in the misconduct, did they do so on their own, or were they encouraged, directed or authorized to do so by Department supervisors and managers, or the City Attorney's Office;
  - d. Why was there a failure to enter the January 23, 2009, complaint in the Department's complaint tracking system any sooner than February 26, 2009, and if so, who was involved in causing the delay;
  - e. Was a non-sworn manager treated differently in anyway when recommending how to handle the complaint, and if so, how was the non-sworn manager treated differently and who engaged in such conduct;
  - f. Why was the case status changed to "Closed-Not Sustained" on July 16, 2009, and who was involved in making the change, when an investigation had not been conducted; and
  - g. Why has the Department failed to conduct the investigation the former fire chief said would be performed on April 29, 2009, and the Department said would be conducted in October and November, 2009, before expiration of the one-year statute of limitations?
166. The investigation of these issues should be completed so that any disciplinary action that is not barred by the statute of limitations may be taken, if supported by the investigation.
167. The Department should provide assurance the Police Department has been notified of the allegations contained in the January 23, 2009, letter, and that assurance should specify the date and manner in which the notification was made.
168. The City Attorney's Office should determine if the City of Los Angeles has a valid claim for malpractice against the private attorney retained to conduct the investigation that was not completed before expiration of the statute of limitations, and whether the private attorney should be requested to place the attorney's malpractice carrier on notice.