



LOS ANGELES FIRE DEPARTMENT

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FIRE CHIEF

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BOARD OF FIRE COMMISSIONERS FILE NO. 15-108
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TO: Board of Fire Commissioners

FROM:  Ralph M. Terrazas, Fire Chief

SUBJECT: IDENTIFYING AND RESOLVING NON-DISCIPLINARY COMPLAINTS AT
INTAKE WITHOUT INVESTIGATION

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 Withdrawn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

Through its intake of thousands of complaints since 2008, the Professional Standards Division (PSD) believes that some complaints can be reviewed and determined to be "non-disciplinary" on their face because the complained about conduct, even if true, would not give rise to punitive action.

Although most complaints will require some investigation, a proportion of complaints which, with a different process of complaint review by a subject matter expert, can be resolved with education, training, and/or corrective action, which will correct the member's behavior and ensure continued public service. These complaints involve a technical violation of a policy or rule which results in minimal harm and are primarily related to emergency medical services provided by the Department.

PSD will continue to accept and track all complaints but recommends the ability to change the designation of a disposition.

RECOMMENDATIONS

That the Board approve the following changes to the discipline process:

1. The Department will identify non-disciplinary complaints at intake.
2. The Department will pursue education, training and/or corrective action, rather than full investigation and punitive discipline, in the non-disciplinary complaints identified at intake.

DISCUSSION

On March 18, 2008, the Board of Fire Commissioners under President Genethia Hudley-Hayes, approved the Department's Audit Implementation Plan responding to 2005 audits by the City Controller and City Personnel regarding leadership and management within the Department (Board of Fire Commission report 08-026).

Mandated within the 2008 Audit Implementation Plan was the creation of a Professional Standards Division to manage a complaint process which (1) accepted and tracked all complaints; (2) investigated all complaints; (3) mandated the imposition of discipline according to the Disciplinary Guidelines if the investigation proved misconduct by preponderance; and (4) never settle disciplinary actions unless changed circumstances in the evidence warranted settlement or dismissal.

PSD identified that investigating all complaints and always imposing discipline regardless of the circumstances were inconsistent with public sector disciplinary practices, which take into account that most acts violating a rule or policy are unintentional, the result of an honest mistake, a failure or lack of training, or a poor decision made without malice. Because of this, most behavior that violates a rule or policy can be modified with training or counseling, without the need for punitive action.

This disciplinary model shifts from a “punitive” model of discipline to a “public service discipline” based model. It provides the Department with structure in determining the appropriate level of corrective and/or punitive action necessary to modify the member’s behavior while maintaining a high level of public service.

Alternatives to Formal Discipline

Beginning in 2010, the Department asked the Board of Fire Commissioners to allow the Department discretion on which complaints were investigated and to consider alternatives to formal discipline even when misconduct occurred.

At its January 21, 2014 meeting, the Board of Fire Commissioners, under President Delia Ibarra, in response to Board Report 14-003, directed “the Fire Chief to explore updates to the discipline process approved in the 2008 Audit Implementation Plan to adjudicate minor complaints with other alternatives such as corrective action or training and counseling, even when there is a relevant disciplinary guideline, in conjunction with the Independent Assessor”.

Based on that direction, PSD has been working with the Independent Assessor and the Fire Commission on developing alternatives to formal discipline, where some minor misconduct is handled with education, training, and/or corrective action, provided that public service can be ensured and the member’s behavior can be modified through non-disciplinary means.

Non-Disciplinary Complaints at Intake

Through its intake of thousands of complaints since 2008, PSD believes that some complaints can be reviewed and determined to be non-disciplinary on their face because the complained about conduct, even if true, would not give rise to disciplinary action. As such, PSD is proposing the following procedure be followed to determine if a Department subject matter expert would be utilized to recommend the appropriate resolution of a complaint.

1. The PSD Commander or his or her designee shall review all complaints received in the Complaint Tracking System (CTS) to determine from the face of the complaint whether the complaint alleges an act by a Department member, which if true, violates a rule, policy, statute, or well-established practice and would result in punitive action against that member.
2. Where, on the face of the complaint, the alleged conduct, if proven, would
 - a. Violate a low-level disciplinary guideline; and
 - b. The accused member has no history of prior sustained complaints; and
 - c. The act appears to be:
 - (i) A mistake made without intent or malice, and/or;
 - (ii) Made during an emergency situation where time to make a decision was limited, and;
 - (iii) The result of a lack of training or an ambiguous or unclear Department policy.

The PSD Commander may consider whether non-disciplinary measures such as counseling, training, or corrective action short of punitive action are appropriate remedies to correct the alleged behavior without the need for an investigation and formal punishment.

3. Should the PSD Commander believe that the member's behavior can be corrected through non-punitive means and that public service can be ensured without further investigation, he or she shall consult with an appropriate Department subject matter expert for input as to whether such closure is warranted.
4. The complaint and any other information the PSD Commander believes is relevant, shall be forwarded to the Department subject matter expert in a confidential manner. Only those persons who have a valid Confidentiality Agreement on file with PSD shall be considered as Department subject matter experts for this process.
5. The Department subject matter expert shall review the information provided by PSD and, based on their expertise, recommend whether they concur that non-disciplinary measures such as counseling, training, or corrective action short of punitive action are appropriate remedies to correct the alleged behavior without the need for an investigation and formal punishment.
6. If the Department subject matter expert concludes that non-disciplinary measures such as counseling, training, or corrective action short of punitive action are appropriate remedies to correct the alleged behavior without the need for an investigation and formal punishment, the PSD Commander and the Department subject matter expert shall collaborate on what Department entity or supervisor shall be responsible for developing and implementing a Corrective Action Plan for the accused member to address the behavior and for documenting and forwarding the completed Corrective Action Plan to the PSD Commander.

7. The PSD Commander shall provide to the identified Department entity or supervisor the complaint and any other relevant information to prepare a proposed Corrective Action Plan which uses non-punitive means to address and correct the member's behavior. The PSD Commander, with the input of the Department subject matter expert, shall review the proposed Corrective Action Plan. If it is deemed insufficient, the PSD Commander shall return the Corrective Action Plan with the reasons why it was deemed insufficient, for revision and resubmission.
8. The proposed Corrective Action Plan may consist of non-punitive approaches, including, but not limited to training, counseling, mentoring, and monitoring. Nothing in the Corrective Action Plan shall include a suspension, written reprimand, or result in a loss of pay for the accused member.
9. The proposed Corrective Action Plan shall include quantified measures of completion (completion of a training course, the frequency of counseling, or training sessions, etc.) such that the PSD Commander can verify that the Corrective Action Plan was, in fact, successfully implemented and completed within 3 months from the complaint intake date.
10. The proposed Corrective Action Plan shall identify how any training component of the Corrective Action Plan will be recorded in the accused member's training record.
11. Once the PSD Commander approves the Corrective Action Plan, the approved Corrective Action Plan shall be returned to the responsible Department entity or supervisor for implementation and fulfillment of its requirements.
12. Once the accused member has fulfilled all of the Corrective Action Plan's requirements based on the quantified measures of completion as stated in Paragraph 9, the Department entity or supervisor shall document the member's fulfillment of the Corrective Action Plan in an F-223 to the PSD Commander and forward it, with copies of any training certificates or other evidence of plan fulfillment.
13. Upon receipt, the PSD Commander in collaboration with the Department subject matter expert, shall review the submitted documents to determine whether the Corrective Action Plan had been fulfilled.
14. If the submitted documents do not show that the quantified standards of completion as stated in the approved Corrective Action Plan have been met, the PSD Commander shall return the documents to the responsible Department entity or supervisor with direction to fulfill the Corrective Action Plan, as approved within a two week timeframe. If the Corrective Action Plan has not been completed following the second attempt, the members involved will be detailed to their assigned Bureau office to complete the Corrective Action Plan.
15. If the submitted documents support that the quantified standards of completion, as stated in the approved Corrective Action Plan, have been satisfied, the PSD

Commander shall record this in the CTS. The PSD Commander shall place the Corrective Action Plan package, with all submitted documents, in the CTS file. The complaint shall then be closed as "Non-Disciplinary" with appropriate notations that the approach counseling, training, or other corrective action was taken.

16. For purposes of progressive discipline, a complaint which is closed as a result of a completed Corrective Action Plan without investigation, as outlined in this procedure, shall not be used as a first offense for purposes of progressive discipline. However, the complaint and the Corrective Action Plan may be used as evidence that the member was on-notice of and trained regarding the relevant rule and policy.
17. For complaints involving allegations of misconduct involving emergency medical treatment or response, the Department subject matter expert is presumed to be the Medical Director.
18. With the approval of the PSD Commander the Department subject matter expert may be the same entity or supervisor who develops the proposed Corrective Action Plan, implements the approved Corrective Action Plan, and/or submits the completed Corrective Action Plan document to the PSD Commander.
19. The authority to review and close complaints as stated in this procedure rests with the PSD Commander. In the event that the Department subject matter expert disagrees with the decision of the PSD Commander, the matter shall be discussed between the two parties for resolution. If no resolution is reached, the decision of the PSD Commander will stand.

Board report prepared by Kristin M. Crowley, Acting Commander, Professional Standards Division.