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8 **UNITED STATES DISTRICT COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA**

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 11 DELPHINE ALLEN, et al.,
 12 Plaintiffs,
 13 v.
 14 CITY OF OAKLAND, et al.,
 15 Defendants.

Case No. C 00-4599 TEH

**DEFENDANT CITY OF OAKLAND'S
 SEPTEMBER 30, 2016 PROGRESS
 REPORT PURSUANT TO SEPTEMBER
 28, 2015 ORDER REQUIRING
 QUARTERLY REPORTS**

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CITY OF OAKLAND

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September 30, 2016

DELPHINE ALLEN v. CITY OF OAKLAND, et al.**PROGRESS REPORT NO. 5**

This is the City's fifth Progress Report. The Court ordered that the City provide quarterly Progress Reports, beginning on December 31, 2015. Only one item remains outstanding from the Court Investigator's April 2015 report.¹ Accordingly, this report focuses on the City's recent police-related arbitration decisions and the City's progress in implementing the fourteen (14) recommendations in the Court Investigator's more recent March 21, 2016 report. Of those fourteen recommendations, eight (8) were complete as of our last progress report. This report focuses on the remaining six (6) recommendations.²

I. Arbitration Decisions Since June 2016 Progress Report

One police-related arbitration decision has been issued since we filed the June 2016 progress report.

	GRIEVANT & VIOLATION	CITY'S DISCIPLINE	ARBITRATOR'S DECISION	OUTCOME	DECISION DATE
1	Officer A Miranda Violation	2-Day Suspension	Upheld City's discipline.	2-Day Suspension	6-27-2016

¹ The one outstanding item from Court Investigator's April 2015 report is the recommendation for OPD, in consultation with OCA, to address outdated rules and policies. OPD continues to work on updating its entire policy manual and remains on track to complete the project by late 2016 or early 2017.

² We have numbered the remaining six recommendations using their original numbering, so they can more easily be cross-referenced with the Investigators report and the City's last progress report.

II. Implementation of March 2016 Recommendations

5) ***IAD Civilian Manager***

Recommendation:

The Civilian Manager within IAD should be responsible for developing institutional memory within IA, potentially through the development of an IAD manual.

Status:

The IAD manual project remains open and ongoing. Approximately 75% of the policies are near final drafts, yet require final review and approval. The remaining 25% of the policies are still undergoing revisions.

The IAD continues to track and report all department-wide training and policy recommendations issued from investigations. IAD is scheduled to meet with Training and Policy later this month to discuss further recommendations for strengthening the tracking and reporting process.

Projected Time Frame for Completion: March 2017

8) ***OPD Departmental Counsel***

Recommendation:

The current relationship between OPD and OCA for services beyond discipline investigations and arbitrations is inadequate and puts the Department's discipline process at risk. OPD should hire its own internal general counsel, who reports directly to the Chief. The City should provide the necessary funding to the Department for this position.

Status:

As previously discussed, OCA has assigned, on an interim basis, an experienced supervising attorney to serve as OPD's Departmental Counsel. The Police Department and City Administrator have provided positive feedback to the City Attorney about the Interim Departmental Counsel's service.

The City has begun the process for permanently filling this position. We originally projected a completion date of September 2016, but the necessary vacancy in the City Attorney's office (and thus the necessary

funding) took longer than expected to become available. In accord with our previous reports, the police chief will be involved in the hiring process for recruiting, hiring, evaluating and reassigning Departmental Counsel.³

Projected Time Frame for Completion: December 2016

9) Deputy City Attorney Full-Time Equivalent

Recommendation:

In order to maintain the position of the Deputy City Attorney currently assigned to IAD, future Oakland City budgets should include a full-time-equivalent attorney that is specifically charged with providing legal services to OPD related to IAD investigations, police arbitrations, and other police discipline matters. Should OCA fail to provide OPD with the services of that attorney, or should that attorney fail to provide the level of service required by OPD, the Mayor and City Administrator should send a budget amendment to City Council to reduce the City Attorney's departmental budget allocation in an amount equivalent to the Deputy City Attorney's salary.

Status:

On June 21, 2016, the City Council voted to implement this recommendation as part of the Council's adoption of mid-cycle budget amendments.

Projected Time Frame for Completion: Done

10) Labor and Employment Supervisor

Recommendation:

The current Deputy City Attorney overseeing the Labor and Employment Unit should be reclassified as "Special Counsel – Labor and Employment." The position should require expertise in labor and employment matters, and should hold responsibility for overseeing OCA's work related to police discipline investigations and arbitrations. This will be an at-will

³ The OPD Departmental Counsel position likely will be filled before the OPD Chief position is filled. Accordingly, the City Administrator (as opposed to the Chief) will be involved in the current process for hiring Departmental Counsel.

classification, as the at-will status will help ensure that the person in this position continues to be held responsible for his or her efforts to oversee labor and employment matters, including police discipline investigations, grievances, and arbitrations.

Status:

The City's Department of Human Resources Management has begun the process of creating the new job classification. The process involves meeting and conferring with the union and presenting a resolution to council recommending that the Civil Service Board authorize the Special Counsel – Labor and Employment classification. The City originally projected a completion date of September 2016, but the process has taken longer than expected.

Projected Time Frame for Completion: January 2017

11) Quarterly Reports to City Council

Recommendation

OCA should report to City Council quarterly on recent arbitration decisions, its efforts to support the police discipline process, and recent developments in police discipline. OPD should simultaneously provide a separate quarterly report to the City Council regarding IAD investigations, police personnel trainings, updates to police policy, and recent developments in police discipline. Both OPD and OCA should simultaneously provide their reports to the Mayor and City Administrator.

Status:

The City Administrator and OCA scheduled quarterly public reports to the Council on OPD's and OCA's efforts to increase and sustain police accountability. The first quarterly reports were presented to the City Council's Public Safety Committee on July 12, 2016. The next Quarterly report will be presented to the City Council's Public Safety Committee on October 25, 2016.

Projected Time Frame for Completion: Done

14) *OIG Performance Measurements*

Recommendation:

OIG should develop a plan to measure the performance of OPD at various points in the process of police discipline, including intake, investigation, Skelly hearings, and arbitration. OIG should also measure whether OPD is receiving the support that it needs to carry out fair discipline. The Mayor and City Administrator should present a budget that provides OIG with the resources it needs, including accredited auditors, to perform this additional function.

Status:

OIG has adjusted its audit plan for the remainder of 2016 to include more focused reviews of discipline-related processes and issues. The audit plan was approved following review and collaboration with the Monitor, the Independent Monitoring Team, and Plaintiffs' attorneys. The revised and improved scope of auditing work includes objectives designed to measure the presence or absence of Office of the City Attorney partnership during the investigative and discipline process.

Several audits related to discipline, discipline processes, or officer misconduct have already been completed, are planned, or are now in progress. In May, OIG reviewed the tenure and training of investigators assigned to the Internal Affairs Division. This review determined that Internal Affairs Division investigators maintain an acceptable level of training and experience and that the majority of cases assigned to Investigators were processed within the 180-day deadline. The OIG Monthly Report for July reviewed the consistency of discipline resulting from misconduct investigations and found that discipline is generally equitable with reasoning for variance being articulated on the Pre-Discipline Report as required.

The July Report also evaluated the Skelly process and found that the recent addition of a designated City Attorney's Office (CAO) Attorney assigned to OPD has improved the overall Skelly process. A significant result of collaboration between the two Departments was a training course that all potential Skelly Officers were required to attend that covered such topics as Skelly Hearing Basics, the Skelly process, Skelly Officer Responsibilities, and Confidentiality.

The August OIG Report reviewed the Department's handling of misconduct complaints. A planned September review of Internal Affairs Division investigations was postponed with approval in order to prioritize

OIG resources and focus on a needed review of hiring and training practices. A review of recent discipline cases that are either pending, in progress, or concluding with arbitration proceedings is currently underway and scheduled to be included in the OIG August Report. The completed reviews offered significant findings and made recommendations to improve existing processes overall.

Projected Time Frame for Completion: Done or plans in progress for the remainder of 2016

III. Conclusion

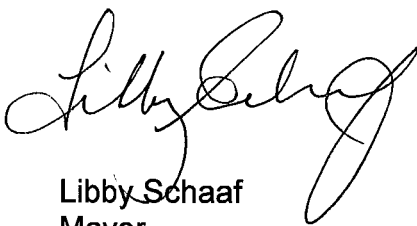
The City's remains committed to making OPD a national model of constitutional public safety services. We have been working hard to sustain the Department's success in many areas and working equally hard to improve the Department in other areas. In terms of improving, the City has been focused on investigating recent allegations of serious misconduct by some officers and holding the responsible officers accountable.

The City has also begun its nationwide search for a new Chief of Police. Community input and involvement are central to the recruitment initiative Mayor Schaaf and City Administrator Landreth are spearheading. The City is holding public sessions related to the new police chief hiring process in several languages in various parts of Oakland. The City is also receiving community input through an online platform and a phone line. The City's recruitment initiative is designed to foster communication and trust with all the communities we serve and protect.

While the City conducts a nationwide search for permanent Chief of Police, OPD is under the management of Oakland City Administrator Sabrina Landreth and Assistant Chief David Downing. OPD command staff report to the City Administrator on all personnel and administrative matters and to Assistant Chief Downing on tactical and operational matters.



Barbara J. Parker
City Attorney



Libby Schaaf
Mayor



Sabrina Landreth
City Administrator