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

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
 DECEMBER 30, 2016 PROGRESS
 REPORT PURSUANT TO SEPTEMBER
 28, 2015 ORDER REQUIRING
 QUARTERLY REPORTS**

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CITY OF OAKLAND

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December 30, 2016

DELPHINE ALLEN v. CITY OF OAKLAND, et al.**PROGRESS REPORT NO. 6**

This is the City's sixth Progress Report. The Court ordered that the City provide quarterly Progress Reports, beginning on December 31, 2015. There is only one outstanding item 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 March 21, 2016 report. The City had implemented ten (10) of the fourteen recommendations when we issued our last progress report in September 2016. This report focuses on the remaining four (4) recommendations.²

I. Arbitration Decisions Since September 2016 Progress Report

One police-related arbitration decision has been issued since we filed the September 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	12-14-2016

¹ The one outstanding item from the Court Investigator's April 2015 report is the recommendation for OPD, in consultation with OCA, to address outdated rules and policies.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 is on track to complete the project in 2017.

² We have numbered the remaining four recommendations using their original numbering, to facilitate cross-referencing with the Investigator's 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. 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 nearly finished the process for permanently filling this position. In accord with our previous reports, the City Attorney's hiring decision is being made in collaboration with the City Administrator.³

Projected Time Frame for Completion: December 2016

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 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 developed the proposed classification and is coordinating the meet and confer process with the union. As we advised in prior reports, 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.

Projected Time Frame for Completion: March 2017

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.

³ Since the City Attorney will hire OPD Departmental Counsel before the City hires an OPD Chief, the City Administrator (as opposed to the Chief) has been involved in the current process for hiring Departmental Counsel.

Status:

OIG's original scope of auditing for the fourth quarter of 2016 was adjusted in order to prioritize OIG resources and focus on a needed review of hiring and training practices. OIG had originally planned to evaluate arbitrations within this last quarter, but the lack of a recent population sample made postponement necessary. With the collaboration and approval of the Independent Monitoring Team, OIG completed a revised schedule and scope of audits, reviews and inspections for the 2016 calendar year. Many of these projects addressed the process of police discipline, including intake and investigation. Reports for the months of August, September, October and November have been published since our last briefing, and the report for December is approaching its final stage of approval. The audits within these Reports were designed to achieve and maintain sustainable compliance with the Negotiated Settlement Agreement and are all publically available on the Department's website. Specific to the process of investigating police misconduct, Report contents included:


- **Refusal to Accept or Refuse Misconduct Complaints:** OIG performed a high-level review of ten complaints involving the alleged failure of personnel to properly accept or refer a complaint of misconduct for investigation. Slightly more than half of these investigations sustained OPD personnel for policy violations, and all investigative findings were determined to be sound. Additionally, OIG reviewed body-camera footage and other available documentation to verify that the complaint referral process is used as required and as intended.
- **Tracking of Policy and Training Recommendations in IAD Cases:** OIG evaluated the process of beneficially changing policy, training, or procedure related to investigations of misconduct when it is determined that better policy, training, or procedure may mitigate or prevent future misconduct.

In November, OIG met with the Independent Monitoring Team to craft a suitable scope of work for the first seven months of 2017. Although the resulting schedule remains flexible, several topics related to the investigation and discipline processes were identified including the appropriate use of *Lybarger* forms and process, the process, preparation, or outcome of discipline arbitrations, and the thoroughness of IAD investigations.


Projected Time Frame for Completion: Continuous.

III. Conclusion

As eventful as 2016 has been for the City and our police department, it has been a time of self-examination, resilience, and continued transformation. The City and OPD have dealt with and continue to address allegations of serious misconduct by a number of officers. While this misconduct has been and continues to be extremely disturbing to the undersigned and all of our City's leaders, it has not discouraged us. On the contrary, it has strengthened the City's resolve to make OPD a national model of constitutional public safety services. The City continues to focus on addressing the misconduct, including holding the culpable officers accountable and taking measures to prevent recurrences. In addition, the City has nearly completed its nationwide search for a new Chief of Police, spearheaded by Mayor Schaaf and City Administrator Landreth. Over 300 community members provided input at public sessions in various parts of Oakland, and over 600 people provided input through the City's online survey. In short, the City's commitment to sustaining and building upon the OPD's achievements is steadfast and unwavering.



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