

1 BARBARA J. PARKER, City Attorney, SBN 069722
 OTIS McGEE, JR., Chief Assistant City Attorney, SBN 071885
 2 RYAN G. RICHARDSON, Special Counsel, SBN 223548
 KIMBERLY A. BLISS, Deputy City Attorney, SBN 207857
 3 JAMILAH A. JEFFERSON, Senior Deputy City Attorney, SBN 219027
 One Frank H. Ogawa Plaza, 6th Floor
 4 Oakland, California 94612
 Telephone: (510) 238-7686; Facsimile: (510) 238-6500
 5 Email: jjefferson@oaklandcityattorney.org
 R20752/2102614

6 Attorneys for Defendant
 7 CITY OF OAKLAND

8
 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
 MARCH 31, 2017 PROGRESS REPORT
 PURSUANT TO SEPTEMBER 28, 2015
 ORDER REQUIRING QUARTERLY
 REPORTS**

21
 22
 23
 24
 25
 26

1 Defendant City of Oakland (“City”) files the attached progress report pursuant to the Court’s
2 September 28, 2015 Order Requiring Quarterly Reports on Arbitrations which provides:
3 “Defendants shall continue to implement these recommendations and shall file quarterly progress
4 reports on or before March 31, June 30, September 30, and December 31 each year.” September
5 28, 2015 Order at 1:12-16 (Dkt. No. 1071). The next report is due on March 31, 2017.

6 There are no attachments to the progress report.

7
8 Dated: March 29, 2017

9 BARBARA J. PARKER, City Attorney
10 OTIS McGEE, JR., Chief Assistant City Attorney
11 RYAN G. RICHARDSON, Special Counsel
12 KIMBERLY A. BLISS, Deputy City Attorney
13 JAMILAH A. JEFFERSON, Senior Deputy City Attorney

14 By: /s/ Barbara J. Parker
15 Attorneys for Defendants
16 CITY OF OAKLAND, et al
17
18
19
20
21
22
23
24
25
26

CITY OF OAKLAND



ONE FRANK H. OGAWA PLAZA 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney
Barbara J. Parker
City Attorney

(510) 238-3601
FAX: (510) 238-6500
TTY: (510) 238-3254

March 27, 2017

DELPHINE ALLEN v. CITY OF OAKLAND, et al.

PROGRESS REPORT NO. 7

This is the City's seventh 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 as of our December 2016 progress report. This report focuses on the remaining four (4) recommendations.²

I. Arbitration Decisions Since December 2016 Progress Report

No police-related arbitration decisions have been issued since we filed the December 2016 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.

¹ The one outstanding item from the Court Investigator's April 2015 report is the recommendation that OPD, in consultation with OCA, 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.

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.

Projected Time Frame for Completion: May 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 assigned, on an interim basis, an experienced supervising attorney to act as OPD's Departmental Counsel. The Police Department and City Administrator provided positive feedback to the City Attorney about the Interim Departmental Counsel's service. In January 2017, OCA permanently appointed this same attorney to serve as OPD's Departmental Counsel.

The appointment resulted from close coordination between the City Attorney and the City Administrator. The City Attorney's Office interviewed a number of qualified applicants and identified two finalists. The City Administrator interviewed both finalists and concurred with the City Attorney regarding appointing the Interim Department Counsel as OPD's Departmental Counsel.

Projected Time Frame for Completion: Completed.

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:

As we previously advised, Human Resources (“HR”) has developed the proposed classification and is coordinating the meet and confer process with the union. The process involves meeting and conferring with the union and presenting a resolution to the City Council recommending that the Civil Service Board authorize the Special Counsel – Labor and Employment classification. The City has met with the union on one occasion and HR has been working to coordinate additional meet and confer sessions with the union. Given the current status, we anticipate that the process will be completed by the end of this fiscal year.

Projected Time Frame for Completion: July 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.

Status:

OIG presented its comprehensive review of OPD hiring and training practices in January 2016. Although the report was not directly tied to discipline and discipline outcome processes, the report’s catalysts were the serious and unacceptable incidents of misconduct which became the focus of the Court’s March 23, 2016 Order. In collaboration with the Monitor, his team, and the City Auditor’s Office, OIG produced a comprehensive report designed to address the core tenets of the Negotiated Settlement Agreement: “the best available practices and procedures for police management in the areas of supervision, training and accountability mechanisms.”

OIG took a comprehensive approach and selected 78 officers for review who had engaged in serious misconduct, received serious discipline, or had otherwise engaged in unethical behavior since 2012. OIG evaluated the relevant policies, practices, and procedures in use during the hiring and training phases, as well as the background data, academy performance data, field training performance data, and early warning system data tied to these specific officers. Although the report found no simple commonality could be identified among the group, the report definitively revealed weaknesses in the Department's recruitment, training, and early warning system. OIG made eleven recommendations to systematically address preferred practices and strengthen control measures in order to hire, train, and retain the most qualified officers, while also properly addressing those who may pose an elevated risk of committing misconduct. The Department accepted each recommendation and an action plan to promote, improve, and sustain these practices is ongoing.

OIG continues its revised practice to produce monthly reports on policy compliance and assessment of police practices and outcomes. The January Monthly Accountability Progress Report completed two reviews which are related to the management and accountability of issues relating to misconduct: (1) the handling of criminal cases dropped due to poor, defective, or mishandled warrants, evidence, or testimony and (2) an audit of the Department's handling of personnel arrested, sued, or served with administrative process. The February Report evaluated adjustments made to Task 34 stop data reporting as recommended by Stanford University, reviewed follow-up conducted to improve the handling of criminal investigations of OPD personnel, and assessed operational risk and performance of the Department's handling of confiscated or controlled U.S. currency.

OIG remains fully staffed and funded with a scheduled scope of auditing work which lasts through July 2017. The OIG will collaborate with the Independent Monitoring Team and plaintiffs' attorneys before scheduling future reviews for the remainder of the year.

Projected Time Frame for Completion: Continuous.

III. Conclusion

As the City begins a new year, continuing and sustaining improvement of our police department remains a top priority for the undersigned. As the City and our police department continue to address some of the major challenges that surfaced last year, we recognize that new challenges lie ahead. Although we cannot predict what those

DELPHINE ALLEN v. CITY OF OAKLAND, et al. – PROGRESS REPORT NO. 7

March 27, 2017



PAGE 5

challenges will be, we do know the City is committed to meet them head on. Our goal is for the Department to be a model police agency, exemplifying a fair, constitutional, and effective public safety service. Accordingly, we understand that we must remain eager to improve and be willing to continue self-reflection. The City has taken a major step forward with the appointment of our new Chief of Police. After a nationwide search spearheaded by Mayor Schaaf and City Administrator Landreth, the Mayor was proud to swear in Chief Anne Kirkpatrick on February 27, 2017. Finally, in the spirit of self-reflection, the City continues to work with Court-appointed investigator Ed Swanson as he reviews IAD case 15-0771. We look forward to receiving his findings.

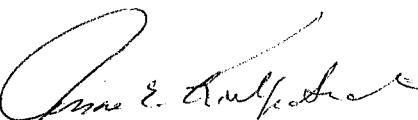
Barbara J. Parker
City Attorney



Libby Schaaf
Mayor



Sabrina Landreth
City Administrator



Anne Kirkpatrick
Chief of Police