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# LOS ANGELES FIRE DEPARTMENT



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BOARD OF FIRE COMMISSIONERS  
FILE NO. 12-145

TO: Board of Fire Commissioners

FROM: Brian L. Cummings, Fire Chief

SUBJECT: DISCIPLINE PHILOSOPHY; CONSIDERATION OF  
ALTERNATIVE DISCIPLINE RESOLUTION STRATEGIES TO  
MODIFY OR CORRECT BEHAVIOR IN LIEU OF PUNITIVE  
ACTION

FOR INFORMATION ONLY:	<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 Withdrawn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

## **For Information Only:**

### **Summary:**

The purpose of this Informational Board Report is to provide the HRDC/Personnel Committee with background as to the current philosophy and approach of the Professional Standards Division (PSD) in implementing the current disciplinary process; to correlate the existing philosophy and approach with operational challenges currently facing PSD and to inform the Committee of "Alternative Discipline Resolution" strategies existing in the public sector which may correct a member's behavior without the need for punitive action.

### **BACKGROUND**

In the aftermath of high profile hazing incidents and the Los Angeles Fire Department's (LAFD) handling of disciplinary issues from those incidents, the City Controller and the Personnel Department conducted audits of the Department's management practices as to EEO and disciplinary investigations in 2006. Both reviews were highly critical of the Department's existing practices and recommended that the LAFD:

2. Establish a centralized mandatory tracking and reporting system for disciplinary and corrective actions that includes all measures taken at each LAFD level;
3. Develop, with input from the firefighter and chief unions, a set of standard disciplinary penalty guidelines for sworn firefighters;
4. Once the disciplinary penalty guidelines were developed, assure that they are consistently applied and fairly administered;
5. Eliminate 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 by proposing penalties consistent with the disciplinary penalty guidelines;
6. Create a separate Internal Affairs Division within the LAFD with permanently assigned investigative staff who possess the necessary expertise, experience and training to conduct the wide range of investigations to ensure public accountability of the LAFD, as well as prepare and maintain professionally documented investigative files.
7. Require that the separate Internal Affairs Division report to both the Fire Chief and Fire Commission, but be otherwise removed from the chain of command.
8. Amend Charter Section 1060(g) of the Disciplinary Procedures for the LAFD to mirror the provisions of Charter Section 1070(f) for the Police Department to add a non-sworn, independent civilian member to the Board of Rights;
9. Revise its current investigation procedures to ensure that all pertinent witnesses are interviewed and that the interviews are thoroughly documented.

In response, the Mayor's Office convened the LAFD Professional Standards Division Working Group to present a final plan that incorporated best practices, realistic timelines and resources necessary to implement the best model for the PSD. The product of these efforts resulted in the creation of the present structure and staffing of the PSD. Beginning in 2008, PSD implemented processes to strictly follow the Controller's and Personnel Department recommendations and the intent of the Stakeholders by:

1. Creating the Complaint Tracking System (CTS) to track all complaints received by the LAFD against its members;

2. Assessing incoming complaints to determine if they alleged misconduct against LAFD members and if so, assigning the complaint for investigation to either the chain of command or to PSD;
3. Providing an eight-hour training program to all 700 Officers and Chief Officers on basic administrative investigations skills;
4. Creating procedures for the handling of complaints of serious misconduct and EEO/Hazing by the PSD to ensure thorough, complete and well documented investigations;
5. Creating a review and adjudication process within the PSD to determine whether the investigation is complete and to adjudicate the complaint without involvement of the chain of command;
6. If one or more of the allegations were sustained, proposing discipline consistent with the Disciplinary Guidelines;
7. Utilizing an investigative team of a sworn Advocate and a civilian Investigator on all cases to marry LAFD knowledge with investigative expertise in all PSD cases;
8. Ensuring that all implemented practices not only satisfied the City Charter and existing MOUs, but complied with the newly enacted Firefighters Procedural Bill of Rights (FFBOR).

Almost immediately, PSD found that strictly adhering to these processes produced operational challenges. The number of complaints received in CTS in 2009 and 2010 exceeded the Audits' estimate of 100 complaints annual by ten fold. The caseload among three civilian Investigators, four sworn Captains and two contract, part-time Senior Personnel Analysts (for EEO cases) initially assigned to PSD, immediately became overwhelming. The need to thoroughly document interviews and investigative steps in the Advocate Report added to that burden. Further, conflict between the statute of limitations provisions of the City Charter and the FFBOR required that the LAFD complete all investigations within one year, without the ability to extend that period as allowed under the FFBOR. Finally, the LAFD's strict adherence to the Disciplinary Guidelines in imposing punitive action, coupled with refusing to lower proposed penalties in informal "settlement" discussions, led to an increase in members requesting Boards of Rights to challenge their discipline. The lack of permanent PSD staffing to prepare for and present Boards of Rights added to the backlog of hearings.

On March 27, 2010, the Independent Assessor, Board of Fire Commissioners, issued his Assessment of the LAFD's Disciplinary Process and Professional Standards Division, concluding among his many findings that the increased number of complaints received by the LAFD "has severely impacted and will continue to severely impact its ability to effectively conduct investigations, prosecute disciplinary hearings, target issues of concern and appropriately manage the disciplinary system without additional and qualified resources being provided."

On September 20, 2010, the LAFD presented a staffing plan which included the creation of eight Special Investigator II positions and one Management Analyst II position to implement the recommendation to permanently assign experienced civilian investigative staff, which was approved by City Council in mid 2011. By the beginning of 2012, the eight Special Investigator II positions had been filled.

The number of complaints received by the Department has consistently gone down, in part, due to a reduction of internal complaints (from 803 in 2009 to 381 in 2011). However, in that same period, the number of EEO Unit investigations grew from 46 in 2009 to 63 in 2011. The number of sustained complaints resulting in punitive action also rose in that period. At the same time, the quality of field investigations conducted by the chain of command languished because of the inability of PSD to provide adequate support and training to the field. This led to PSD taking over a number of field investigations which appeared to have sustainable allegations, adding to its existing caseload. The number of pending Board of Rights currently stands at twenty-five. Five are "LAFD directed" where the LAFD sends the member to a Board of Rights for egregious misconduct. The remaining 20 are "Member requested" where the member is challenging the proposed discipline (including suspensions as low as three days). The predominate reason given for "Member requested" Boards is not that they are not guilty of the alleged act, but that they believe the proposed penalty is unfair.

PSD has implemented a number of changes to its processes to address these issues. These include using single investigators (as opposed to the sworn/civilian team) whenever possible, utilizing a "short form" report to document investigations where no allegations are sustained and empowering civilian investigators to interview sworn members alone (through the use of a Fire Chief letter presented to the member). However, the extent that PSD may modify its investigative practices is sometimes subject to "Meet and Confer" with the Unions, slowing its ability to make changes as needed.

Based on its four years of experiences since 2008, PSD has also recommended changes to the disciplinary guidelines and the City Charter. Specifically, PSD has recommended that the Penalty Guidelines be modified to address problems with verbiage that could not have been foreseen by the Stakeholders in 2008 but

which have created difficulties in proposing consistent and fair discipline to match the conduct. PSD has also recommended implementing base penalties, based on the Core Values, as the starting point for the Penalty Guidelines, instead of the arbitrary one-third for UFLAC and one-half for COA currently in use. Finally, PSD has recommended amendments to the City Charter to address a number of issues, including the statute of limitations and the composition of the Board of Rights to include a civilian Hearing Officer or an Administrative Law Judge.

Since the beginning of 2012, two Special Investigator positions have become vacant. Further, the contract for the two part-time Senior Personnel Analysts assigned to EEO cases was not renewed for 2012-2013. Finally, the number of Fire Captains detailed to PSD had been reduced from seven in 2010 to four in 2012.

Because of these factors, PSD has been unable to reduce its backlog of active investigations, leading to extraordinary delays in completing cases. It is not unusual for a member to be served with final papers on the eve of the running of the statute of limitations. Disagreement with the penalty guidelines continues to result in member's requesting Boards of Rights for low-level proposed discipline, adding to the backlog.

## **ONGOING ISSUES WITH THE DISCIPLINARY PROCESS**

### **Disciplinary Processes Take Excessive Amounts of Time to Complete.**

The current approach to conducting and adjudicating disciplinary investigations often exceeds eight months to complete, with an increasing number of complex cases taking the full one-year statute of limitations period to adjudicate. The backlog of Board of Rights has been bogged down by the large percentage of member requested Boards of Rights to challenge what they believe to be unjust penalties under the Penalty Guidelines.

### **Disciplinary Processes and Outcomes Perceived to be Unfair by the Members**

The perception of many members is that the disciplinary process takes too long and is inconsistent in application. This is partly due to the long delay in investigating and adjudicating complaints, the perceived focus on "punishment" in the current process, PSD's strict adherence to the penalty guidelines and the delays in the completing investigations and Boards of Rights. The delay lessens the connection between the alleged misconduct and the penalty and leaves the member in limbo until he or she is served.

### **Disciplinary Process as an Ongoing Source of Conflict with the Unions**

Likewise, the strict adherence to the intent of the Controllers, Personnel and Stakeholders has created an ongoing source of conflict with the Unions over issues such as representation, penalties and investigative practices. The message consistently heard from the Unions is that the Penalty Guidelines are rigid and harsh, intended solely to punish the member and not to correct his or her behavior and the perception that PSD's strict adherence to the Stakeholders' intent equates to a lack of cooperation and collaboration.

### **The Disciplinary Appeal Processes Often Weaken the Current Disciplinary Model**

The LAFD's experiences since the creation of PSD suggest that both the Board of Rights process and the ability of members to challenge a Board decision at arbitration weaken the effectiveness of the current disciplinary model.

The current composition of a Board of Rights by three Chief Officers means they are forced to rule on significant legal, evidentiary and procedural questions without immediate legal advice. In several Board Hearings not involving terminable misconduct, the Board of Rights has almost always lowered the penalty from what the LAFD had proposed under the disciplinary guidelines. This repeated pattern of Board findings suggest a disconnect between the Penalty Guidelines as they currently exist and the collective opinions of the Chief Officers sitting in judgment.

Under the current Memorandum of Understandings, a member may take a decision by a Board of Rights to arbitration. Under the wide ranging discretion of the arbitrator, the matter may be reviewed as to specific issues raised by the parties or may be heard *de novo* (or in its entirety), giving the member a second opportunity to appeal the LAFD's actions. The multiple opportunities for the member to challenge the proposed punitive action dilute the intent and weight of the LAFD's decision to impose discipline, the disciplinary process and the Disciplinary Guidelines.

### **Punitive Action Does Not Address Underlying Issues in Workplace Environment Issues Common to the LAFD**

One of the most challenging types of complaints received by PSD is an allegation a single act of misconduct stemming from a simmering dispute with other members in the workplace. Although PSD may investigate and adjudicate the single act, the current disciplinary process does not require nor incorporate meditative or non-punitive options to address, remedy or resolve the issues

underlying the misconduct, leaving the likelihood of another incident occurring to remain high.

### **The Demand on PSD Resources for Serious Misconduct Investigations and Boards of Rights is at a Breaking Point**

Consistently, over half of the active complaint investigations at any one time are assigned to PSD because of their complexity or nature (i.e. serious misconduct, criminal, EEO, off-duty, etc.) Inadequate field investigations which might be sustained with additional investigation are taken back by PSD to complete, adding to their case burden. Finally, the increased number of Board of Rights (80% of which are member requested challenging the proposed disciplinary action) has created yet another burden on PSD resources.

The resulting domino effect has resulted in investigations taking months to complete, adjudications occurring right before the statute of limitations expires and other investigations suffering because of pending critical investigations and/or Boards of Rights.

### **The Perception of the Current Disciplinary Model is to Punish, Not Change Behavior**

The experiences of the past four years, including numerous discussions with involved members, Union leadership, Chief Officers, and internally within PSD support that the intent of the current disciplinary model is to punish members for violating LAFD rules and regulations. A repeated example of this is the repeat offender in discourtesy complaints stemming from emergency medical responses. Although the disciplinary process will address the issue through punitive action, nothing in the LAFD's approach attempts to address how to modify the member's behavior in the positive, often resulting in the filing of additional complaints for similar behavior.

### **CONTINUING NEED FOR TRADITIONAL FORMAL DISCIPLINE IN EGRIGIOUS CASES**

Most traditional discipline models, including those heavily relied upon by most City departments and most public sector agencies are premised on rule-dictated behavior and punishment for rule violations.

There is no question that there is and always will be the need for formal traditional discipline in the LAFD. In those few cases where the Fire Chief has determined that someone's actions has violated the public trust to the point that he or she can no longer remain a member, the LAFD must have a provable quantum of evidence beyond preponderance and must follow due process in imposing punitive action. PSD has moved towards recommending amendments

and modifications to the existing Disciplinary Guidelines and City Charter Section 1060 to bring needed changes to the formal disciplinary process.

**CONSIDERATION OF PHILOSOPHICAL SHIFT TO DEPARTMENT DISCIPLINE: MODIFY BEHAVIOR FOR MEMBERS WHO REMAIN A VALUED ASSET TO THE LAFD**

In the majority of LAFD sustained complaints however, the LAFD has no intent to remove the member from service. Instead, the LAFD seeks to change the member's behavior through the means available to it. Unfortunately, with punitive action as its only option, the currently disciplinary process and resulting discipline (after a prolonged investigation and adjudication) often leaves the member bitter about the process, without being given tools or training which might help them avoid a recurrence.

Merriam-Webster defines "discipline" as follows:

**dis·ci·pline**

noun \ˈdi-sə-plən\

1: punishment

2 obsolete : instruction

3: a field of study

4: training that corrects, molds, or perfects the mental faculties or moral character

The *Online Etymology Dictionary* states that the word "discipline" is derived from the Latin word "discipulus", meaning "instruction given to a disciple".

As the definition of discipline states, current literature in public sector discipline (predominately in the perceived militaristic environment of law enforcement) suggests training, not punishment, should be the goal of the disciplinary process. The Federal government and some law enforcement agencies have implemented alternative discipline resolution strategies to encourage employees to change their behavior, while recognizing the need for punitive action and traditional formal discipline for limited number of egregious cases.

This philosophical shift was articulated by Los Angeles County Sheriff Lee Baca in his 2007 Leadership Message:

*Our leadership values require us to believe that until a Department member leaves our service, he or she will always be our responsibility. We must always care for all of our personnel, work closely with those who are experiencing problems, and be straightforward in building a trustworthy relationship.*



*We must care and give to those in need whether they like us or not. Ineffective discipline is when we fail to be fair. Not listening to why Department members have acted in violation of a policy is widely believed to be unfair, especially by me.*

*The focus of discipline should be on creation of a corrective action plan rather than punishment for punishment's sake. The plan should emphasize training and remediation along with more creative interventions designed to correct deficits in performance and maximize the likelihood of the Department member and his or her peers responding appropriately in the future.*

PSD believes that a focus on “modifying behavior” through corrective action and training is an appropriate goal for the LAFD’s discipline process and introduces this philosophical shift with a brief outline of existing strategies for consideration.

### **ALTERNATIVE DISCIPLINE RESOLUTION STRATEGIES**

Alternative Discipline Resolution models currently in use in public sector discipline include:

#### **Pre Disposition Settlement Agreements (Washington State Patrol)**

The Washington State Patrol adopted a discipline matrix in January 2002 that provided an opportunity for officers to “admit their mistake and move on.” Officers can choose to acknowledge their mistake and accept the sanction from the matrix without a lengthy investigation and hearing. In its first year of implementation, WSP resolved 43 percent of its complaints without a formal investigation and most were resolved in less than 14 days. The first full year of implementation saw a reduction in lengthy investigations, reduced costs, a reduction in citizen complaints and considerable cost savings. The major benefit of the process is to communicate that taking responsibilities for minor mistakes is healthy and valued by the agency.

#### **Education-Based Discipline (Los Angeles County Sheriff’s Department)**

Education-Based Discipline (EBD) is designed to focus on behavioral change through education rather than punishment. The process gives the individual the option of voluntarily participating in a personally designed remedial plan that can include education, training or other options designed to address the misconduct issue, including writing a research paper. The option to participate is open to employees who are facing a one to 30-day suspension. One mandatory component of the program is an eight-hour training session developed specifically for EBD focusing on understanding the influences that affect decision-making.

### **Conditional Official Reprimand (Los Angeles Police Department)**

Beginning in 2008, LAPD implemented the Conditional Official Reprimand (COR) as part of its strategy to enhance employee development through the disciplinary process. In lieu of imposing an initial suspension or higher penalty for a first offense, the COR is issued, setting conditions of a future penalty for recurrence of the misconduct while reprimand the conduct in the instant case. In its April 10, 2012 report to the Board of Police Commissioners, the Department concluded that the recidivism rate for officers issued CORs was lower than that of officers penalized under the "legacy penalty scheme" (2% versus 11.9%).

### **Mediation (Denver Police Department)**

The Denver (Colorado) Police Department has made mediation as part of its approach to handling citizen complaints and discipline. A complaint is dropped if officers involved volunteers to participate in the mediation with the complainant, regardless of the outcome. With professional mediators, officers and citizens meet at a neutral location to discuss the circumstances of the complaint and reach an understanding as to what happened and why. The satisfaction level of both officers and citizens in the way complaints have been handled in the three years the program has been operating has increased from 10-15 percent to 75-85 percent.

### **Early Intervention**

Early intervention systems are designed to track various indicators and provide early identification of members whose performance indicates emerging problems and then intervene in a useful way. Thresholds are established that let the LAFD know there may be a problem that needs correction before it becomes a disciplinary issue. These systems are not a part of the disciplinary process but instead are used to identify employees who may benefit from counseling, training or other forms of corrective action to address behavioral problems before they become misconduct issues.

### **Conclusion**

Currently, the disciplinary model for the LAFD uses punitive action as its primary (and often only) tool to correct members' behavior after they violate our rules and regulations. Imposing punitive action alone, especially after a prolonged and delayed complaint investigation, may leave the member angered or upset by the process. For cases where the member will remain with the LAFD, the LAFD should consider using "Alternative Discipline Resolution" strategies. Carefully chosen strategies may correct the unwanted behavior with training and education without solely resorting to punitive action, giving the member the tools and understanding to avoid a recurrence of the misconduct. The LAFD would benefit

by potentially expending PSD resources on matters that could be resolved through Alternative Discipline Resolution, allowing PSD to focus on cases which must go through the traditional disciplinary process.

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