



AGENDA REPORT

TO: Jestin D. Johnson
City Administrator

FROM: Darren Allison
Interim Chief of Police

SUBJECT: OPD NSA Status Update

DATE: February 5, 2024

City Administrator Approval 
Jestin Johnson (Feb 29, 2024 15:26 PST)

Date: Feb 29, 2024

RECOMMENDATION

Staff Recommends That The City Council Receive An Informational Report From OPD On OPD's Progress Toward Compliance With The Negotiated Settlement Agreement (NSA) In The Case Of Delphine Allen, Et Al., V. City Of Oakland, Et Al.

EXECUTIVE SUMMARY

In a Court Order dated May 12, 2022, the Honorable William H. Orrick declared the Department had achieved substantial compliance with the NSA and ordered the one-year sustainability period to begin as of June 1, 2022, with the final sustainability report due in May 2023. On April 11, 2023, the Court expressed concerns about the City's inability to sustain compliance and subsequently issued an Order dated April 18, 2023, extending the sustainability period. The Court stated in its Order that it would assess the City's compliance with the NSA at the next CMC, which was rescheduled from September 26, 2023, to January 23, 2024. The Court also reduced the number of actively monitored tasks from eleven to five.

The Monitor has published three additional sustainability reports since the April 2023 CMC. In the most recent report, [Sixth NSA Sustainability Report](#), filed December 19, 2023, the Monitor found the Department in compliance with four of the five actively monitored tasks. Task 45 (Consistency of Discipline) remains in a status of "no compliance finding." At the most recent CMC on January 23, 2024, the Court stated that the Department was not ready to exit the NSA due to remaining concerns about Task 45, Consistency of Discipline. The Court also expressed concern about how long it was taking the City to find a new police chief. The Court set the next CMC for June 4, 2024.

This report provides an update on compliance and the Department's efforts to address Task 45.

BACKGROUND

In 2003, the City of Oakland entered into the NSA with the Plaintiffs to settle the *Allen v. City of Oakland* lawsuit (the "Riders" case). The NSA requires implementation of 51 tasks to promote police integrity and prevent unconstitutional policing. A court-appointed Monitor reviews and reports on compliance with each task and determines whether the task is "in compliance." On October 24, 2019, Council requested via the Rules and Legislation Committee a "Negotiated Settlement Agreement (NSA) Bi-Monthly Update." On January 14, 2020, OPD presented a report to the Public Safety Committee. OPD later released a "Bi-Monthly OPD NSA Status

Public Safety Committee
March 12, 2024

Update” memorandum dated February 8, 2021, to the City Council and Mayor, which was published on the City’s website.¹ At the May 11, 2021, Public Safety Committee, Council’s request for a bi-monthly update *report* was changed to a *verbal* bi-monthly update. At the June 14, 2022, Public Safety Committee meeting, the bi-monthly update was amended to become a quarterly written informational report. OPD’s last informational report was presented to the Public Safety Committee on June 13, 2023.

ANALYSIS AND POLICY ALTERNATIVES

Monitor’s Fourth, Fifth, and Sixth Sustainability Period Reports (June 2023, September 2023, and December 2023)

Per the Court’s April 18, 2023 Order, the number of actively monitored tasks was reduced from eleven to five (2, 5, 24, 25, and 45).² During the sustainability period, which began on June 1, 2022, the Monitor has conducted virtual quarterly site visits and issued quarterly reports. The Monitor published three reports since the last update to Council in June 2023.

In the Monitor’s [Fourth Sustainability Report](#) (June 2023), the Monitor continued to find Tasks 2, 24, and 25 in compliance. Task 5 remained out of compliance and Task 45 had no compliance finding. The compliance status for all five tasks remained the same in the Monitor’s [Fifth Sustainability Report](#) (September 2023). In the Monitor’s [Sixth Sustainability Report](#), the Monitor found the Department in compliance with Task 5. Task 45 was declared to have no compliance finding and is the only outstanding task.

Task 45 (Consistency of Discipline Policy)

The Monitor found OPD In Compliance with Task 45 in its [Second Sustainability Period](#) report, stating, “the Department has taken significant steps in identifying, examining, and responding to potential disparity in the disciplinary process.” The report cited the Department’s analysis in its September 2022 “[Discipline Equity and Internal Procedural Justice Report](#)” and its collaborative work in drafting a working methodology for IA disparity analysis. In the [Third Sustainability Report](#), the Monitor rated Task 45 as “no compliance finding.” The report cited the Department’s recently released analysis of 2022 data in its Internal [Investigation Outcome and Discipline Report](#). It highlighted the disparity in discipline between black and white officers for violations of Failure to Accept or Refer a Complaint (unintentional).

The Monitor’s most recent three Sustainability Reports (Fourth, Fifth and Sixth) have continued to rate Task 45 as “no compliance finding.” In the [Fourth report](#), the Monitor expressed dismay that the Department had not directly responded to issues of disparities. In the [Fifth report](#), the Monitor commended the Department for the quality of its “[2022 Analysis of Race in Internal Investigative Outcomes and Discipline: Supplemental Report Examining Failure to Accept or Refer Complaints](#),” but found that no concrete progress had been made during the reporting period. The report urged the Department and City to create tangible and sustainable policies and practices that ensure members of the organization are treated equitably. The Monitor’s [Sixth Report](#) found the Department had addressed the issue of creating practices and policies

¹ <https://www.oaklandca.gov/resources/info-memo>

² Task 2: IAD Investigation Timelines, Task 5: Complaint Procedures for IAD, Task 24 and 25: Use of Force Reporting and Investigation, Task 45: Consistency of Discipline

through both analysis and policy, but stated that it must strive to address cultural issues, which, when unaddressed, perpetuate actual or perceived disparities.

Case Management Conference

Since the last update to Council, the Court held a case management conference on January 23, 2024.

At the January 23, 2024 CMC, the Court recognized the progress OPD has made, including the drop in the rate of Black stops, the publication of policies (stemming from the Clarence Dyer & Cohen report recommendations), and the Department's study of allegations of Failure to Accept or Refer a Complaint. The Court, however, stated that being in compliance means fixing the problem, especially with race. The Court also expressed concern about the City's lengthy process of hiring a new police chief and wants to ensure the new chief is committed to constitutional policing. The Court scheduled the next CMC for June 4, 2024, and directed the parties to discuss what compliance would look like before the next CMC.

OPD's Compliance Efforts

The Department has implemented the recommendations in the Clarence Dyer & Cohen report and additional measures to shore up the internal investigation and discipline process. The report made eight recommendations.

1. OPD should require all personnel involved in investigating, reviewing, supervising, and approving IAD and CID cases to conform to the recusal standards of applicable policies.
2. OPD should adopt a policy that requires approval and documentation of all changes to draft reports of IAD investigations.
3. OPD should adopt a policy that requires all briefings regarding ongoing IAD investigations to be documented.
4. OPD should adopt a policy that requires the Chief of Police to read reports of IAD investigations before signing them.
5. OPD should adopt a Department-specific policy regarding acceptable personal relationships between sworn members and when and how those relationships must be reported.
6. OPD should review its implementation and training regarding the policies governing OPD members' use of OPD-issued cellular telephones and personal cellular telephones for all departmental business and prohibit the use of personal cellular telephones for work-related communication.
7. OPD should revise its rule regarding physical fitness for duty to explicitly include mental health.
8. OPD, through its Office of Internal Accountability, should review and improve its policies, practices, and training regarding investigations of members accused of criminal misconduct to ensure rigor and accountability.

Working in collaboration with the parties, the City Attorney's Office, the Police Commission, and the Monitor, OPD prepared revisions to existing policy, created new policy, and drafted new forms in response to the Clarence Dyer & Cohen recommendations. The policies and forms were critical in achieving compliance with Task 5. All policies were published as of November 30, 2023.

- DGO D-22, Personal Relationship Disclosure Policy (new)
- CID Recusal Policy 23-02 (rev.)
- Internal Affairs Division (IAD) Meeting Roster (rev.)
- Investigator and Reviewer Conflict/Recusal Forms (rev.)
- IAD Policy and Procedure Manual (rev.)
- Training Bulletin V-T.01, Internal Investigation Procedure Manual (rev.)
- Internal Investigation Report template (rev.)
- Addendum [Reviewer Disagreement] template (rev.)
- Executive Summary/Presentation template (rev.)
- Command Review Checklist (rev.)
- IAD Policy and Procedure Manual (rev.)
- Information Bulletin (IB) re Psychological Fitness for Duty Assessments (new)
- DGO M-4.1, Criminal Investigation of Department Members and Outside Sworn Law Enforcement Personnel (rev.)
- CID Investigative Training Program 23-01

The Department has been committed to studying and addressing disparity in internal affairs investigation outcomes and discipline. In 2019, the Department commissioned a study of investigation outcomes and discipline by a consulting firm and conducted its own analysis. Policy now requires the Department to produce an annual report of its investigation outcomes and discipline analysis, and the Department has worked with Stanford University researchers and the Monitor to develop a comprehensive methodology for conducting the analysis.

The Department's analysis of the 2022 investigation outcome and discipline data revealed differences in discipline between white and black officers for the allegation of "Failure to Accept or Refer a Complaint" (FTARC). Black officers were receiving more severe discipline than white officers for FTARC allegations. Although the sample size was small, the Department recognized potential disparity and subsequently conducted a comprehensive review of cases that included allegations of FTARC. The Department's supplemental report on FTARC allegations found inconsistencies in applying policy and practice, which could lead to disparity in outcomes and discipline. The Department recommended clarifying policy, additional training for reviewing commanders, better documentation, and better checks and balances. These recommendations were implemented at the end of 2023. The Department has initiated its analysis of 2023 data and anticipates preliminary data to be available by the end of March 2024. (See **Attachment A: Joint Case Management Statement**, January 29, 2024).

Community Safety

OPD's efforts to develop processes and procedures to address all NSA tasks support the citywide priority of community safety, as well as responsive, trustworthy government. These efforts support contemporary, procedurally just policing that promotes community trust and public safety. OPD's efforts to show progress with the NSA tasks, as outlined in this report, support the City's efforts toward increased responsiveness and trust and community safety.

FISCAL IMPACT

This report is for informational purposes only and has no direct fiscal impact or cost.

PUBLIC OUTREACH / INTEREST

No public outreach was necessary outside of standard Council noticing and publishing requirements.

COORDINATION

OPD regularly consults with the City Administrator's Office and the Office of the City Attorney on NSA matters and reports.

SUSTAINABLE OPPORTUNITIES

Economic: There are no economic opportunities associated with this report.

Environmental: There are no environmental opportunities associated with this report.

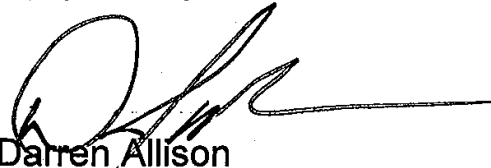
Race and Equity: The OPD is pleased to announce the renewal of its contract with Dr. Eberhardt, a distinguished social psychologist from Stanford University, who has previously collaborated with us on advancing race and equity best practices and training. This renewal underscores OPD's commitment to fostering an inclusive environment and continuing the valuable work initiated. Dr. Eberhardt's expertise will be instrumental as we seek community and stakeholder input to shape our upcoming training initiatives on race and equity. This engagement reflects our dedication to maintaining and enhancing our efforts in these critical areas, ensuring that all department members are equipped to serve our community with fairness and respect.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Receive An Informational Report From OPD On OPD's Progress Toward Compliance With The Negotiated Settlement Agreement (NSA) In The Case Of Delphine Allen, Et Al., V. City Of Oakland, Et Al.

For questions regarding this report, please contact Deputy Chief Clifford Wong, Bureau of Risk Management, at cwong@oaklandca.gov.

Respectfully submitted,



Darren Allison
Interim Chief of Police
Oakland Police Department

Reviewed by:
Clifford Wong, Deputy Chief
OPD, Bureau of Risk Management

Prepared by:
Bryan Hubbard, Lieutenant
OPD, Bureau of Risk Management

Attachment (1):

A: Joint Case Management Statement, January 29, 2024