



# AGENDA REPORT

**TO:** Steven Falk,  
Interim City Administrator

**FROM:** Darren Allison  
Interim Chief of Police

**SUBJECT:** OPD NSA Status Update

**DATE:** May 11, 2023

City Administrator Approval

Date: May 31, 2023

## 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. The Monitor has published three of the four sustainability reports required by the May 12, 2022 Court Order. In the [Third NSA Sustainability Report](#), filed April 3, 2023, the Monitor found the Department out of compliance with Task 5 (Complaint Procedures for IAD), and made no compliance finding for Task 45 (Consistency of Discipline). The Monitor cited serious questions about the Department's capacity to police itself after investigations conducted by outside investigators (Clarence Dyer & Cohen, LLP) resulted in several serious disciplinary determinations. At the most recent CMC on April 11, 2023, the Court expressed concerns about the City's inability to achieve full 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 on September 26, 2023. The Court also reduced the number of actively monitored tasks from eleven to five (see **Attachment A: Order Extending Sustainability Period, filed April 18, 2023**).

This report provides an update on compliance and the Department's efforts to implement the recommendations in the Clarence Dyer & Cohen report.

## 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  
June 13, 2023

Update” memorandum dated February 8, 2021, to the City Council and Mayor which was published on the City’s website.<sup>1</sup> 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 July 22, 2021, Rules Committee, however, Council renewed its request for an informational *report* to the Public Safety Committee on progress with the NSA. 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 December 12, 2022.

## **ANALYSIS AND POLICY ALTERNATIVES**

### **Monitor’s Second and Third Sustainability Period Reports (December 2022 and April 2023)**

Per the Court’s May 12, 2022, Order, the sustainability period was set to run from June 1, 2022, to May 31, 2023, with active monitoring of eleven Tasks (2, 5, 20, 24, 25, 26, 30, 31, 34, 41, and 45)<sup>2</sup>. During the sustainability period, the Monitor conducted quarterly site visits and issued quarterly reports. Since the last update to Council in December 2022, the Monitor conducted two site visits and published two reports.

In the Monitor’s [Second Sustainability Report](#) (December 2022), OPD achieved full compliance with Task 45, but fell out of compliance with Task 5 due to questions about the integrity of the internal investigatory process. In the Monitor’s [Third Sustainability Report](#) (April 2023), OPD remained out of compliance with Task 5 and Task 45 was declared to have no compliance finding.

OPD remained in compliance with the remaining nine of eleven actively monitored tasks.

### **Task 5 (Internal Affairs Complaint Procedures)**

The Monitor has found Task 5 out of compliance in their last two reports (Second and Third Sustainability Period reports) due to questions about the OPD’s inability to investigate its own personnel. In May 2022, the City retained outside investigators (Clarence Dyer & Cohen LLP) to conduct investigations into OPD’s handling of two incidents involving the same officer. The outside investigators’ report revealed acts of misconduct by officers and systemic deficiencies in OPD’s ability to investigate misconduct of its members (see ***Attachment B: Order RE Conclusions and Recommendations RE Vehicle Collision and Elevator Discharge Incidents***). The report included eight recommendations to address the issues identified.

In the Second and Third Sustainability Period reports, the Monitor assessed 24 cases closed between July and December 2022. The Monitor disagreed with one finding in each of two separate cases. In both cases, the allegation was officers failing to provide their name and serial number upon request, but rather than come to a finding, the officers were provided training which was documented their supervisory notes file. The Monitor did not disagree with any other

---

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

<sup>2</sup> Task 2: IAD Investigation Timelines, Task 5: Complaint Procedures for IAD, Task 20: Span of Control, Tasks 24 and 25: Use of Force Reporting and Investigation, Task 26: Force Review Boards, Task 30: Executive Force Review Boards, Task 31: Officer Involved Shootings, Task 34: Vehicle Stops Detentions (Stop Data), Task 41: Personnel Assessment System, Task 45: Consistency of Discipline

findings, but they did find a credibility assessment in one case problematic. The Monitor stated that the assessment appeared boilerplate and did not coincide with the facts of the case.

#### 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 cited the Department’s recently released analysis of 2022 data in its Internal Investigation Outcome and Discipline Report and highlighted the disparity in discipline between black and white officers for violations of Failure to Accept or Refer a Complaint (unintentional). The Department will be issuing a supplemental report with the findings from a deeper analysis of Failure to Accept or Refer a Complaint allegations.

The Monitor rated Task 45 as “No Compliance Finding” in the Third Sustainability Report. The report appeared to link Task 45’s lack of finding to Task 5’s Out of Compliance finding, stating, “The January 14, 2023, public report, by the outside investigators retained by the City, brought to light significant other issues that have bearing on Task 45. These issues cannot be ignored.”

Further, the report stated, “Systemic and other deficiencies cited by the outside investigators were exacerbated by investigative and disciplinary decisions, which were premised on the status and positional considerations of both violators and decision-makers.”

The Monitor also referenced OPD’s own survey of members’ perceptions showing 57% officers disagreeing that OPD’s investigation and disciplinary process is fair. The Monitor stated that “it is time for organizational introspection.”

#### Case Management Conferences

Since the last update to Council, the Court has held two case management conferences (January 24, 2023, and April 11, 2023).

At the January 24, 2023 CMC, the Court expressed disappointment by the facts that resulted in the conclusion that Task 5 was out of compliance. The Court indicated the Clarence Dyer & Cohen LLC report demonstrated significant cultural problems within the Department remained unaddressed. He directed the City to adopt each of the outside investigator’s recommendations or explain why an alternative was deemed more effective. The Court also asked the parties to engage in a discussion of how to move forward in a way that finally achieved compliance (see **Attachment C: Transcript of Remote Zoom Video Conference Proceedings, January 24, 2023**).

During the most recent CMC on April 11, 2023, the Court reiterated its concerns about OPD’s culture and inability to police itself. The Court was particularly concerned about OPD’s leadership and asked the parties how the Court could support the OPD’s efforts to achieve full compliance. In the Court’s Order following the April CMC, the Court outlined the next steps during the extended sustainability period (see **Attachment D: Transcript of Hybrid Proceedings, April 11, 2023**).

### Court Order Extending Sustainability Period

On Apr 18, 2023, the Court issued an order extending the Sustainability period beyond its initial intended timeframe, adding the following adjusted parameters for monitoring:

1. The Monitor will continue to monitor Tasks 2, 5, 24, 25, and 45. The Monitor will not be required to observe Risk Management Meetings, but OPD must continue to share meeting materials and stop data with the Monitor.
2. The Monitor will continue to maintain regular contact with the Chief and other Department officials, review and comment on NSA-related policies, review OIA's audit reports and provide feedback, and engage in other activities as deemed necessary by the Monitor.
3. The Monitor will conduct site visits and issue reports on a quarterly basis. Absent extraordinary circumstances, the Monitor need not assess compliance with tasks other than those listed above.
4. The term of the sustainability period will be assessed again at the next CMC. The Monitor will conduct site visits in May and August 2023 and issue sustainability reports in June and September 2023.

### OPD's Compliance Efforts

Since the January CMC, the Department has been working on implementing 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 the investigation, review, supervision, and approval of 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 Department-business and to 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. While the policies are still in the review process, OPD has already implemented some practices. Some of the changes to the internal investigation process include:

- The Chief is now reading all internal investigation reports with any sustained findings.
- All internal investigation briefings are documented with notes of the briefings.
- Any significant changes to investigation reports are approved and the change and approval is documented in the investigation file (i.e., downgrade of subject to witness, removal of subject, change or removal of a manual of rules allegation, and changes to recommended findings).
- A Deputy Chief reviews all investigation reports with a recommended sustained finding that could result in termination or for obedience to laws misdemeanor/infraction.
- The Chief and Bureau of Risk Management Deputy Chief review internal investigations involving any allegation that was the subject of a prosecution or defense (e.g., District Attorney or Public Defender) misconduct refer, regardless of the recommended finding.
- High-profile case briefings to the Chief, including but not limited to IAD and CID investigations of members accused of criminal misconduct, occur at least monthly with a notetaker.
- The Department has taken measures to improve communication with the Commission and CPRA.
- CID has expanded the information it provides to City leadership and oversight bodies including the Commission and CPRA when a Department member has been arrested or cited or is under investigation for criminal misconduct.

The Department finalized its new policy on Electronic Communications Devices (DGO I-19), regarding the use of Department-issued cell phones for work-related purposes. While waiting for Department General Order D-22: Personal Relationships Disclosure Policy to make its way through the collaborative Police Commission review process, the Department continues to follow the City of Oakland's anti-fraternization instruction and local ordinance regarding conflicts and reporting relationships. Further, the Department consults with the City's human resources risk management team to follow the City's process for psychological fitness for duty assessments and proposes creating an Information Bulletin that will include information about the City's policy and practice involving psychological fitness for duty evaluations but tailored to the Department (see **Attachment E: Joint Case Management Statement, April 11, 2023**).

### **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 does not have a 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:*** In March 2019 OPD hired a consulting firm to conduct a review of potential disparities in the department's internal investigations of police misconduct and any resulting discipline. In response to the Police Discipline Disparity Study conducted by the consulting firm Hillard Heintze, OPD created a working group and Steering Committee on Racial Disparity in conjunction with the Internal Race & Equity Team (IRET) and Stanford researchers. All recommendations from the Hillard Heintze report have been implemented. The Department's Race & Equity Team continues to meet with the goal of ensuring the Department continues to build upon the progress made as a result of the recommendations. Every member of the Department will participate in Project Reset. OPD continues to partner with Stanford researchers and produces an annual equity study to monitor case outcomes and discipline for disparity.

---

**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 NSA in the case of Delphine Allen, Et Al.

For questions regarding this report, please contact Deputy Chief Clifford Wong, Bureau of Risk Management, at [cwong@oaklandca.gov](mailto: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:  
Nicholas Calonge, Lieutenant  
OPD, Bureau of Risk Management

***Attachments (5):***

- A: Order extending sustainability period, filed April 18, 2023
- B: Order Re: Conclusions and Recommendations re: vehicle collision and elevator discharge incidents
- C: Transcript of remote Zoom video conference proceedings, January 24, 2023
- D: Transcript of hybrid proceedings, April 11, 2023
- E: Joint case management statement, April 11, 2023