5-07/290.00 - Review of Civil Claims by Unit Commanders and Division Chiefs or Division Director

Upon receipt of a copy of a civil claim from the Civil Litigation Unit, the concerned unit commander shall review the claim. The concerned unit commander is responsible for conducting an inquiry into the allegations in each civil claim and providing a response that sets forth the information obtained in that review, as well as identifying when an administrative or criminal investigation of alleged misconduct is warranted.

Claim Review Requirements

As part of the claim review, all available information about the allegations made in the claim should be gathered. The review shall be unbiased, seeking to obtain all information whether supporting or undermining the claim. Unless the memorandum from the Civil Litigation Unit accompanying the claim indicates otherwise, this claim review shall include, at a minimum:

- Identifying, gathering, and preserving all pertinent written documentation and supporting physical materials (refer to Section 5-07/290.15, Administrative Documentation/Materials), including the documents identified on the Civil Litigation Unit Claim Response Documentation/Materials Check-Off List accompanying the claim. All evidence identified shall be labeled with a green label per Section 5-04/020.15;
- Interviewing claimant. If a claimant is represented by counsel, do not contact the claimant directly. A request shall be made of counsel to interview a claimant. If possible, any interview of a claimant shall be audio recorded. If counsel or claimant declines to be interviewed, such declination shall be noted;
- Identifying and interviewing all Department employees who were participants in, witnesses to, in the vicinity of, or had post-incident involvement with the events underlying the claim. Whenever possible, employee work schedules shall be arranged to allow for in-person interviews;

  NOTE: Although a claim review is not an administrative investigation, if a Department employee requests that he/she be given the rights he is entitled to in an administrative investigation, the employee's request should be granted.

- Identifying and interviewing any non-Department witnesses to the events underlying the claim, both those identified in any underlying paperwork, and those identified through the claim review, including those the claimant identifies; and
- When appropriate, visiting and photographing the location of the alleged incident.

When there is more than one involved unit responding to a claim, the primary unit designated by the Civil Litigation Unit shall coordinate with the secondary units to avoid duplicate efforts. The units should arrange a single interview of the claimant and of each witness that covers all areas of necessary inquiry.

The Civil Litigation Unit may indicate that a different claim review procedure should be followed for certain types of claims, including claims of property damage, lost property, or over-detention.

If the claim relates to an incident that has previously been reviewed because of a reported use of force, shooting, traffic collision, watch commander's service comment report, or administrative investigation, the claims review should be coordinated with the unit level or Internal Affairs Bureau investigator who handled the

previous review and focus on any additional or different information or allegations provided by the claim. The claim review need not repeat any steps taken as part of any prior investigation or review, unless additional or different information or allegations require additional investigation. To the extent additional or different information or allegations are found in the claim, that new information shall be reviewed like any other claim.

Administrative/Criminal Investigations

If, at any time while reviewing the claim, the unit commander determines that discipline or criminal prosecution may be an issue because of the nature and seriousness of the allegation(s) and/or the concerned employee's performance history, the unit commander shall follow Department policy, as set forth in Section 3-04/020.05, for initiation of an appropriate administrative or criminal investigation. When an administrative or criminal investigation is initiated, the unit commander shall coordinate with the Civil Litigation Unit and/or county counsel to inform them that an administrative or criminal investigation has been initiated and to assist in responding to the claim as necessary. As long as discipline or criminal prosecution is not an issue, the unit commander shall perform a claim review. The unit commander should keep in mind that the selection of a given course of action does not preclude initiation of another course of action if the subsequent uncovering of facts justifies or mandates it.

Unit commander's Claim Review Report

After conducting his claim review, the unit commander shall direct a memorandum to his division chief or division director and complete any worksheets forwarded by Civil Litigation along with the claim. The unit commander's memorandum shall include:

- All information obtained from the review of the claim, including a list of witnesses, any conflicting versions of the facts, and each source for information, as well as a description of the claim review performed;
- All training, policies, or procedures relating to the conduct alleged to be wrongful, and any perceived issues or nonissues regarding the same;
- Whether any administrative or criminal investigation is warranted;
- Identification of personnel involved in the events underlying the claim as either an involved employee or as a supporting employee. (An "involved" employee is someone who took part in the event, while personnel who witness it or who were in the vicinity or had post incident involvement are "supporting" employees. If the event involves an incident where no employees were directly involved, i.e., slip and fall by a county inmate at a jail facility, with no Department witnesses, the unit commander shall indicate "no Department employees involved.");
- Whether the personnel involved were contract city items or county items, whether the location of occurrence was within a contract city, unincorporated area, Department facility, or independent incorporated city, and whether the personnel were performing contract city business at the time of the occurrence; and
- Any other insights or assessments of the claim or issues raised by it.

The completed worksheets provided by the Civil Litigation Unit, as well as relevant supporting documents shall be attached to the unit commander's memorandum. All other documentary or physical evidence relating to the civil claim shall be preserved by the unit in a manner that allows for its retrieval.

Finally, when a unit commander forwards the claim review report to his/her chief or division director, he shall simultaneously forward a complete copy of the claim review packet to the office of independent review.

Division chief's or division director's Responsibilities

The concerned division chief or division director is responsible for ensuring that the Unit-level review was thorough, that the proper decision was made regarding any administrative or criminal investigation, and that the review was completed in a timely manner.

The division chief or division director shall review the unit commander's memorandum for thoroughness of the review of the claim. A thorough review requires both a thorough inquiry into the facts and a thorough analysis of those facts for any performance, training, policy, or disciplinary issues. If a review is not thorough, the chief or division director shall return it to the unit commander for further investigation or analysis.

The division chief or division director shall also review the unit commander's determination on the propriety of an administrative or criminal investigation. If the division chief or division director determines further internal administrative or criminal investigation is warranted even though not suggested by the unit commander, the division chief or division director shall follow the Department policies for initiation of such an investigation.

Once the division chief or division director is satisfied with the claim review, he shall then forward the unit commander's memorandum and his concurrence with it to the Civil Litigation Unit.

The division chief or division director will be responsible for ensuring that the claim reviews for his Division are completed in a timely manner. The Civil Litigation Unit will track the status of requests for claim reviews. The division chief or division director will have access to information regarding claims that are overdue.

Timing for Claim Review

The designated unit(s) has 20 calendar days, from the date listed on the Risk Management Bureau memorandum, to complete their review and forward the claim to the division chief or division director. Division chiefs or division directors are expected to review and forward claim reports to the Risk Management Bureau within 5 days.

Decreasing the amount of time needed to provide a response to the Risk Management Bureau, without sacrificing the quality of the review, is important. Therefore, all are encouraged, where possible, to rely on electronic or facsimile transmission of documents rather than Department or county mail systems. In addition, it is crucial that a unit immediately notifies the Risk Management Bureau of all claims that have been forwarded to it in error and any additional units that may need to prepare their own claim report.