

THE HONORABLE JAMES L. ROBART

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,)	
)	Case No. 2:12-cv-01282-JLR
Plaintiff,)	
)	MEMORANDUM OF OPA DIRECTOR
v.)	PIERCE MURPHY RE: SPD
)	ACCOUNTABILITY SYSTEMS
CITY OF SEATTLE,)	
)	
Defendant.)	
_____)		

As invited by the Court during a status conference on August 26, 2015 the Director of the Office of Professional Accountability (OPA) for the Seattle Police Department (SPD) is honored to provide the Court with comments following the Parties’ own submissions on September 30, 2015 regarding systems of accountability and review.

I. INTRODUCTION

The Court asked the Parties to provide it with a “framework” for accountability, review and discipline, citing the need for these three to be “in harmony” and to work as an interrelated whole. The Court further invited OPA and the Community Police Commission (CPC) to comment on the Parties’ submissions. It is with this in mind that I provide the Court with a set of

1 principles regarding accountability, review and oversight which the Court may find valuable as it
2 reviews policies, training and other proposals put before it for approval. This submission is based
3 on my over 40 years of experience in law enforcement, organizational and human resource
4 development, and civilian oversight of police.

5 **II. BACKGROUND AND EXPERIENCE**

6 After being duly appointed by the Mayor and confirmed by the City Council, I was sworn
7 into office as the third Civilian Director of OPA on July 1, 2013 and have served in this capacity
8 to the present day. I came to Seattle after more than 14 years of experience as the Community
9 Ombudsman for the City of Boise in Idaho responsible for proving civilian oversight of the
10 Boise Police Department. As the first appointed ombudsman for Boise, I had the privilege of
11 creating the office, including drafting of empowering legislation, establishment of policies and
12 procedures, and executive leadership of the office. During my years of service in Boise, I
13 conducted independent investigations of officer-involved shootings, in-custody deaths, serious
14 uses of force by the police, and community complaints against the police. I also undertook
15 several in-depth policy reviews and made a number of recommendations for changes in policy
16 and training that led to positive changes in Boise Police Department operations and restored
17 community trust. I have also served as an advisor and pro-bono consultant to civilian oversight
18 agencies throughout the United States and contributed to the civilian oversight profession as a
19 board member and past president for the National Association for Civilian Oversight of Law
20 Enforcement (NACOLE). I hold a Certified Practitioner of Oversight designation from
21 NACOLE. Prior to becoming the ombudsman in Boise, I had a successful career in human
22 resource management and organizational development, working as a trainer, consultant and
23

1 executive. From 1973 to 1979, I served as a level 1 (fully qualified) reserve police officer in the
2 California cities of Menlo Park and Atherton.

3 As Civilian Director of OPA, I have focused my time and energies on increasing the
4 independence, accessibility and transparency of OPA. The Chief of Police and her staff rely on
5 OPA to conduct investigations that are independent, thorough and objective. The public expects
6 the same from OPA and deserves nothing less. Since the implementation of SPD's new Use-of-
7 Force policy at the beginning of 2014, OPA was given the added responsibility of providing
8 independent, civilian-led oversight of all Type 3 use-of-force investigations conducted by the
9 SPD Force Investigation Team. As the Court is undoubtedly aware, OPA is staffed almost
10 entirely by commissioned SPD police officers of various ranks, all of whom are members of
11 either the Seattle Police Officers Guild or the Seattle Police Management Association, the two
12 unions representing all SPD officers except those at the ranks of Chief, Deputy Chief or
13 Assistant Chief.

14 **III. SUBSIDIARITY: CORE PRINCIPLE OF ACCOUNTABILITY**

15 A core principle of effective organizational management is the proper delegation of
16 authority and responsibility. Highly effective organizations provide their first level supervisors
17 with sufficient authority, training and resources to hold employees accountable to deliver quality
18 products and services in a manner consistent with the organization's mission and values. Police
19 departments are no exception. To deliver constitutional and bias-free policing services, the best
20 police departments depend on their front-line supervisors, typically sergeants, to lead, train,
21 direct, counsel and motivate the officers in their charge. A well-trained sergeant is at the heart of
22 police accountability. A police department's accountability processes must be oriented to support
23 and empower the front-line supervisor to effectively perform his or her accountability role.

1 In considering policies, processes and structures brought forward for its review and
2 approval, the Court may wish to consider how these proposals strengthen and support SPD
3 sergeants and their immediate chain of command.

4 IV. CRITICAL SELF-REVIEW

5 Front-line supervisors should be assisted in their accountability role by effective systems
6 and processes of critical self-review. In implementing the provisions of the Settlement
7 Agreement, SPD has established a stable and capable process to review the use of force, from the
8 lowest to the most series levels. SPD has also recently begun implementation of an Employee
9 Intervention System (EIS) which will provide supervisors at all levels with information and tools
10 to use in correcting and improving officers' behavior before it becomes the subject of discipline.
11 While other systems and processes of critical self-analysis (e.g., the Collision Review Board
12 (CRB), Internal Performance Audits and Inspections, etc.) are extant within SPD, a
13 comprehensive and integrated review and alignment of all such processes would assist SPD in its
14 efforts to deliver timely and useable information to supervisors and decision-makers.

15 V. THE ROLE OF DISCIPLINE IN POLICE ACCOUNTABILITY

16 In Seattle and throughout the country, calls for greater police accountability frequently
17 focus on criminal prosecution of officers and the imposition of discipline. This is an important
18 and highly visible aspect of any accountability system. Building both public and employee trust
19 includes implementing a robust discipline system that is simple, fair, swift, unbiased and based
20 on findings of fact derived from thorough and objective investigations. Appropriate disciplinary
21 decisions and criminal prosecutions communicate to all parties that a police department is
22 serious about accountability. However, as noted above in discussing the role of police sergeants,
23 accountability is much more than discipline. To be effective and to produce policing of the

1 highest quality, accountability must start with the front-line supervisor, include the entire chain
2 of command, and rely on clear policies, effective training and strong processes of critical self-
3 analysis (e.g., the SPD Force Review Board).

4 **VI. INDEPENDENT OVERSIGHT OF THE POLICE**

5 “*Quis custodiet ipsos custodiet?*” This timeless question from the Roman poet Juvenal
6 gets to the heart of the challenge facing American policing today. To gain the trust and support
7 of the governed, those exercising governmental power must be held accountable to respect
8 human and civil rights and operate within the law and established policies. An essential element
9 in any effective system of police accountability is some form of independent community
10 oversight. While the specific structure, authority and scope of responsibility of community
11 oversight vary widely throughout the country, all strive to gain as much independence as
12 possible given the constraints of local laws, collective bargaining agreements and politics. In
13 general, it can be said that the greater the actual and perceived independence of police oversight,
14 the greater the community’s trust that their police officers are being held accountable.

15 OPA can best be described as quasi-independent. The director and the auditor are both
16 appointed by the mayor and confirmed by the City Council. Of the two, the OPA auditor is the
17 more independent given her status as a contractor to the City, rather than an employee. The OPA
18 director is a SPD employee with neither civil service nor contractual protection. In addition, both
19 the director and the auditor are subject to reappointment and reconfirmation every three years,
20 potentially subjecting them to political pressures on a tri-annual basis.

21 Since its inception in 2000, the investigation section of OPA has been entirely staffed by
22 commissioned officers of SPD. OPA investigations are conducted by eight SPD detective
23 sergeants supervised by two lieutenants and a captain. The only non-commissioned OPA staff

1 members are the director, deputy director, strategic analyst and two administrative assistants.
2 This means that members of the public filing complaints with OPA have their complaint
3 received, investigated and reviewed by SPD officers. Notwithstanding the important role the
4 OPA director and OPA auditor each play in the classification of complaints at intake and the
5 certification of OPA investigations after completion, along with the OPA director's authority to
6 recommend findings and discipline to the chief of police, the current situation of an all-
7 commissioned OPA intake and investigations staff is a serious challenge to OPA's actual and
8 perceived independence.

9 In addition to the independent investigations conducted by OPA, public trust in SPD's
10 own systems and processes of accountability and critical self-analysis will be greatly enhanced if
11 OPA and the rest of the independent oversight apparatus have adequate authority, access and
12 resources to monitor and audit these systems and processes. Without usurping the vital role of
13 the supervisor in holding his or her employees accountable for day-to-day police activities and
14 the rest of SPD's management and command structure in supporting accountability throughout
15 the Department, the independent oversight structure and entities in Seattle should have the
16 authority and resources necessary to monitor and audit crucial systems such as force
17 investigations and review, the EIS process, performance management systems, the disciplinary
18 system, the CRB, internal audits and inspections, etc.

19 Finally, independent oversight of the police must be as transparent and accessible to the
20 public as the law will allow. Direct involvement in a meaningful way by representatives of the
21 communities served by the police will ensure that the oversight processes and mechanisms retain
22 the public's support and trust, while providing SPD with valuable insights and feedback from
23 those they are sworn to serve.

VII. CONCLUSION

The Court’s current interest in SPD’s systems of accountability, review and discipline comes at a propitious time in the life of the Parties’ implementation of the Settlement Agreement. Adequate structures, policies and processes of accountability, review and oversight must be fully implemented and operating effectively before the Court’s oversight of SPD concludes. To do otherwise would be to risk the loss of the many improvements made since the Court gained jurisdiction and to forfeit the possibility of a virtuous cycle of continuous improvement in the years beyond the Settlement Agreement.

DATED this 16th day of October, 2015.

CITY OF SEATTLE OFFICE OF
PROFESSIONAL ACCOUNTABILITY

s/ Pierce Murphy

Pierce Murphy, Director

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CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system.

DATED this 16th day of October, 2015, at Seattle, King County, Washington.

s/ Autumn Derrow
Autumn Derrow
E-mail: autumn.derrow@seattle.gov