

**LOS ANGELES POLICE COMMISSION**

***REVIEW OF THE DEPARTMENT'S  
QUARTERLY DISCIPLINE REPORT***  
1<sup>st</sup> Quarter, 2009



Conducted by

**OFFICE OF THE INSPECTOR GENERAL**

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Inspector General

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## **I. Introduction**

The Los Angeles Police Department (LAPD or Department) prepares a quarterly report regarding discipline imposed, including Categorical Uses of Force (CUOFs) found to be out of policy, within 45 days after the end of each quarter. The Department has completed its report for the First Quarter of 2009 (Quarter). The Board of Police Commissioners (Commission or BOPC) received its copy of the Department's Quarterly Discipline Report (Department's Report) on May 13, 2009. The Office of the Inspector General (OIG) has reviewed the Department's Report and has submitted its own Report to the Commission.

During this Quarter, the OIG interpreted some of the statistical data contained in various tables within the Department's Report. Section II of this Report contains the OIG's analysis of some of the information found within the tables contained in the Department's Report and expands upon the information contained therein.

In Section III, the OIG reviewed cases closed during the Quarter that contained at least one allegation of domestic violence. The OIG reviewed these cases to determine the overall quality of the investigations. Areas focused upon included, but were not limited to, whether the investigation was fair and objective, whether the adjudication results were supported by the evidence and whether a reasonable effort was made to identify and interview relevant witnesses and gather pertinent evidence.

In Section IV, the OIG discusses cases closed during the Quarter that were determined to be Out of Statute (OOS). This Report includes three such cases that were closed during the Quarter. The OIG was provided with additional documentation to explain why these cases fell OOS and what remedial action, if any, was taken to avoid similar recurrences.

Section V contains our review of the discipline imposed relative to the five CUOF incidents where the Commission adopted a finding of Out of Policy and/or Administrative Disapproval, which were closed during the Quarter, and which are enumerated on Table L of the Department's Report.

Section VI contains information about the need to update Training, Evaluation and Management System (TEAMS) Reports to reflect the Commission's findings regarding CUOF incidents.

Finally in Section VII, the OIG provides overall conclusions about the cases that we reviewed this Quarter.

On July 15, 2009 and August 31, 2009, OIG staff received responses to our preliminary findings in this report from the Commanding Officer (C/O) of the Internal Affairs Group (IAG). The information provided by IAG in their response was taken into consideration prior to finalizing this report.

## **II. Analysis of Statistical Information Within the Department's Report**

As a result of our review of the Department's Report, we utilized the information provided and conducted some additional analysis to aid the Commission in its review and evaluation of the discipline imposed during this Quarter.

### **Sustained Information Summary**

A classification of an allegation as Sustained means that the Department's investigation disclosed that the act complained of did occur and constituted misconduct. The standard of proof used by the Department in adjudicating administrative complaint investigations is a preponderance of the evidence, which means, "the greater weight of the evidence...that has the most convincing force."<sup>1</sup>

Using the information contained in the Department's Report, we determined that the percentage of sustained allegations was 11.5% (total number of sustained allegations/total number of allegations = 351/3042 = 11.5%). Also using the information in the Department's Report, we determined that the percentages of sustained allegations for each of the 10 most common allegations this Quarter were as follows, in descending order of sustained rate:

<b>Allegation</b>	<b>Sustained Rate</b>	<b>No. of Sustained Allegations/ Total Number of Allegations</b>
Preventable Traffic Collision	56.6%	82/145
Neglect of Duty	15.6%	95/609
Unbecoming Conduct	13.5%	68/505
False Statements	8.5%	7/82
Unauthorized Tactics	7.4%	6/81
Other Policy/Rule	4.2%	4/96
Unauthorized Force	3.8%	12/312
Discourtesy	1.1%	6/565
False Imprisonment	0.0%	0/222
Unlawful Search	0.0%	0/83

<sup>1</sup> Black's Law Dictionary 1220 (8th ed. 2004).

Allegation Summary

We created an additional table, depicted below, which utilizes data from the Department's Tables C, E and II.

<b>Classification</b>	<b>Sustained Allegations/ Total Allegations</b>	<b>Sustained Rate</b>	<b>Percentage of Total Allegations</b>	<b>Number of Accused Employees<sup>2</sup></b>	<b>Number of Employees w/ Sustained Allegations<sup>1</sup></b>
Accidental Discharge	2/2	100%	0.1%	2	2
Alcohol Related	3/6	50.0%	0.2%	6	3
Discourtesy	6/565	1.1%	18.6%	343	5
Discrimination	0/17	0.0%	0.6%	11	0
Dishonesty	3/11	27.3%	0.4%	8	2
Domestic Violence	7/14	50.0%	14	7	4
Ethnic Remark	3/12	25.0%	0.4%	9	2
Failure To Appear	15/32	46.9%	1.1%	32	15
Failure To Qualify	15/42	35.7%	1.4%	42	15
Failure To Report Miscon.	0/8	0.0%	0.3%	6	0
False Imprisonment	0/222	0.0%	7.3%	188	0
False Statements	7/82	8.5%	2.7%	67	6
Gender Bias	0/1	0.0%	0.0%	1	0
Improper Remark	5/32	15.6%	1.1%	21	5
Insubordination	10/12	83.3%	0.4%	5	3
Misleading Statements	1/1	100.0%	0.0%	1	1
Narcotics/Drugs	1/6	16.7%	0.2%	5	1
Neglect of Duty	95/609	15.6%	20.0%	425	58
Off-Duty Altercation	0/3	0.0%	0.1%	1	0
Other Policy/Rule	4/96	0.0%	3.2%	58	3
Preventable Traffic Coll.	82/145	56.6%	4.8%	141	81
Racial Profiling	0/77	0.0%	2.5%	66	0
Retaliation	0/8	0.0%	0.3%	6	0
Service	0/5	0.0%	0.2%	2	0
Sexual Misconduct	4/15	26.7%	0.5%	9	3
Shooting Violation	0/1	0.0%	0.0%	1	0
Theft	2/37	5.4%	1.2%	19	1
Unauthorized Force	12/312	3.8%	10.3%	214	2
Unauthorized Tactics	6/81	7.4%	2.7%	59	5
Unbecoming Conduct	68/505	13.5%	16.6%	267	30
Unlawful Search	0/83	0.0%	2.7%	62	0

<sup>2</sup> Data in this column were taken from Table II in the Department's Report. Employees are separately counted for each complaint and for each allegation type; thus a single employee may be counted repeatedly. Accordingly, the numbers in this column do not match the exact number of employees against whom the allegations were sustained.

Allegation Summary by Employee Rank – Listed by Allegation Type

Using the information in Table F, the OIG obtained sustained allegation rates, broken-out by rank, calculated both by total allegations, and by total allegations excluding Preventable Traffic Collisions (PTCs), Failures to Appear (FTAs) and Failures to Qualify (FTQs). The results are depicted in the table below.

	<b>Sustained Allegations/ Allegations</b>	<b>Overall Sustained Rate</b>	<b>Sustained Allegations/ Total Allegations (Minus PTCs, FTAs, &amp; FTQs)</b>	<b>Overall Sustained Rate (Minus PTCs, FTAs, &amp; FTQs)</b>
Allegation Total	351/3042	11.5%	239/2823	8.5%
Command Staff <sup>3</sup>	2/18	11.1%	0/11	0.0%
Lieutenant	2/27	7.4%	0/23	0.0%
Sergeant	36/173	20.8%	22/153	14.4%
Detective	52/228	22.8%	42/213	19.7%
Police Officer III	44/500	8.8%	27/461	5.9%
Police Officer II	120/1303	9.2%	72/1199	6.0%
Police Officer I	24/184	13.0%	9/160	5.6%
Reserve Officer	1/7	14.3%	1/7	14.3%
Detention Officer	2/7	28.6%	2/7	28.6%
Civilian Personnel	68/595	11.4%	64/589	10.9%

Eleven percent (11.5%) of all misconduct allegations were sustained during this Quarter. Eight percent (8.5) of all allegations were sustained when PTCs, FTQs, and FTAs were removed.

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<sup>3</sup> The OIG noted that there were two allegations sustained against Command Staff, for Preventable Traffic Collisions (CF Nos. 08-004624 and 08-005046) this quarter. Command Staff had 18 allegations included in this quarter's Report, which is up from 1<sup>st</sup> Quarter 2008 but down from 4<sup>th</sup> Quarter 2008. For 2008, Command Staff had 13 allegations in the 1<sup>st</sup> Quarter, 22 allegations in the 2<sup>nd</sup> Quarter, 23 allegations in the 3<sup>rd</sup> Quarter and 35 allegations in the 4<sup>th</sup> Quarter.

### III. Review of Domestic Violence Cases

#### A. Introduction

In our review of the Quarterly Discipline Report for First Quarter 2009, the OIG noted that the sustained rate for allegations of domestic violence for the past three quarters (50.0% [First Quarter 2009], 46.2% [Fourth Quarter 2008] and 65.4% [Third Quarter 2008], respectively) were the highest sustained rates over the previous 10 quarters. Upon further review, the OIG found that the sustained rate was 50.0% (7/14) for sworn employees and 0.0% for non-sworn employees (0/0).<sup>4</sup>

The OIG believes that the high overall percentage of sustained domestic violence allegations demonstrates the Department's commitment to investigating and disciplining officers for this type of conduct.

#### Domestic Violence Sustain Rate by Year and Quarter

<b>Year / Quarter</b>	<b>Sustained Allegations/ Allegations</b>	<b>Overall Sustained Rate</b>
2009/1	7/14	50.0 %
2008/4	6/13	46.2%
2008/3	17/26	65.4%
2008/2	2/28	7.1%
2008/1	4/37	10.8%
2007/4	14/40	35.0%
2007/3	12/27	44.4%
2007/2	4/40	10.0%
2007/1	10/47	21.3%
2006/4	6/18	33.3%

#### B. Definition

Domestic violence is defined by California Penal Code Section 13700 as follows: "abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship. For purposes of this subdivision, "cohabitant" means two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship.

<sup>4</sup> When the OIG queried the Complaint Management System, on April 6, 2009 and May 6, 2009 for cases to be included in this report, the complaint system showed a final closed date of January 22, 2009 for CF 08-001427. However, CF 08-001427 was not included in the Department's QDR for the 1<sup>st</sup> Quarter 2009 because at the time the QDR was generated on May 6, 2009, this CF number was considered open in CMS. It appeared that the complaint was reopened and closed several times for unknown reasons. Opening and closing complaints are administrative functions of the CMS and are not necessarily reflective of the date in which the investigations are conducted. The information relating to this complaint will be reflected in the Department's QDR for the 2<sup>nd</sup> Quarter of 2009. If CF 08-001427 was included in this quarter, the sustained rate for non-sworn employees would be 100% (2/2) instead of 0%, which would cause the overall sustained rate to increase to 56.3% instead of the 50.0% listed above.

Factors that may determine whether persons are cohabiting include, but are not limited to, (1) sexual relations between the parties while sharing the same living quarters, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) whether the parties hold themselves out as husband and wife, (5) the continuity of the relationship, and (6) the length of the relationship.”

### C. Methodology

This Quarter the OIG conducted in-depth reviews of complaints that contained at least one allegation of domestic violence. For this Report, the OIG limited the cases reviewed to those that were closed between January 1, 2009 and March 31, 2009. During the First Quarter of 2009, a list generated from the Department's Complaint Management System (CMS) revealed that there were seven complaints with at least one allegation of domestic violence.

In conducting this review, a matrix was utilized by the first and second level reviewers. This matrix contained 36 questions designed to evaluate the quality, completeness, and findings of the completed investigation, including whether the discipline imposed was justified and appropriate in light of the surrounding circumstances, the employee's disciplinary history, and the standards enunciated in the Department's "Management Guide to Discipline" (July 2004) and the "Civilian Penalty Guide to Discipline Standards" (January 2008).<sup>5</sup> In addition, a Crib Sheet was used to assist in answering the questions on the matrix.

OIG staff also reviewed all available recorded interviews. In reviewing the recorded interviews in these cases, the OIG utilized a separate matrix containing 18 questions designed to evaluate whether: (1) the interviews were properly summarized to include all relevant testimony; (2) all allegations raised by the complainant were properly formed; (3) any additional allegations raised during the interviews were addressed in the completed investigation; (4) the interviews themselves were conducted properly (e.g., whether the interviewer used inappropriate or leading questions, or adopted a hostile or inappropriate tone with the witness); and (5) logical follow-up questions were asked by the interviewer. Second-level reviewers also listened to recordings that were recommended by the first-level reviewers to be essential to the review.

Although we reviewed seven cases that were closed during the Quarter, there were a total of 14 misconduct allegations, because some of these cases involved multiple allegations. In the cases we reviewed, a total of seven allegations of domestic violence were sustained.

### D. Findings

In summary, our review of domestic violence cases revealed that IAG conducted investigations that contained enough information for the adjudicators to utilize in making a final adjudication in all seven of the cases. Although there were some additional steps we would have preferred to have been taken by investigators or additional allegations that could have been framed, overall the OIG found the investigations to be complete. We found in these cases that the Investigating Officer (I/O) made efforts to either canvass the area and/or interview possible witnesses, including police officers from outside law enforcement agencies. We also found that the I/O's gathered relevant evidence related to the investigations and even drug tested one accused

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<sup>5</sup> Both Guides are advisory.

employee as a result of the allegations against him/her. Notwithstanding the quality of the investigations conducted in each case, the OIG believes that there were three cases that could have resulted in different adjudications, given the seriousness of the allegations and the amount of information gathered by investigators. The complete review of these three cases, CF No. 08-002069, CF No. 08-002465 and CF No. 08-002633, are included in the next section.

IAG reviewed these investigations and also determined that sufficient information was presented to the adjudicators to review and make quality decisions regarding the allegations of misconduct. IAG noted that while all investigations could benefit from additional resources, they believe that these investigations substantially met investigative guidelines.

The OIG last looked at domestic violence cases for the Discipline Report (QDR) for the 3rd Quarter of 2006. We reviewed our findings and recommendations from that report to find out if the same trends and patterns were found in the QDR for the 1<sup>st</sup> Quarter of 2009. In 2006, the OIG recommended that the Department utilize the services of an expert on domestic violence cases during a Board of Rights (BOR) to explain the cycle of violence involved in abusive relationships and/or give appropriate consideration to the possibility that the victim might be suffering from Battered Woman's Syndrome (BWS).<sup>6</sup> For the cases in the 1<sup>st</sup> Quarter of 2009, the investigations did not reveal that any of the victims suffered any symptoms that resembled BWS.

The OIG noted the involvement of alcohol in the reported incidents in many of the cases that were reviewed in this report. Of the seven cases, there were five cases that involved alcohol, one that may have involved alcohol, and only one that did not involve alcohol. For the nine cases for the 3rd Quarter 2006, three cases involved alcohol, one may have involved alcohol, and five did not involve alcohol.

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<sup>6</sup> Battered Woman's Syndrome (BWS) was coined by Dr. Leonore Walker, in her book, "The Battered Woman" (1979). This term, which draws upon the principles of learned helplessness to explain why some women are unable to leave their abusers, describes a set of psychological and behavioral symptoms that develop from a victim's prolonged exposure to violence from a romantic partner. Among other things, women who suffer from BWS often feel that the violence was her fault and is unable to place the responsibility for the violence on someone else (such as the batterer). Moreover, victims of BWS may fear for their or their children's safety and/or fear that they are powerless to do anything to stop their abuser. Thus, in such cases, it is not unusual for victims of BWS to downplay, minimize, or recant allegations of domestic violence. According to Dr. Walker, there is a "cycle of violence" associated with these abusive relationships, with three distinct phases. The first phase involves a tension building phase, followed by the explosion or acute battering incident, culminating in a non-violent, loving phase, often referred to as the "Honeymoon Phase." This "Cycle of Violence" is also described in the Department's own manual entitled, "An Employee's Guide to Domestic violence in Law Enforcement Families," dated December 1999 (LAPD DV Guide).

E. Case Summaries and Analysis

Summaries of cases and our analysis of investigations are listed below.

1. CF No. 07-5129

a. Summary

This complaint was filed by the Department against an officer whom the Department alleged became involved in a domestic violence incident which resulted in the response of officers from the local police agency. The complaint included eight allegations of misconduct against the accused employee, which included unbecoming conduct along with domestic violence.

The investigation revealed that the accused employee and his/her domestic partner (partner) had a dating relationship for approximately one year but did not reside together. There had been no physical disputes but there was one verbal argument that occurred approximately three months prior to this incident.

The investigation also revealed that the accused went to his/her partner's residence and unsuccessfully attempted to gain entry by knocking on the front door. The accused proceeded to climb on the hood of his/her partner's sport utility vehicle to gain access to the second story balcony. The accused tried to open the balcony door while yelling at his/her partner to open the door, but was still not able to enter the residence. Finally, the accused returned to the front door, and forcefully knocked on the door until the partner cracked the front door open. Undaunted, the accused forced his/her way inside by pushing the door open with both hands. A neighbor witnessed how the accused entered the residence and became concerned when he heard the partner yell, "Get out, get out of my house." The neighbor walked over to the partner's residence, offered his assistance and took the partner's six year old son back to his residence.

When the accused was walking upstairs, the partner grabbed the accused by his/her ponytail, but the accused slipped out of his/her grip. The accused entered the master bedroom and sat on the floor for approximately thirty minutes. In order to persuade the accused into leaving, the partner pretended to call a mutual friend by using his/her cellular telephone. At that point, the accused attempted to prevent the telephone call by trying to take the cellular phone from the partner. A physical struggle over the cellular phone ensued during which "the accused executed a takedown on the partner," which was described as placing a "headlock" on the partner and pulling him/her to the ground. The struggle lasted for approximately two minutes and the partner did not sustain any visible injuries. After the struggle, the accused barricaded himself/herself in the master bedroom walk-in closet. The neighbor returned and entered the master bedroom. The accused resisted all attempts by his/her partner and the neighbor to end the incident. The accused directed numerous profanities against the neighbor. Then the accused became quiet and there was calm in the household, at which time the neighbor returned home.

Around 1:00 am, the neighbor heard a lot of screaming and items being thrown to the floor and called 911. When officers from the local police agency arrived, the accused barricaded himself/herself in the master bedroom's bathroom. Several officers tried unsuccessfully to get the accused out of the bathroom. The accused responded to the officers with profanities. The

accused was finally able to momentarily control himself/herself sufficiently to exit the bathroom, but almost immediately lost control of his/her emotions and attempted to once again barricade himself/herself. Four officers made an effort to control the accused, which resulted in a physical struggle. The accused was tasered on at least two occasions during the struggle and handcuffed. The local District Attorney's Office reviewed the entire investigation and filed one count California Penal Code (CPC) Section 148(a)(1)(Resisting Arrest) against the accused, but did not file any domestic violence charges.

The investigation resulted in seven allegations of Unbecoming Conduct and one allegation of Domestic Violence against the accused employee. The Department Sustained all eight allegations and the accused employee was directed to a Board of Rights (BOR) and assigned home pending the outcome of that process. The BOR found the accused employee to be guilty on all eight counts and recommended removal from the Department.<sup>7</sup> The Chief of Police concurred with the BOR recommendation and the accused employee was removed. The removal penalty is within the Department's Guidelines, which provide that an officer that receives a sustained allegation for the use of physical force during a domestic violence incident that was filed as a misdemeanor is recommended to receive from a minimum of five days up to being directed to a Board of Rights.<sup>8</sup>

b. Analysis of the Investigation

Our review revealed no investigative deficiencies which impacted the adjudication. The I/O canvassed the area for additional witnesses, which resulted in statements from another neighbor and the property owner of the partner's house. Also, four of the eight personnel from the local police agency that responded to the incident provided interviews, while the fifth officer gave a written statement. We agreed that the remaining three interviews would not be necessary for the adjudication of the allegations because there was enough information to Sustain the allegations against the accused employee.

c. Conclusion

The OIG believes that there was enough information gathered during the investigation to allow the adjudicator to make an informed decision and we agree with the resulting adjudications.

2. **CF No. 07-005883**

a. Summary

This complaint was filed by the Department against two officers whom the Department alleged became involved in a domestic violence incident, which resulted in the response of officers from the local police agency. The Department alleged that Accused 1, while off duty, used physical violence during an incident to prevent Accused 2 from entering their mutual residence. The

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<sup>7</sup> The Chief of Police (and adjudicators) may adjudicate an allegation as Sustained, Exonerated, Not Resolved, Insufficient Evidence to Adjudicate, or Other Judicial Review. A BOR may find an employee to be Guilty or Not Guilty of a count. Further, a count may contain one or more allegations.

<sup>8</sup> For a sustained allegation of a domestic violence incident which causes law enforcement to respond, but for which no criminal charges are filed, an employee is recommended to receive a minimum of a written penalty up to four days suspension.

Department also alleged that, while off duty, Accused 2 used force to attempt to enter the residence. Both accused employees had minor injuries consistent with a struggle. The complaint included five total allegations of misconduct against Accused 1 and Accused 2. The allegations included the use of physical force, domestic violence, and that Accused 1 was named as a suspect of a child abuse crime report.

The investigation revealed that the accused employees had been married for a number of years and had problems during their relationship. The day of the incident, the accused employees were at a social function at a local pizza parlor. Accused 1 left the pizza party and drove home with the couple's children in the late evening. Accused 2 arrived home in a separate vehicle approximately two and half hours later. Accused 2 attempted to open the door, but Accused 1 had placed a chair under the doorknob preventing the door from opening. Accused 2 attempted to force the door open not knowing that the door had been blocked. Accused 1 met Accused 2 at the door, opened the door and an argument ensued. During the argument, Accused 1 told Accused 2 that Accused 2 did not deserve to be let into their home, that Accused 2 needed to leave the location, and then blocked Accused 2's access to their residence. Accused 2 alleged that Accused 1 took Accused 2's house keys and cellular phone and threw the phone, causing it to shatter and break. Accused 1 re-entered the residence and locked the door. Accused 2 called out and continued to bang on the door. Accused 1 eventually opened the door and allowed Accused 2 to enter the residence. Accused 2 entered the residence, obtained the telephone from the kitchen, and locked himself/herself in the bathroom, and called 911 to request help.

Accused 2 advised officers that during the incident, Accused 1 grabbed, pushed, and struck Accused 2. Scratches on the inside of Accused 2's mouth were noted. During the investigation, Accused 2 was observed attempting to cause visible marks to his/her own arms to bolster his/her allegations. Because Accused 2's attempts were noted, no photographs were taken of the bruises that were self inflicted.

During the investigation of this incident, Accused 2 notified the I/O of two additional incidents that occurred involving Accused 1. First, Accused 2 called local law enforcement about a month before the domestic violence incident and alleged that Accused 1 was in their driveway attempting to commit suicide. The criminal investigation did not support Accused 2's statement about the suicide attempt and later, Accused 2 recanted the allegation to his/her supervisor.

Second, Accused 2 advised the I/O that Accused 1 was the subject of a child abuse crime report for an incident which occurred six months prior between Accused 1 and Accused 2's child from a prior marriage. It was determined that Accused 1 used very minor force on Accused 2's child in order to hurry the child along to school. Accused 2 did not initiate the crime report and was not a witness to the incident. No charges were filed as a result of that incident, but the investigation revealed that Accused 1 did not notify a supervisor that he was the subject of the crime report, and had been questioned by the local police agency about it.

The investigation resulted in five allegations against the accused employees. Each employee received one allegation of a domestic violence incident and one allegation of unbecoming conduct which caused the response of a local police agency. All four of these allegations were Sustained by the Department. The rationale provided that "both officers' judgments and behavior in this incident were unprofessional and unbecoming, but the physical evidence could

not determine which officer was the primary aggressor. There were no independent witnesses to this incident and both officers had minor injuries consistent with a struggle. It is reasonable to conclude that both of the officers used some type of force on one another to accomplish their individual goals; Accused 1 was trying to prevent entry into the residence and Accused 2 was attempting to enter." A fifth allegation against Accused 1 for being named as a suspect of a child abuse crime report was adjudicated as No Misconduct-Actions Could Have Been Different. The rationale provided that there was an issue as to whether or not any abuse occurred, which did not appear to be the case. Accused 1 used a minor amount of force on his/her step-child to hurry the child along to school.

Each employee received a conditional Official Reprimand, which provided that each employee would receive a minimum of 22 days of suspension or be directed to a Board of Rights and demoted should a similar incident of Domestic Violence or Unbecoming Conduct be sustained against them. Although most officers that receive sustained domestic violence allegations incur suspension days, the penalties appear to be within the Department's Guidelines, as a review of each officer's complaint history revealed no prior sustained complaints for Domestic Violence or Unbecoming Conduct for either officer within the last five years. Additionally, the adjudicator noted that the officers ended their stormy relationship, attended counseling and accepted responsibility for their behavior.

b. Analysis of the Investigation

Our review revealed no investigative deficiencies which impacted the adjudication of the framed allegations.

c. Conclusion

The OIG believes that there was enough information gathered during the investigation to allow the adjudicator to make an informed decision and we agree with the resulting adjudication.

3. **CF No. 08-001427**

a. Summary

This complaint was filed by the Department against a civilian employee whom the Department alleged became involved in a domestic violence incident which resulted in the response of officers from the local police agency. The Department alleged that the accused employee, while off duty, used physical violence during a domestic violence incident when the accused scratched his/her partner causing visible injuries and that the accused while off duty was arrested by the local police for 273.5 P.C. Spousal Abuse and subsequently convicted of 243 (e) (1) P.C. Spousal Battery.

The investigation revealed that the accused employee and his/her partner had been married for a number of years and had never been involved in a physical dispute. The accused employee advised that he/she inadvertently scratched his/her partner because he/she was trying to have a discussion and his/her partner did not want to have that discussion. The accused employee also scratched and hit the partner as he/she walked away to go take a shower. A 911 call was placed

by a witness who was working in a house near the accused employee's residence. The local police responded and the accused employee was arrested. The accused employee and partner both were contacted by the police and gave statements about the incident.

The investigation resulted in two allegations of misconduct against the accused employee for using physical violence, being arrested, and causing the response of a local police agency. Both allegations were Sustained by the Department. The rationale provided that the accused employee admitted to the allegations, and there were photographs taken of the partner on the date of the incident to support the allegations. Further, the accused employee admitted to the arrest for 273.5 P.C. and entered a guilty plea to 243(e) (1) P.C. Spousal Battery. Per the Penalty Guide, the first time a misdemeanor domestic violence incident occurs with a law enforcement response, the employee is recommended to receive a minimum of five days up to being directed to a Board of Rights. The accused employee received three days because he/she was arrested, convicted and given a court sentence of 36 months of summary probation, domestic violence classes, and was ordered to 12 months of counseling.

b. Analysis of the Investigation

Our review revealed no investigative deficiencies, which impacted the adjudication. The I/O canvassed the area and left contact cards for the residents when no one was home, which aided in finding the witness. The I/O also attempted to interview the local police agency arresting officer but their Department policy was that no outside agency can interview their officers unless compelled to do so and an IAG supervisor must be present. The I/O consulted with his commanding officer and they agreed that the interview would not be necessary for the adjudication.

c. Conclusion

The OIG believes that there was enough information gathered during the investigation to allow the adjudicator to make an informed decision and we agree with the resulting adjudications.

4. CF No. 08-002069

a. Summary

This complaint was filed by the Department against an officer whom the Department alleged became involved in two domestic violence incidents which resulted in the response of officers from the local police agency.

The investigation revealed that the accused employee and his/her domestic partner had been living together for a number of years and had routinely been involved in verbal disputes throughout the relationship. The couple became involved in two verbal incidents on consecutive days, which resulted in an Emergency Protective Order (EPO) being issued against the accused employee.

The investigation also revealed that the first incident occurred after the couple verbally argued about issues in the relationship. The accused employee began drinking alcohol to the point that

he/she became intoxicated, at which time the partner left the residence and took the keys to all of their vehicles. The accused employee ended up falling into the pool at their house, but was able to extricate himself/herself before he/she "passed out" in an enclosed part of the yard.

The next day, the partner arrived back at the house and another argument ensued. The partner alleged that he/she tried to leave the residence and the accused employee grabbed the door handle and blocked the partner's exit. The partner further advised that the accused employee pulled the handle with such force that it flew back and struck the accused employee in the face. The accused employee, on the other hand, advised that the partner began throwing the accused's belongings out of the front door of the residence. At that point, the accused employee advised he/she stepped in front of the door and grabbed the handle to prevent any more throws. He/she then advised that due to the mutual pulling of the door handle, the door flew back and struck the accused employee in the face. Both alleged that the accused employee then called 911 and alleged that the partner had hit the accused in the face. The accused employee later told responding officers that after "processing what happened, [he/she] realized that [the partner] did not hit [him/her]" with the door. Instead, the accused employee realized that he/she was struck due to them each pulling on the handle.

The investigation revealed that when officers arrived at the residence there was clothing strewn in the yard near the door, but both the accused and the partner had left the residence. Both were contacted by the police and gave statements about the incident. The partner advised that they had mutually pushed each other in the past and that these types of incidents were occurring with more frequency and intensity. In the 911 recording, the accused can be heard advising that the partner "just beat the crap out of me, he/she just popped me in the face." The partner can be heard saying "tell them why, because this (unintelligible) won't let me leave." In part because there were no visible injuries, the police determined that no domestic violence had occurred, but admonished the accused employee to leave the residence and stay elsewhere for the time being. The police also advised the accused employee not to return to the residence without them being present, in an effort to keep the peace. The partner also advised that the accused employee had previously held him/her down and blocked him/her from leaving.

The investigation also revealed that the second incident occurred the next day when, despite the warning from police, the accused employee returned to the residence to retrieve a day planner, without first contacting them. The partner called the police and this time both advised the police that they had injuries: the partner to his/her hands and the accused to his/her chest. Photographs were taken to document that there were no visible injuries to either person. They both, however, denied that any violence had occurred. It was speculated by the responding officers that any injuries, although invisible, could have occurred during the couples struggle with the door handle from the previous day. As to why the accused returned to the residence without the officers being present, there were three different versions. The accused advised he went to the residence when the partner would not answer when he/she asked if he/she could come over. The partner advised that he/she said, that the accused could not come over without the officers present, but the accused advised that "I live there and I can come over." And the local officers advised that when they asked the accused employee, why he/she went to the residence without them, the accused advised "I forgot." An EPO was issued against the accused employee after this second incident. As a precautionary measure, the police submitted their investigation of the two

incidents to the District Attorney's Office, who rejected the case for filing as it lacked sufficient evidence.

The investigation resulted in two allegations of misconduct against the accused employee for unnecessarily becoming involved in two domestic disputes, causing the responses of a local police agency. Both allegations were adjudicated by the Department as No Misconduct-Employee's Action Could Have Been Different. The rationale provided that no crimes had been committed, but the "arguments could have been handled differently." Additionally, the adjudicator noted that the couple had reconciled, had sought counseling and have had no further incidents.

b. Analysis of the Investigation

Our review revealed no investigative deficiencies which impacted the adjudication of the allegations framed. The I/O even contacted neighbors and attempted to contact uncooperative family members to confirm that no incidents of domestic violence had occurred in the past.

c. Analysis of the Adjudication

We agreed as to the adjudication of the allegation for the first incident since arguably the accused was the victim. However, the second incident occurred when the accused employee ignored the warning from the local police and went to the house to retrieve some arguably insignificant items, when he/she knew that his/her relationship with the partner was volatile and bordering on violence. Additionally, despite their later reconciliation, the accused was issued an EPO after this incident. Therefore, we believe there was enough information to also sustain this allegation against the accused employee.

d. IAG's Response

IAG did not concur that this second allegation should have been sustained and provided the following response: "During the first call, the local police officers advised the accused employee not to return to his/her home due to the volatility of his/her relationship with his/her partner. IAG concurs that this was excellent advice. However, the accused employee still had every legal right to return to his/her own home. According to all accounts, he/she called first to advise his/her partner that he/she was returning to the residence in order to retrieve his/her property from his/her car. The partner admitted that he/she was uncooperative with allowing the accused to retrieve that property and incited the second argument. A third party called for police response. There is no indication that the accused committed any act of misconduct in the second allegation."

e. Conclusion

After reviewing IAG's response, the OIG continues to believe that there was enough information gathered during the investigation to allow the adjudicator to make an informed decision, but continues to disagree with one of the resulting adjudications.

5. **CF No. 08-002105**

a. Summary

This complaint was filed by the Department against an officer whom the Department alleged while off-duty, used physical force during a domestic violence incident and whose conduct required the response of the local police agency.

The investigation revealed that the accused employee and his/her domestic partner had been married for several years and that they had been having problems with their relationship. The accused employee stated that there had not been any domestic violence incidents before or after this incident. However, the accused employee's daughter indicated that this was not the first time that the accused employee has hit the partner.

The investigation revealed that the accused employee had been trying to contact and locate his/her partner all day. The accused employee was dropping off his/her daughter at the airport and the partner was there waiting for the accused employee and his/her daughter. The arrest report indicated that the accused employee and partner were arguing about infidelity and the partner stated to the accused employee, "I dare you to hit me!" The accused employee then punched the partner once in the mouth. The partner then struck the accused employee in the face an unknown amount of times causing visible injuries to the accused employee's eye. The prosecutor's office rejected the case due to the partner being uncooperative during the City Attorney's Hearing.<sup>9</sup> Both parties were counseled and the case was closed.

The investigation resulted in two allegations of misconduct against the accused employee for using physical force during a domestic violence incident while off-duty and for requiring the response of the local police agency. Per the Department's Penalty Guide, an officer that receives a sustained allegation for the use of physical force during a domestic violence incident is recommended to receive from a minimum of a written penalty up to being directed to a Board of Rights.<sup>10</sup> Both allegations were classified by the Department as Sustained, which resulted in the accused receiving a four day suspension. This penalty was within the Department's guidelines. Additionally, the adjudicator noted that from the onset of this incident, the accused took responsibility for his/her actions and made no attempt to avoid his/her culpability, notwithstanding the fact that the accused sustained injuries during the altercation with his/her partner. Additionally, the accused agreed to voluntarily seek counseling on anger management and related issues.

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<sup>9</sup> If formal criminal charges are not filed against the person arrested, the City Attorney's Office may set the case for a City Attorney Hearing. The goal of the Hearing Program in domestic violence cases is to increase the safety and security of victims of family violence and their children by providing an effective alternative to prosecution of misdemeanor offenses in criminal court. If the case is set for a hearing, both the person arrested and the victim will receive a letter informing them of when and where the hearing will be held. At the hearing, a Hearing Officer will review the case, educate the parties about the law and provide resources and referrals as needed.

<sup>10</sup> For a sustained allegation of a domestic violence incident which causes law enforcement to respond, but for which no criminal charges are filed, an employee is recommended to receive a minimum of a written penalty up to four days suspension.

b. Analysis of the Investigation

Our review revealed no investigative deficiencies, which impacted the adjudication. There were only two known witnesses to this incident; the accused employee's daughter and an unidentified individual that caused the police to be called. The unidentified witness could not be located for an interview.

In our review we noted, however, that on the tape recorded interview of the partner, the investigators read the partner his/her Miranda rights and then he/she was too scared to proceed without an attorney. At that point, the investigating officers turned off the recording device to discuss the matter further. The OIG believes that the investigators should not have ended the recording until the issue was completely resolved especially since, the paraphrased statement does not elaborate on what was discussed off tape.

c. IAG's Response

IAG concurred that a gap in a recording raises the question as to what transpired during the period of non-recording and provided the following response: "In this instance, the partner was properly Mirandized, since he/she was possibly a suspect in a domestic violence incident as the accused employee also had injuries. He/she had every right to request an attorney or invoke his/her rights. As with many domestic violence victims/involved parties, emotions can run very high and the presence of a recording device can oftentimes exacerbate tensions and fears. It was for this reason that the recorder was turned off, in an attempt to gain the individual's trust and calm his/her fears or hesitation. As the OIG noted, this did not have any effect on the outcome of the investigation or the adjudication. However, an Investigator's Note describing the nature of the off-tape conversation should have been included."

d. Conclusion

The OIG believes that there was enough information gathered during the investigation to allow the adjudicator to make an informed decision and we agree with the resulting adjudications.

6. CF No. 08-002465

a. Summary

This complaint was filed by the Department against two off-duty officers, Accused 1 and Accused 2, by the former domestic partner of Accused 1. The partner and Accused 1 (the couple) engaged in a physical and verbal incident, which resulted in the response of the local police agency. As a result of the incident an EPO was issued against Accused 1. The partner initially alleged that Accused 1 hit him/her in the head and kicked him/her in the stomach, but later recanted these allegations. The Department alleged that Accused 1 unnecessarily caused the response of the local police agency during a domestic violence incident and was named as a respondent on an EPO. The Department also alleged that Accused 2 failed to provide adequate information to a 911 emergency operator during the incident between Accused 1 and the partner.

The investigation revealed that the couple previously had a relationship for a number of years and had a child in common. The investigation also revealed that Accused 1 and Accused 2 had previously been engaged in a relationship, but were just friends at the time of the incident. The incident occurred around 3:30 am while the couple verbally argued at the home of Accused 1 about visitation with their child. The partner wanted to visit with the child, but Accused 1 would not allow the visit. As a result, a physical altercation ensued after the partner grabbed the door handle and Accused 1 tried to remove him/her from the porch. The partner alleged that he/she fell off the porch of the residence and sustained injuries. After the partner fell, Accused 1 went back inside the residence and received a phone call from Accused 2. Accused 2 was apprised of the incident and called 911. As a result of the 911 call, the incident was dispatched to the local officers as a "459 suspect there now."<sup>11</sup> When the two local officers arrived and interviewed the couple, they determined that the call was coded incorrectly as a burglary call, but it was actually a domestic dispute. Therefore, no report was generated. The investigation revealed that Accused 2 who made the call, did not provide the operator with adequate information.

The local officers called a supervisor out to assist them. The officers did not see injuries on either party that evening. Additionally, while at the scene, neither person expressed any fear of the other person. The partner left the scene peacefully, but then decided to go to the hospital to receive medical treatment for injuries to his/her back and legs. While at the hospital, the partner advised a nurse that Accused 1 hit him/her in the head and kicked him/her in the stomach. The nurse called the local police agency and IAG investigators came to the hospital to take a statement from the partner. The partner recanted the initial allegations to the IAG investigators. However the partner insisted that Accused 1 shoved him/her against a wall, that the partner's head struck the wall, that he/she had sustained a fall and that Accused 1 then used his/her foot to push the partner's leg off the porch after he/she had fallen. While speaking to IAG investigators, the partner expressed the need for an EPO against Accused 1.

During the subsequent investigation photographs were taken to document that there were visible injuries to both parties. They both; however, had denied to the officers at the scene that any violence had occurred. The police submitted their investigation of the incident to the District Attorney's Office, who rejected the case for filing because they determined that no felony charges were warranted. The case was then referred to the City Attorney Office's, Family Violence Unit and they determined that no misdemeanor charges were warranted. This case was scheduled by the Deputy City Attorney for a City Attorney's Hearing. After the hearing, the case was resolved and closed.

The investigation resulted in four allegations of misconduct. The following three allegations were framed against Accused 1: Allegation No. 1 for allegedly hitting and kicking the partner, Allegation No. 2 for unnecessarily causing the response of the local police agency and Allegation No. 3 for being named as a respondent in an EPO. The assault allegation was classified as Unfounded. The rationale provided that the partner was actually the aggressor and first struck Accused 1,

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<sup>11</sup> California Penal Code Section 459, provides that "Every person who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, with intent to commit grand or petit larceny or any felony is guilty of burglary."

who had “the right to defend [him/herself] from the partner's admitted attack.” The adjudicator further provided that “the domestic partner admitted that [he/she] lied to the hospital staff ... because [he/she] was emotional.”

The allegations that Accused 1 unnecessarily caused the response of the local police agency and was named in an EPO were classified as Non-Disciplinary, Employee Actions Could Have Been Different. The rationale provided that Accused 1 should not have opened the door during the incident. It further provided that Accused 1's actions did not rise to the level of misconduct, however, “[he/she] certainly could have taken a more appropriate course of action.” The adjudicator also opined that the EPO could not have been obtained since Accused 1 did not have physical contact with the partner. Finally, Accused 1 was also informally trained/counseled that he/she should have reported his/her involvement in the incident, which may have avoided the entire misconduct investigation.

The final allegation was framed against Accused 2, for failing to provide adequate information to a 911 emergency operator. This allegation was also classified as Non-Disciplinary, Employee Actions Could Have Been Different. The rationale provided that Accused 2 “failed to give the whole story to the operator, when [he/she] reported that an unknown person was breaking into [the] house.” Accused 2 also failed to initially identify him/herself or Accused 1 as off-duty local police officers. Accused 2 was informally trained/counseled “about the importance of providing the 911 operator with as much detail as possible to ensure the safety of responding personnel and the integrity of the investigation.”

The adjudicator advised in the LOT that both accused employees were receptive to the training/counseling that they received.

b. Analysis of the Investigation

First, we noted that overall the I/O interviewed all of the involved persons and gathered a great deal of evidence in this matter and the OIG believes that there was enough information gathered during the investigation to assist in adjudicating these allegations. Our review did reveal; however, that there were additional allegations that could have been framed against the accused employees and there was no mention of whether or not a potential piece of evidence was obtained.

The additional allegations are as follows:

- That Accused 1 did not disclose material information about the domestic violence incident to the responding supervisor during the investigation.

The investigation revealed that Accused 1 never told the supervisor that there was a physical altercation and the partner fell off of the accused's porch because Accused 1 did not want the partner to be arrested. During his/her interview, Accused 1 did admit that he/she should have told the officers about all of the material facts of the incident, but we believe an allegation should still have been framed.

- That Accused 1 and 2 inappropriately started a dating relationship while they were partners on the same watch and did not immediately notify their Commanding Officer of their dating relationship.

The investigation revealed that in the tape recorded interviews with both accused employees; they both admitted that they had a dating relationship that started while they were partners on the same watch and became intimate after one officer was moved to another watch. Neither of the officers formally notified their Commanding Officer about the start of their dating relationship.<sup>12</sup> This information was also not included in the paraphrased statements.

Lastly, during the partner's interview he/she indicated that the supervisor had a recording device that he/she used to record their conversation. However, there were no notations in the investigation as to whether a recording existed, and if so, whether the I/O made reasonable efforts to obtain it.

c. Analysis of the Adjudication

From our review of the rationale in this case it appeared that many of the discrepancies between the partner's statement and Accused 1's statement appeared to be resolved in favor of Accused 1, due to the partner's lack of credibility and emotional state on the night of the incident. Some of the discrepancies resolved in Accused 1's favor include whether the partner tried to take the child, whether the partner tried to force his/her way into the residence and the nature of the physical contact between the two. We agree that the partner had credibility issues since he/she initially gave false information to hospital staff, but then he/she seemed to voluntarily correct those false statements when speaking to IAG investigators. However, we also noted that Accused 1's statements seemed to be inconsistent as well in that he/she failed to disclose that the partner sustained a fall during the incident and denied that there was any violence between them; but the documented injuries for both parties seems to contradict Accused 1's statement.

We also question the change made to Allegation No. 1. The I/O originally framed this allegation as the accused employee, "while off duty, used physical force during a Domestic Violence Incident." It was changed to more closely reflect the partner's initial false statement to hospital staff that Accused 1 had kicked the partner in the stomach and hit him/her in the head. It seemed to the OIG that the original allegation framed by IAG more closely fits the partner's statement to the I/O about what happened that night, since the partner continued to note that there was physical contact, that he/she ended up hitting a wall, that he/she had sustained a fall, and that Accused 1 then used his/her foot to push his/her leg off the porch after he/she had fallen.

Finally, we also have concerns about the adjudication of Allegations No. 2 and No. 3. We agree that Accused 1's actions could have been different with respect to these allegations, since he/she would not have been one of the causes of the response of officers and he/she would not have been named in an EPO if he/she had stayed in the house. We also note that in this case and in others referenced herein, if the accused employees did not engage with the other parties, then the physical confrontations would most likely not have occurred; and, as in this case, Accused 1 would not have been named in an EPO.

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<sup>12</sup> LAPD Manual Vol. 1, Section 271 provides that employees should avoid situations that lead to a conflict between duties and relationships and should these situations develop, it is their duty to notify their C/Os.

d. IAG's Response

IAG did not agree that additional allegations were necessary and provided the following response: "The relationship between Accused 1 and Accused 2 was not one between a supervisor and a subordinate and did not interfere with their working relationship. The Department Manual only discusses notification of the Commanding Officer when the relationship leads to a conflict of duty."

"As to the second allegation suggested by the OIG, the officer should have divulged all information regarding the incident to the responding supervisor, but he/she did not believe that the partner had been injured and did not wish to cause him/her to be arrested. It appears that the partner was intoxicated at the time of the incident, but this was not pursued in the line of questioning of the witnesses. IAG does not believe that it is reasonable to say that Accused 1 contributed to this incident by making contact with the partner. It was the partner who appeared on Accused 1's doorstep in the early morning hours of the incident. Accused 1 had every legal right, and one would argue a responsibility as a good neighbor, to respond to the partner when she arrived at his house and began yelling and banging on his/her door with a shoe at 2:30 am. The officer was attempting to deescalate the partner's behavior."

"IAG concurs that the allegation verbiage should have reflected the incident as it was determined to have occurred, rather than as first reported by the complainant. However, the adjudication would have remained the same."

e. Conclusion

After reviewing IAG's response, the OIG concurs that there was enough information gathered in the investigation to allow the adjudicator to make an informed decision, although we noted that there may have been one additional recorded statement available to investigators. However, we continue to believe that additional allegations could have been framed and are concerned about the resulting adjudications of the included allegations.

7. CF No. 08-002633

a. Summary

This complaint was filed by the former domestic partner of the accused employee, who alleged that there had been several incidents of domestic violence between them during their relationship and that the accused had engaged in other violent misconduct towards others. The accused employee denied that there was any history of violence between the two of them or with others.

The investigation revealed that the accused employee and the partner had a one and a half year relationship and that they had lived together for approximately 10 months. On one occasion (Allegation No. 1), the partner advised that one night the two argued in the bedroom of their residence. As a result of the argument, the partner left and went into another room. The partner alleged that the accused employee followed him/her, grabbed him/her by the ankle and dragged him/her on the floor to the bedroom. The partner further advised that he/she left the residence to sleep in his/her vehicle to avoid any further confrontations, but then returned without further

incident. The accused denied the incident ever occurred. There were no witnesses to the incident and law enforcement was never called that evening.

On another occasion (Allegation No. 2), the partner also alleged that, the accused employee, while off-duty, inappropriately displayed his/her handgun in public at friends during an argument and made a criminal threat. The partner alleged that friends saw the accused employee out one evening and confronted him/her about how the accused treated the partner. The partner advised that the accused displayed a hand gun and threatened the friends. However, one of the friends advised that she never saw a gun, but the accused did say "I'm going to kill you" to them and stood chest to chest with one of the group, before being separated. Law enforcement was not involved in this incident and no other members of the group provided information during the investigation. The accused admitted that he/she had been confronted by the group of friends, but denied threatening anyone or brandishing his/her weapon.

On a separate occasion (Allegation No. 3), the partner alleged the accused and a friend had been drinking alcohol at home one evening with a group when a verbal dispute ensued about some property. The partner also alleged that, the accused employee then choked his/her friend causing other members of the group to have to intervene. The group of friends was not located and did not provide information during the investigation. The accused employee admitted that he/she had a friend by the same name, but denied that any such incident occurred.

During another incident (Allegation No. 4), the partner alleged that the accused returned home intoxicated and became angry with the partner. At that point, the partner advised the accused went outside without wearing shoes, but carried a firearm. The accused then allegedly fell to the ground which caused the firearm to fall out of his/her pocket. After standing back up, the accused then went and sat in his/her vehicle which prompted the partner to call 911 because the partner feared the accused would drive away intoxicated. When an officer from the local police agency arrived, the partner alleged the officer had to threaten to break the window to get the accused to roll it down. The officer advised that he had to "pound" on the window for a while to wake the accused and that the accused was slow in responding to the officer's orders to roll down the window or open the car door. The officer also noted that the accused's eyes were bloodshot and watery and the accused smelled of alcohol. The officer also advised the accused admitted to drinking alcohol that evening, but denied having a weapon on him/her. The accused was not searched and was allowed to return home without further incident. The partner never spoke to the responding officer, but observed the incident from the apartment. The accused denied that he/she had been drinking alcohol, but that he/she was very tired and went to sleep in the car after arguing with the partner.

The next day (Allegation No. 5), the partner alleged that he/she wanted the accused "off the lease," which resulted in another argument. The accused cursed the partner and he/she responded by pushing the accused in the chest. The partner advised that the accused then removed his/her firearm from his/her pocket and placed it on a table, but not pointed towards the partner. The accused then allegedly advised "I will fucking kill you. Do you know who I am? You don't even know what I can do to you." The partner said he/she left the residence after the accused threatened to call the police on him/her for pushing the accused. The accused denied brandishing his/her weapon or threatening the partner. There were no witnesses to the incident and law enforcement was never called that evening.

Lastly, the partner alleged that the accused employee, while off-duty, inappropriately used steroids (Allegation No. 6). The partner advised that the accused used a particular steroid and disclosed its name. The accused allegedly would fill a syringe with the steroid and release it under his/her tongue as opposed to injecting it. After the accused began using the drug, the partner advised his/her personality changed and he/she exhibited other symptoms consistent with steroid use. The partner named the accused's alleged source for the drug and noted that the drug was kept in a specific bag in a specific location in the residence. The accused denied obtaining or using steroids, but advised that he/she used over the counter supplements which came in tubes, not syringes, which the partner may have confused for steroids. The accused's alleged source did not provide information during the investigation, although the accused admitted to knowing him. The local police agency tested the accused for steroids during the investigation and the results were negative. The I/O's review of medical research about the drug provided that by the time the accused was tested, that particular drug would not have been present in his/her system.

The partner advised friends of several physical domestic disputes between the two. Additionally, the apartment manager wrote a letter to the couple after he/she received complaints from other tenants about an argument between the accused and the partner on a particular date. One of the tenants who complained to the manager also advised that he/she heard the couple arguing in the accused/partner's residence and one person "pleading for the other to stop." The accused denied that the partner was home on the date of the incident described by the manager and the tenant.

The investigation resulted in the six aforementioned allegations of misconduct against the accused employee. All six allegations were classified as Not Resolved, as the adjudicator did not believe the investigation was able to resolve the discrepancies between the accused and the partner's versions of the incidents described herein.

#### b. Analysis of the Investigation

We note and commend the I/O for the amount of information obtained during this investigation and overall, we believe the investigation was substantially complete. The I/O canvassed the apartment complex to locate and identify potential witnesses to the alleged incidents. Furthermore, the I/O ensured that the accused was drug tested as part of the investigation. However, the OIG would have preferred if the investigative records contained more documented attempts to follow up with important witnesses who were unavailable during the investigation and to locate a potentially important piece of evidence. The I/O's chronological record (chronolog) contained a few attempts to contact some witnesses, but it contained no additional follow up or reasons as to why follow up was not taken. And, the partner indicated that he/she still had the toiletry bag in which the accused employee allegedly kept his/her steroid syringes, however, there was no documentation or follow up in the investigation that indicated if the I/O was able to obtain the bag from the partner.

#### c. Analysis of the Adjudication

The OIG agreed with all of the adjudications given the lack of cooperation of some of the witnesses. However, we noted that Allegation No. 4, that the officer was drunk in public causing

the local policy agency to respond, could have been amended to reflect that a domestic dispute caused the response of the local police agency. The OIG believed that an amendment would have been appropriate because there were no scientific evidence or sobriety tests to confirm the accused's intoxication level, but there was evidence of a domestic dispute and police response. We discussed this matter with the accused employee's C/O who advised that the framing of the allegation was left up to IAG since they have more knowledge about the appropriate language to be used.

Additionally, we were concerned because this accused employee has a previous sustained domestic violence complaint (CF No. 06-5866) and had previously been ordered to Behavioral Sciences Services for evaluation. The LOT provided that the adjudicator would conduct future meetings and reviews to render it unlikely that similar incidents involving this accused employee would occur. We discussed this matter with the accused employee's C/O, because of the accused's domestic violence complaint history. The C/O confirmed that the officer's chain of command was also concerned about the accused employee and that the meetings/reviews discussed in the LOT took place and will continue. We appreciate the C/O's response on this case.

d. IAG's Response

IAG believes that adequate and thorough attempts were made to contact the witnesses in this case, and the OIG noted in the opening of their analysis of the investigation that the investigation was overall substantially complete. IAG provided the following response:

“While the Department does not have control over non-Department employees, and it is likely that the Complainant declined to cooperate further, a definitive disposition as to the presence or absence of the bag should have been noted in the investigation. As the investigation stands, it does appear that there was no follow up by the IO.”

Further IAG concurred with the OIG's assessment that Allegation No. 4 “could have been framed differently, or an additional allegation framed, to address the accused's behavior, intoxicated or not, that led to the response of the local police agency. This clearly occurred, as we have the local police officer's statement of his response and contact with the accused. This allegation should have been either re-framed or a new allegation framed and sustained accordingly. OIG apparently discussed this with the accused employee's C/O. The C/O advised that the framing of allegations is left to IAG, who are considered subject matter experts. While this is generally true, there is always room for improvement. When a C/O sees a deficiency in an investigation submitted by IAG, they are encouraged to either amend the allegations or frame new ones, and should contact IAG if they have any questions. This creates feedback for IAG investigators that can lead to improved performance.”

e. Conclusion

The OIG believes that there was enough information gathered in the investigation to support the adjudicator's decision. However, there were some additional investigative steps that may have assisted in resolving the allegations.

#### **IV. Discussion of Out Of Statute Cases**

During this Quarter, three cases were closed that were determined to be Out of Statute (OOS).<sup>13</sup> We reviewed these investigations to determine the reasons that the cases fell OOS and whether remedial actions were taken to prevent recurrence. We also reviewed three Intradepartmental Correspondences (15.2s) related to these cases provided to us by the Department, as well as the full case files.

Summaries of the OOS cases are as follows:

##### **CF No. 07-000207**

This complaint involved two accused employees who allegedly were rude and used profane language to a detainee. The detainee also alleged that they applied the handcuffs too tightly resulting in injury and failed to provide a business card after releasing him/her. The allegation regarding the failure to provide a business card was Sustained, and one of the officers would have received an admonishment had the complaint not fallen OOS. The statute lapsed due to the complaint tracking system in place at the area police station, which failed to cause a timely alert to indicate that this investigation had not yet been completed. IAG recommended that the area police station improve their complaint tracking system by incorporating an automated tickler file to monitor complaints and assigning a complaint coordinator to audit the status of those complaints on a routine basis.

##### **CF No. 07-001010**

This complaint involved one accused employee who was alleged to be discourteous. The complainant advised that the officer unnecessarily yelled at the complainant, inappropriately threatened to arrest the complainant, and was discourteous by intentionally throwing the complainant's paperwork at the complainant. The allegation of intentionally throwing the complainant's paper at the complainant would have been Sustained, had the complaint not fallen OOS. The statute lapsed due to the complaint tracking system in place at the area police station, which failed to cause a timely alert to indicate that this investigation had not yet been completed. To avoid future recurrences, the area police station instituted a computerized tracking system for all incoming complaints with calendared alerts built into the program. The Complaint/Review tracking supervisor at the area police station now receives the 30, 60, and 90 day statute list sent out by IAG. Lastly, the Department's shift to the fully automated Complaint Management System should provide supervisors with the best tools to effectively manage internal investigations.

##### **CF No. 07-006455**

This complaint involved an officer who became involved in a Preventable Traffic Collision (PTC) which injured another officer. The C/O of the Division sustained the allegation and recommended a four-day suspension.

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<sup>13</sup> These OOS cases are listed in Table N of the Department's Report: Out of Statute Complaints. All three cases are discussed herein. Only three out of 1332 (.0023 or .23%) cases were OOS in the 1st Quarter.

It appears that the statute lapsed because the Department Fleet Safety Coordinator (DFSC) did not receive a copy of the traffic report or Fleet Safety Report (FSR) until one year and two months after the date of occurrence. The FSR is necessary to initiate the complaint; therefore the complaint was OOS by the time the FSR was received.

Pursuant to the recommendation of the IAG, the investigating division created a tickler file to ensure that an FSR is received for each employee involved traffic collision report. The DFSC sent correspondence advising all traffic divisions to forward all employee involved traffic collision reports to Emergency Operations Division (EOD) within five working days of the incident. Additionally, CMS and TEAMS II will soon include automatic routing of these types of complaints, which should reduce the number that fall OOS.

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## **V. CUOFS Adopted As Out of Policy or Administrative Disapproval By the Commission**

During this Quarter, five CUOF incidents were closed in which the Commission adopted a finding of Out of Policy or Administrative Disapproval (AD). Of the five CUOF incidents, one was an In Custody Death; three were Negligent Discharge cases; and one involved a Head Strike.<sup>14</sup> Table L in the Department's Report contains additional summary information on each of the five cases, including corresponding complaint information, the Commission's findings and the discipline imposed. Abridged summaries of the OIG's reports in these CUOF cases are included below.

### **In Custody Death (ICD) No. 012-07**

This case involved several officers utilizing non-lethal force on a suspect, who subsequently died in custody. The situation began when Officers A and B conducted a traffic stop on a vehicle driven by the suspect, who was a known gang member. Officer A directed that the suspect exit the vehicle, while he/she inspected the vehicle for other occupants. The suspect was directed to walk towards Officer B, who was standing towards the rear of the suspect's vehicle. The suspect continued to walk past Officer B and proceeded to run away, with the officers in pursuit. Officer A advised Officer B to return to their vehicle, whose engine was still running, while Officer A continued to run after the suspect.

Prior to the officers separating, Officer A instructed Officer B to use the police vehicle to parallel him/her in the pursuit. While pursuing the suspect, Officer A observed the suspect grab his waistband and throw a metal object to the ground, which was subsequently recovered and determined to be a handgun. The suspect subsequently fell to the ground and Officer A drew his service weapon and ordered the suspect to remain on the ground. The suspect ignored the order and stood up and stared at Officer A, who characterized the suspect as being "disoriented" and looking like a "zombie."

The suspect proceed to walk towards Officer A, who delivered one baton strike to his left elbow and another to his left leg, where upon the suspect again fell to the ground, where he was ordered to remain. The suspect immediately stood up and again ran, with Officer A in pursuit. Officer A ordered the suspect to stop running, but the suspect just turned and looked at Officer A. The suspect proceeded to walk towards Officer A, who delivered one baton strike to the suspect's elbow and another to his leg. The suspect again fell to the ground but got up and immediately proceeded to walk away from Officer A.

The suspect approached several males and requested that they help him. Officer A again ordered the suspect to get on the ground. The suspect ignored the order and proceeded to again walk

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<sup>14</sup> On July 22, 2008, the Commission approved a Use of Force Directive (Directive) which included the following definitions: "Accidental Discharge: The unintentional discharge of a firearm as a result of an accident such as a firearm malfunction or other mechanical failure, not the result of operator error;" and "Administrative Disapproval – Negligent Discharge: Finding, where it was determined that the unintentional discharge of firearms resulted from operator error, such as the violation of a firearm safety rule." All unintentional discharges which occurred after the adoption of this Directive will be defined accordingly. However, for purposes of the QDR, the Department still categorizes some Negligent Discharges as Accidental Discharges due to a lag in the updating of documentation for these types of incidents. The Department is working to bring the terminology in the QDR into agreement with the definitions in the Directive.

towards Officer A, who delivered another baton strike to the suspect's elbow and another to his leg. Officer A, who was feeling fatigued drew his weapon and pointed it at the suspect. Officer A also used his radio to broadcast a call for help as he believed that the suspect was under the influence of drugs because of his continued actions.

Officer A observed that the suspect did not have a weapon, as he walked towards him/her, and proceeded to holster his/her weapon. Officer A again took possession of his/her baton, and proceeded to deliver another baton strike to the suspect's elbow and leg. The suspect momentarily fell to the ground, got up again, and proceeded to walk away again. At this point, Officer B arrived at the scene.

The suspect turned and walked towards Officer A, who delivered another baton strike to the suspect's leg. The suspect remained standing and proceeded to walk towards Officer B, who punched the suspect three times in the face, where upon the suspect bent down as if to grab Officer B's legs. Officer B delivered a knee strike to the suspect's upper chest area and attempted to force the suspect to the ground.

Several officers arrived at the scene in response to Officer A's call for help, where upon Officer C observed the suspect fighting with Officer B. Officer C proceeded to grab the suspect's left arm, but the suspect broke Officer C's grip and again focused his attention on Officers A and B. Officer C struck the suspect with a close fist in the left temple head area and the strike appeared to have no visible reaction on the part of the suspect. Meanwhile, Officer D also observed the suspect's combative actions and proceeded to deliver a front kick to the suspect's front torso. Officers C and D forced the suspect to the ground, where upon Officer C attempted to gain control of the suspect's left hand. The suspect attempted to grab Officer C's utility belt and Officer C used his closed fist to punch the suspect at least two times in the ribcage/chest area.

At this point, the officers were able to gain control of the suspect, who was handcuffed. A pat down search of the suspect by Officer A resulted in the discovery of a folded dollar bill, which Officer A handed to Officer E for further examination. An examination of the bill revealed it to contain a white powdery substance and as Officer E examined the bill, the suspect blew its contents onto Officer E's uniform shirt and onto the trunk of a police vehicle. Officers A and E sat the suspect in the backseat of the police vehicle at which point Officer F, a supervisor, directed that a hobble restraint device (HRD) be placed on the suspect. The HRD was placed on the suspect's ankles by Officer A without any further incident.

The suspect was transported to a booking facility by Officers H and G. Upon arrival at the facility the suspect was removed from the vehicle, stood for a moment and fell to the ground. Officer G repositioned the HRD to the suspect's knees so that he could walk into the facility. At this point the suspect went limp and Officers G and H, with the assistance of Officers I and J carried the suspect into the facility. The suspect was placed on a bench in a cell in the booking area, but he subsequently fell to the floor. The suspect was assisted back onto the bench and appeared to be breathing but was non-responsive. The suspect was examined by Officer K, a supervisor, who observed him to be drooling. Officer K also observed the suspect to be non-responsive and breathing fairly shallowly. Officer K left the cell momentarily to check on another arrestee and upon returning to the cell observed the suspect's breathing to be somewhat shallower than it had been before. A Los Angeles Fire Department Rescue Ambulance was

requested and several firefighter/paramedic personnel responded to the scene. An examination of the suspect revealed no pulse or heart activity and he was pronounced dead. A subsequent autopsy by the Los Angeles County Coroner's office disclosed that the suspect's death was the result of "the effects of cocaine and methamphetamine use, combined with coronary artery disease." Moreover, it was determined that the use of force employed by the officers to subdue the suspect was not fatal.

The Commission found that the use of non-lethal force by Officer A during his/her pursuit of the suspect when he/she struck the suspect several times with his/her baton was reasonable, appropriate and within Department policy. Furthermore, the Commission found that Officer B's delivery of three punches to the suspect's nose and mouth area and his/her delivery of a knee strike to the suspect's upper torso was also reasonable, appropriate and within Department policy. Additionally, Officer C's use of a firm grip and his/her punching of the suspect in the left temple and right torso were reasonable, appropriate and within Department policy. Similarly, Officer D's use of a firm grip and his/her delivery of a front kick to the suspect's left torso were also reasonable, appropriate and within Department policy.

The Commission also found that it was reasonable, appropriate and within Department policy for Officer A to draw and exhibit his/her weapon after the suspect had discarded what Officer A believed was a weapon, since the suspect could still have been armed. Moreover, it was determined that Officer A appropriately drew and pointed his/her weapon at the suspect, when he/she was physically exhausted from repeated contacts with the suspect, who despite being ordered to the ground, continued to advance towards Officer A.

The Commission found, however, that the tactics employed by Officers A and B warranted Administrative Disapproval (AD), in that the officers chose to secure an unattended police vehicle, which resulted in Officer A being in foot pursuit of the suspect, while Officer B secured the vehicle. Furthermore, it was determined that Officer A had directed Officer B to use the vehicle to attempt to catch the suspect as opposed to joining Officer A on foot, once the vehicle was secured. Moreover, the Commission was critical of the fact that Officer A failed to increase the distance between himself/herself and the suspect, while waiting for responding officers to arrive, which resulted in repeated physical confrontations with the suspect.

As a result of the AD finding, personnel complaint CF No. 07-000769 was initiated. The Department framed one allegation of Unauthorized Tactics against Officers A and B. Additionally, the suspect's family filed a claim for damages alleging excessive force, discourtesy, unlawful detention, false statements, and failure to provide medical treatment. The family's allegations were consolidated into one complaint investigation along with the unauthorized tactics allegations. None of these additional allegations were sustained against any accused employees.

The unauthorized tactics allegations were sustained and the Chief of Police imposed a penalty of Training-No Penalty for Officers A and B. The penalties appear to be within the Department's Guidelines, as a review of each officer's complaint history revealed no prior sustained complaints for Unauthorized Tactics for either officer. Both officers subsequently received one-hour of formal training on Use of Force and Foot Pursuit tactics.

### **OIS No. F108-07**

This case involved an accidental discharge of a weapon which occurred when an officer was in a locker room while changing to go on duty. The officer was attempting to secure his off-duty weapon into a gun case when he/she inadvertently pressed the trigger causing the weapon to discharge. The round struck the locker room wall causing minimal damage.

The Commission found that the officer was negligent in the handling of his/her weapon as the officer failed to adhere to basic Department firearm safety rules when he/she handled the weapon. As a result, the Commission found that the incident warranted Administrative Disapproval (AD).

As a result of the AD findings, personnel complaint CF No. 08-000011 was initiated. The Department framed one allegation against the officer for negligently discharging his/her pistol. The allegation was sustained and the Chief of Police imposed a penalty of an Official Reprimand which appeared to be within the Department's Guidelines, in light of the fact that a review of the officer's complaint history revealed only one prior sustained complaint for a dissimilar incident.

### **OIS No. F010-08**

This accidental discharge of a weapon occurred when an officer was in the process of dry firing his/her Department issued weapon, while off-duty at home.<sup>15</sup> In preparing to dry fire the weapon the officer inspected the chamber to see if there was a bullet present, however the room in which the incident occurred was dimly lit. The officer then pulled the trigger and a round was discharged hitting a wall. The officer immediately checked to ensure that no neighbors were injured by the shot and made all of the department's required notifications of the incident.

The Commission found that the officer was negligent in the handling of his/her weapon as the officer failed to adhere to basic Department firearm safety rules when he/she handled the weapon and the incident warranted Administrative Disapproval (AD).

As a result of the AD findings, personnel complaint CF No. 08-000690 was initiated. The Department framed one allegation against the officer for negligently discharging his/her pistol, which resulted in no injuries. The allegation was sustained and the Chief of Police imposed a penalty of an Official Reprimand which appeared to be within the Department's Guidelines, in light of the fact that a review of the officer's complaint history revealed no prior sustained complaints.

### **OIS No. 013-08**

This case involved an accidental discharge of a weapon which occurred when an off-duty officer was seated at a bar in a restaurant. The officer initially placed his off-duty pistol, which was not in a holster, in his jacket pocket prior to entering the restaurant and secured the pocket with its single snap fastening. After a period of time, the officer noted that the jacket pocket was unsnapped and reached into the pocket to insure that the weapon was still there and the weapon

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<sup>15</sup> Dry firing is when an officer pulls the trigger on a weapon, which he/she believes to be unloaded, while practicing with the weapon.

discharged. The round discharged into the bar where the officer was seated and resulted in no injuries.

The Commission found that the officer was negligent in the handling of his/her weapon as the officer failed to adhere to basic Department firearm safety rules when he/she handled the weapon and the incident warranted Administrative Disapproval (AD) with extensive retraining.

As a result of the incident, the area command initiated personnel complaint CF No. 08-000761 prior to the Commission's AD finding. The Department framed one allegation against the officer for negligently discharging his/her pistol. The complaint was Withdrawn by the Chief of Police, who determined that the officer's violation of basic safety rules could best be addressed by extensive training to improve his/her performance. The Chief's decision to withdraw the complaint appeared to be appropriate, in light of the fact that a review of the officer's complaint history revealed no prior sustained complaints at the time of the incident.

### **Headstrike No. 060-07**

This case involved the use of lethal and non-lethal force on a suspect. The incidents involved Officer A, a supervisor, and Officer B, who were assigned to a specialized unit, and were providing cover during an undercover operation, which resulted in the arrest of a female suspect. The officers took custody of the suspect and placed her into their vehicle for transport to a booking facility. The vehicle was unmarked and did not have a wire partition between the front and rear seats.

Only a cursory search was performed on the suspect and her hands were handcuffed behind her back. Officer B placed the suspect in the right rear seat, while Officer A occupied the front passenger seat and Officer B drove the vehicle. While driving to the booking location the suspect was able to release her seat belt, at which point Officer B activated the vehicle's "child safety lock" to ensure that all of the vehicle's doors were locked.

While stopped at a red light, the suspect managed to exit the vehicle and fled on foot, with both officers in pursuit. Officer B realized that he/she had left the vehicle running with at least three doors open. Officer B continued the pursuit, while Officer A returned to secure the vehicle. Upon initially giving chase, Officer B was in possession of a radio, while Officer A had left his/her radio in the vehicle. Officer B advised Communications Division that a foot pursuit was in progress but failed to provide a location.

Upon making initial contact with the suspect, Officer B dropped his/her radio, but managed to subdue the suspect by employing non-lethal force. Office A drove to where Officer B and the suspect were located. As Officer A approached the suspect, he/she was kicked in the stomach by the suspect and non-lethal force was again employed to control the suspect.

The suspect was placed into the rear seat of the police vehicle but his/her seat belt was not secured. At this point, Officer B requested that Officer A retrieve his/her radio from where it had been dropped and Officer A left the immediate area of the vehicle. The suspect proceeded to kick and spit at Officer B, who called out to Officer A for assistance, as the suspect began to crawl into the front seat of the vehicle, of which the engine was still running. Upon returning to

the vehicle Officer A opened the driver's door to remove the keys, and was kicked in the head by the suspect. Officer B, who had retrieved Officer A's radio from the floor of the vehicle, used lethal force to subdue the suspect by punching the suspect in the head with his/her hand, which also held the radio. The suspect sustained a laceration to the head as a result of being hit with the radio.

The Commission found that the use of non-lethal force by both officers upon initially subduing the suspect, after she fled the vehicle, was in policy. Furthermore, the use of lethal force by Officer B when he/she struck the suspect in the head with the radio was also in policy. However, the Commission found that both officers' tactics merited Administrative Disapproval (AD), inasmuch as the officers chose to transport the suspect alone in the rear seat of a non-partitioned vehicle, which minimized their ability to monitor the suspect's activities. Moreover, the Commission found that the officers failed to secure their vehicle prior to chasing the suspect, and that Officer B continued to chase the suspect alone when Officer A returned to secure the vehicle, which resulted in Officer B engaging in a Non-CUOF while alone. The Commission also found that once Officer A had secured the vehicle, he/she failed to follow Officer B on foot. Instead, the Commission found that Officer A chose to drive the vehicle to where he/she last observed Officer B, which resulted in the officers being separated for a period of time and Officer B having to initially contact the suspect by himself/herself. It was further noted that the officers failed to properly advise Communication Division of what was occurring while in pursuit of the suspect.

As a result of the AD finding, personnel complaint CF No. 08-002271 was initiated. The Department framed one allegation of Unauthorized Tactics against each officer. The allegations were sustained and the Chief of Police imposed a penalty of Official Reprimand for Officer A, and a two day suspension for Officer B. The penalties appear to be within the Department's Guidelines, as a review of Officer A's complaint history revealed no prior sustained complaints for Unauthorized Tactics, while Officer B did have a prior complaint for Unauthorized Tactics within the last five years. Moreover, both officers were scheduled to attend training on arrest and control tactics.

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## **VI. TEAMS II Reports and CMS**

During our review of the CUOF cases included herein, we noted that in all five cases the officers' TEAMS II reports were accurately updated to include the correct status of the CUOF cases or the Commission's findings. This has not been the case in recent past reports and we commend the Department for insuring the system that keeps track of use of force patterns for officers is accurate. This quarter we noted that in one of the related personnel complaints, the accused employee's TEAMS II report did not accurately reflect the penalty that was adjudicated in the investigation.<sup>16</sup> After we sent this issue to the Department, the incorrect TEAMS report was updated to accurately reflect the penalty received.

As for CMS, as discussed previously we noted that CF 08-001427 was not included as a closed complaint in the Department's Discipline Report for 1<sup>st</sup> Quarter 2009, because CMS did not recognize that the case was closed. As a result of our discussions regarding this matter, the Department has now initiated additional validation measures to confirm the closing dates of investigations. The Department will include this case in its 2<sup>nd</sup> Quarter QDR.

Additionally, last quarter, the OIG noted that almost 16% of officers were unknown or unidentified in complaint investigations, so we continued to look at that statistic for this quarter. We noted that the Department's QDR showed that no accused employees went unidentified for the quarter.<sup>17</sup> This zero percent unidentified rate was found to be a coding error within CMS, but updated figures were unavailable for the OIG's report. The Department advised that this issue has been resolved and will be accurately reflected in future QDR's.

Finally, we also noted that Table M which shows cases in which officers do not receive discipline contained an incorrect case. The Department agreed that this case should not have been included and will review this issue closely in future reports.

## **VII. Conclusion**

Overall, the OIG noted relatively few investigative concerns in the domestic violence cases we reviewed. It appears the Department is investigating domestic violence cases appropriately, as it is fully aware of its duty to investigate and adjudicate these cases in a thorough manner. And although the OIG took issue with the adjudications in three<sup>18</sup> of the seven cases reviewed in this report; we recognize that reasonable minds can disagree on the weight and value of the information gathered during the investigations.

Last quarter, the OIG noted that the number of OOS cases decreased from seven to six and this quarter, the number fell from six to three. The OIG appreciates that the Department continues to identify and take action to prevent cases from falling OOS. Finally, we found that the Department issued appropriate penalties in all of the CUOF cases reviewed.

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<sup>16</sup> CF No. 07-005129.

<sup>17</sup> Table F of the QDR.

<sup>18</sup> CF Nos. 08-002069, 08-002465, and 08-002633.