

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

**UNITED STATES OF AMERICA**

**CIVIL ACTION**

**VERSUS**

**NO. 12-1924**

**CITY OF NEW ORLEANS**

**SECTION: "E" (2)**

**ORDER**

**CONSIDERING THE FOREGOING** Consent Motion to Amend Paragraph 376 of the Consent Decree (Doc. 389) filed by the City of New Orleans and the United States;

**IT IS ORDERED** that the Motion is **GRANTED IN PART** and **DENIED IN PART**. The Motion is granted insofar as the Court will amend Paragraph 376 of the Consent Decree but denied in that the Court has made additional changes—with input of the parties—to the proposed amendment. Paragraph 376 of the Consent Decree shall be replaced with the language that follows:

**B. Non-Investigative Responses to Allegations of Misconduct**

Notwithstanding the requirement that all allegations of misconduct be fully and fairly investigated, NOPD through PIB may elect to address certain allegations of misconduct through one of the following alternative mechanisms as set forth herein:

1) **Non-Disciplinary Counseling**

In certain limited circumstances, a supervisor may elect to address a minor violation/infracton through non-disciplinary counseling or remedial training. A minor violation/infracton that is eligible for non-disciplinary counseling is a first violation of a Department rule, policy, procedure, regulation, or instruction that a supervisor believes requires minimal intervention through retraining and counseling (e.g., tardiness, uniform requirement, cleanliness of vehicle). The behavior must not be the subject of a civilian complaint and must be considered so minor that it is correctable by simple counseling and minimal intervention, with the goal of non-repetitive behavior. The supervisor must have first-hand knowledge of the employee's behavior that constituted the violation/infracton for it to be eligible for non-disciplinary counseling. A second or subsequent violation/infracton in a twelve month period is ineligible for resolution through non-disciplinary counseling.

If a supervisor elects to address a minor violation/infraction through non-disciplinary counseling, the supervisor shall document the minor violation/infraction, as well as the specific counseling imposed, and transmit that documentation to PIB within five days of the supervisor becoming aware of the minor violation/infraction. PIB shall review the documentation and shall have authority to require a full investigation into the alleged minor violation/infraction.

NOPD agrees to develop and incorporate into policy specific protocols for employing non-disciplinary counseling in a manner that is consistent with the terms of the Decree.

2) Negotiated Settlement

In certain limited circumstances, NOPD through PIB may elect to address and resolve a rank-initiated violation (i.e., an allegation of misconduct reported by an NOPD supervisor) through a negotiated settlement agreement between the department and the officer. To be eligible for negotiated settlement, a rank-initiated violation must be an infraction or set of infractions that is (1) subject to discipline ranging from reprimand to a maximum of ten days suspension; and (2) listed in the penalty schedule set out in the effective and DOJ- and Monitor- approved NOPD Negotiated Settlement Agreement and Complaint Resolution Procedure (Procedure 1023). Complaints initiated by citizens shall not be eligible for negotiated settlement. PIB shall have sole authority to determine whether a rank-initiated violation is eligible for negotiated settlement. Negotiated Settlement Agreements are not a “right” or “entitlement” even if a rank-initiated violation is eligible. At any point prior to the final approval by the Superintendent, the matter may be handled through the formal investigation process.

NOPD agrees to develop and incorporate into policy specific protocols for employing negotiated settlement agreements in a manner that is consistent with the terms of the Consent Decree.

3) Mediation

In certain limited circumstances, NOPD through PIB may elect to address and resolve an allegation of misconduct brought by a civilian through an OIPM-led mediation program. The goal of the mediation process is to increase the level of trust between NOPD and the community.

PIB shall have sole authority to determine eligibility for mediation. Only certain civilian complaints shall be eligible for mediation, for example: professionalism, discourtesy, and neglect of duty. NOPD shall develop and incorporate into policy specific guidelines for determining eligibility for mediation. Further, a complaint will be ineligible for mediation if the NOPD employee against whom the complaint is made has already had two complaints mediated within the previous twelve months. Once PIB deems a complaint eligible for mediation, OIPM shall have sole authority to determine if resolution of the complaint through the mediation process would be appropriate.

Complaints that are either ineligible, inappropriate, or otherwise not selected for mediation will be returned to PIB for formal disciplinary investigation.

NOPD agrees to develop and incorporate into policy specific protocols for employing mediation in a manner that is consistent with the terms of the Consent Decree.

**New Orleans, Louisiana, this 10th day of September, 2014.**

  
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**SUSIE MORGAN**  
**UNITED STATES DISTRICT JUDGE**