

Recommendation xx: After a civil judgment or significant settlement involving MPD activity, the Department and its attorneys should convene a meeting intended to holistically review the incident and any insight learned from the litigation process itself, and should devise a public corrective action plan that addresses any policy, performance, training, supervision, investigative, and equipment issues identified during the course of the litigation. [OIR 76]

Discussion: Cases of adverse civil judgments or settlements, and information uncovered during litigation, can be treated as opportunities for learning, improvement, and risk mitigation. As OIR noted, “When the litigation results in an adverse judgment or large settlement, one common reaction in law enforcement is to cite external factors – evidentiary rulings, jury instructions, makeup of the jurors, quality of the advocacy – in explaining the adverse result. The better response, in our view, is for any substantial payout to trigger additional internal review of the case and use it as an opportunity to readdress officer performance, training, policy, supervision, or other factors – including perhaps the quality of any previous internal investigation – that may have contributed to the outcome. Agency executives, city risk managers, and their lawyers need to step back from their role as advocates in order to identify individual performance or systems issues that may have weakened the jurisdiction’s litigation position.”

There are parallels between this recommendation and Recommendation xx [OIR 75, President’s Work Group 12]. Attorneys assigned to represent the City could be solicited to help identify facts that supported the plaintiffs’ case and that resulted in a decision to settle or an adverse jury verdict. Moreover, as OIR notes, “Ideally, after the litigation was over agency officials might even reach out to opposing counsel to learn ways in which the agency could improve its training, policy, and officer performance from that unique perspective. An advocate who has dedicated months to identifying weaknesses in the agency’s response could provide valuable insight into how to avoid similar liability in the future.” Indeed, for recent settlements regarding MPD officer-involved shootings, Committee members have learned that plaintiffs’ attorneys have multiple well-informed, viable suggestions for improvement (some of which correspond to recommendations this Committee is making). Information uncovered in an objective and introspective review could be used to identify aspects of the incident and subsequent investigation that resulted in liability, to devise ways to remediate these issues, and to formulate a corrective action plan. OIR also noted, “Further, the Department and its attorneys should find appropriate ways to share the insights gained from their review with the public so that the community is aware of constructive steps the Department has taken in response to the result of the significant litigation payout.”

MPD stated that it supports this concept. The City Attorney’s response was more resistant, arguing that just because a case was settled doesn’t mean that a corrective action plan is needed and stating that it “will not be convening a public meeting to discuss the specifics of any case.” OIR noted in response, “In our long history of reviewing adverse judgments and significant settlements, virtually all of them provide a forum for improving performance, training, guidance and the handling of the litigation itself. And of course, developing a remedial plan is not an admission of ‘fault or wrongdoing,’ but a sign that an organization can and wants to get better. In the same way that we urge MPD to be reflective and self-critical, we urge the Office of the City Attorney to adopt a similar posture, at least as to police-involved litigation. The City Attorney states that the Office will not be convening a public meeting to discuss the litigation and cites all of the reasons it cannot be transparent, yet our recommendation does not ask it to. Progressive City Attorney offices in other jurisdictions have found ways to honor their confidentiality duties but still be proactive in devising public corrective action plans that assist the law enforcement agency in its interest in improvement.”

The Committee believes that such reviews would be very useful, and that development of public corrective action plans could both help mitigate risk of further adverse incidents and help build public trust in MPD.