

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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| UNITED STATES OF AMERICA, |) | CASE NO.: 1:15-CV-01046 |
| |) | |
| Plaintiff, |) | |
| |) | JUDGE SOLOMON OLIVER, JR. |
| vs. |) | |
| |) | |
| CITY OF CLEVELAND, |) | |
| |) | MEMORANDUM SUBMITTING |
| Defendant. |) | SECOND-YEAR MONITORING PLAN |

Pursuant to paragraph 369 of the Settlement Agreement (also referred to as the “Agreement”, “Consent Decree,” or “Decree”) between the City of Cleveland (the “City”) and the United States ordered by this Court on June 12, 2015, the Monitor submits the Second-Year Monitoring Plan, attached hereto as Exhibit A (the “Monitoring Plan,” “Second-Year Plan,” or “Plan”). Dkt. 7. The City and United States (the “Parties”) and Cleveland Division of Police (“CPD” or “the Division”) have collaborated closely and effectively with the Monitor to produce a process or framework for effectively and efficiently implementing the Agreement’s requirements. Because the Plan continues to set aggressive but realistic goals, deadlines, and milestones for complying with the requirements of the Agreement while ensuring that individuals and organizations across Cleveland’s diverse communities – including the men and women of the Division themselves – have a voice in the discussion of how police services are

delivered, the Monitor and the Parties together respectfully request that the Court approve the Plan.

I. OVERVIEW OF THE MONITORING PLAN

As set forth in the Memorandum Submitting the First-Year Monitoring Plan (“First-Year Monitoring Plan Memorandum”), Dkt. 43 at 1, the Monitoring Plan is intended to provide a clear, unified structure and framework for the day-to-day and week-to-week efforts that stakeholders from across the Cleveland community need to undertake to ensure that the Consent Decree is implemented in a manner aimed at “ensuring . . . police services in Cleveland” are “constitutional, effective, and consistent with community values, while preserving officer and public safety.” Dkt. 7-1 at 6. This Memorandum incorporates by reference and reiterates herein the sections of the First-Year Monitoring Plan Memorandum describing the “Objective & Format of the Monitoring Plan” (Dkt 43 at Section I-A) and “What the Plan Is and Is Not (Dkt. 43 at Section I-C). This Memorandum summarizes the major milestones set forth in the Second-Year Monitoring Plan in order to give the Court and the public a roadmap of the objectives that the Parties, the Division of Police, and the Monitor expect to focus on in the second year of the Consent Decree.

As with the First-Year Monitoring Plan, the Second-Year Plan details a formalized process for implementation of the Consent Decree and the Monitoring Team’s assessment of the Division’s progress in doing so. In the experience of the Monitoring Team, if well-intentioned stakeholders address disparate elements of the Consent Decree at different junctures, it will be far less possible for major changes to be implemented as effectively, efficiently, and with the involvement of all important stakeholders – including CPD officers, Cleveland community members, leadership of police officer unions and organizations, the CPC, and others.

This Monitoring Plan is partially a project implementation plan and partially an agenda. It is divided into ten major areas. Those areas address the core parts of the Consent Decree on which stakeholders will focus during the second year of monitoring.

Primary objectives, reflected in bolded white type in the more darkly shaded rows, are the broader achievements or accomplishments that the Consent Decree requires. Below those objectives, in the plain-text and indented rows, are the key results or milestones that must be met during the year in service of each objective. In some instances, italicized notes explain or clarify details about the key results or milestone delineated immediately above it.

Each key result or milestone is associated with at least one “responsible stakeholder.” That stakeholder, or set of stakeholders, is responsible for achieving the key result or reaching the milestone indicated. Accomplishing the result or milestone is achieved by providing the “deliverable” identified in each row by the deadline provided in the “deadline” column.

The Plan covers the period of February 1, 2017 through January 31, 2018, with a limited number of deadlines falling beyond January 31, 2018.

II. MAJOR MILESTONES ANTICIPATED UNDER THE PLAN

The emphases of the Second-Year Monitoring Plan are on: (1) continuing with the implementation of policies and procedures in certain areas that were either finalized or developed close to finalization, with substantial success in the first year; (2) continuing with the development of policies and procedures in certain other areas that were initiated but only minimal progress was made in the first year; and (3) initiating the development of policies and procedures in some areas of the Consent Decree not previously addressed.

Two areas in which substantial progress was made in the first year were in the development of new use of force and crisis intervention policies. As a result, the second year activities will build on that progress. With regard to use of force-related policies, in the second year, the Parties, the CPD, the Monitor and other stakeholders will be focusing on finalizing internal use-of-force investigation and review procedures, Ex. A at 3–5, and finalizing and implementing officer use of force training. Ex. A at 6–9. With regard to crisis intervention, CPD, in partnership with the Mental Health Response Advisory Committee (MHRAC), will be finalizing training for all officers consistent with the new policy that has been created for responding to individuals experiencing mental health, substance abuse, and other behavioral crisis challenges, *id.* at 11–12, and also will develop and implement a plan for specialized training for certain selected officers, *id.* at 11–13. The MHRAC will also conduct its first annual analysis of the CPD’s crisis intervention policies and practices. *Id.* at 13–14.

In certain other areas, the second year will involve continuing toward similar goals articulated in the First-Year Monitoring Plan. These areas include equipment and resources, accountability and data collection and analysis. The Plan thus calls for the CPD to revise its equipment and resources plan to conform to the feedback from the Monitor as per the Court’s order of January 6, 2017, *id.* at 21, and has similar, follow-up requirements for the CPD with regard to its body-worn camera policy, *id.* at 22. The Plan reiterates the need for the CPD to complete a staffing study and plan for ensuring that it deploys the appropriate number of personnel to perform the functions necessary for the CPD to fulfill its mission and satisfy the requirements of the Consent Decree. Dkt. 7-1 ¶¶ 319, 322; Ex. A at 21–22.

In the area of accountability, the Plan requires that the CPD recruit, interview, and appoint a civilian head of its internal affairs division by May 31, 2017, and that it update its

internal affairs manual, including policies on the reporting of misconduct by CPD employees and preventing retaliation against CPD employees who report misconduct. Ex. A at 15. Importantly, the Plan requires that the City hire a Police Inspector General by December 1, 2017, after working with the CPC to develop minimum qualifications and that it develop a plan for the Inspector General's office, including staffing, administrative support and a budget. *Id.* at 20. The Plan continues to require that the CPD seek to ensure that the Office of Professional Responsibility ("OPS"), which receives and investigates civilian complaints of officer misconduct, performs high-quality, objective investigations, and creates a plan for eliminating its backlog of unresolved, incomplete, or otherwise pending investigations. Ex. A at 16–18. Under the Plan, the Police Review Board ("PRB"), which reviews OPS investigations, must be evaluated by the Monitor and PRB is to develop training to ensure that it can provide fair, objective, and rigorous assessments of misconduct investigations. Ex. A at 18–19. The Plan also has requirements for improving internal discipline and transparency policies. Ex. A at 19–20. The Plan institutes a new requirement that the Parties, CPD, and the Monitoring Team hold monthly meetings to ensure that CPD's administrative investigations and review processes are sufficiently timely and well-supervised. Ex. A at 15. The Plan requires that the Data Collection & Analysis Coordinator, appointed in the first year, meet at least monthly with the Monitoring Team to discuss data collection efforts, develop a data analysis protocol, and work with the CPD to conduct assessments of all CPD activities. Ex. A at 24.

The areas which are substantially new topics of focus for the second year are: community and problem-oriented policing ("CPOP"); bias-free policing; search and seizure; and officer training. The Plan substantially adopts and implements the Community Engagement Framework for Community and Problem-Oriented Policing Plan and Bias-Free Policing Policy

(“Community Engagement Framework Plan”), which the Court approved at the Monitor’s recommendation by order dated March 6, 2017, Dkt. 113, with one major modification. Ex. A at 1-2. The Plan incorporates that Community Engagement Framework Plan which details two cycles of community engagement involving the CPD, the Parties, the CPC, and the Monitor, around the CPD’s CPOP plan, and requires the CPD to draft its CPOP plan to respond to that community input, concluding with the finalization of the CPD’s CPOP plan expected by November 21, 2017. Ex. A at 2. However, unlike the schedule set forth in the Community Engagement Framework Plan, the Monitoring Plan now separates bias-free policing from the initial cycle of community engagement in order to ensure sufficient time for stakeholder input to be provided on the CPD’s draft bias-free policing policy, and community engagement on that plan will commence later in the process. The Plan still calls for the CPD’s final bias-free policing policy to be completed by November 21, 2017, after incorporating the community and stakeholder input. Ex. A. at 25.

Another area that is a substantially new area of focus is the Consent Decree’s requirement that the CPD develop search and seizure policies that comply with applicable law and the requirements of the Consent Decree. Dkt. 7-1, ¶ 160. The Plan calls for the CPD to “revise, develop, and implement search and seizure policies that are fair, effective, and take into account community values,” through a process that involves extensive community engagement and drafting of the policy to reflect that input over the course of the second year, with the final policy to be submitted to the Court by March 9, 2018. Ex. A at 23.

The Plan also calls for extensive development of officer training, including the finalization of an in-service training instructor policy and written training plans for in-service

training, recruit academy and probationary field training, and supervisor training, as well as the design and implementation of training on the new officer use-of-force policy. Ex. A at 6-10.

Finally, the Plan sets out extensive requirements for compliance and outcome assessments reporting over the course of the year, as required by the Consent Decree. Dkt. 7-1, ¶ 361; Ex. A at 27. These include a biennial community survey and regular compliance meetings with stakeholders, Ex. A at 27-28. The Monitoring Team will also collect and sort 2016 data from the CPD, OPS, and the City, and will conduct systemic assessments as required by the Consent Decree, Dkt. 7-1, ¶ 367, of the quality of CPD's Internal Affairs investigations, personnel discipline system and process, use of force investigations, and officer use of force, Ex. A at 28-30.

III. CONCLUSION

The task of the Monitor was to craft a plan for monitoring CPD's implementation of the Consent Decree during its second year. Because the Second-Year Plan continues to set aggressive but realistic goals and asks the Cleveland community to continue its direct and substantive participation in the reform process, the Monitor and Parties together respectfully request that the Court approve the Second-Year Monitoring Plan and order it effective.

Respectfully submitted,

/s/ Matthew Barge

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CERTIFICATE OF SERVICE

I hereby certify that on March 14, 2017, I served the foregoing document entitled Memorandum Submitting Second-Year Monitoring Plan via the court's ECF system to all counsel of record.

/s/ Matthew Barge
MATTHEW BARGE