

Winston & Strawn Releases Report Regarding Review of the Federal Civil Rights Litigation Division of the City of Chicago Department of Law

JULY 21, 2016

Winston & Strawn LLP and Dan Webb today released the firm's report regarding its review of the Federal Civil Rights Litigation (FCRL) Division of the City of Chicago Department of Law (DOL). As agreed with the City at the time of the engagement, the report has been provided to the City and is being released to the public. An electronic copy of the full report is available [here](#) and also through the DOL website.

The review was commissioned by the City, through its Corporation Counsel, Steve Patton, on January 10, 2016. The City asked Winston to conduct an independent third-party review of the FCRL Division, which defends the City and Chicago Police Department (CPD) officers in civil suits based on allegations of CPD misconduct and/or federal civil rights violations. The City asked the firm to conduct a comprehensive review of the FCRL Division and recommend any changes necessary to conform the Division's policies, procedures, and practices to the highest professional and ethical standards and litigation best practices. The review was to include a particular focus on discovery practices and procedures, as well as attorney training and supervision. Winston was asked to prepare a written report summarizing its recommendations and the current status of the implementation of those recommendations. Winston also agreed that, to the extent during the course of the review any evidence of past or present misconduct was discovered, such misconduct would be reported to the City's Inspector General.

Over the course of the past six months, a team of Winston lawyers, led by Dan Webb and Bob Michels, performed the comprehensive review of the FCRL Division, as requested. The review included interviews of more than 90 individuals, many on multiple occasions. The interviews included virtually all of the attorneys and staff in the FCRL Division, as well as some former FCRL Division attorneys. The review also included interviewing or obtaining information from more than 50 attorneys who regularly represent plaintiffs in civil rights cases against the City and CPD officers, which are defended by the FCRL Division. Many of these attorneys were interviewed, while others elected to simply submit written information for review, and others did both. The review was well-known in the plaintiffs' bar, and many plaintiffs' counsel contacted Mr. Webb and the review team to provide information. The review team spoke with every attorney who contacted Winston and expressed an interest in providing information, and also reached out to other plaintiffs' lawyers who regularly litigate against the FCRL Division.

The review team also received information from various other sources, including:

- several key DOL employees who regularly interact with the FCRL Division;

- several consultants hired by the DOL who either in the past, or concurrently with our review, provided analysis, advice, or counsel to DOL; and
- individuals at CPD (including CPD's Office of Legal Affairs) and the City's Office of Emergency Management & Communications, who regularly interact with FCRL Division attorneys in providing documents in cases handled by the FCRL Division.

In addition, the review team obtained and reviewed thousands of records, including documents regarding FCRL Division cases, policies, procedures, training, and related matters.

The review team also conducted specific case reviews of 75 individual cases handled by the FCRL Division. The cases selected for review were those where either: (1) the court ordered sanctions against the City, the CPD officers, or their counsel; or (2) plaintiffs' counsel interviewed by the review team expressed concerns about the case, and suggested that it be examined. The selection criteria ensured that the cases reviewed were the most likely to potentially involve any problematic issues, such as intentional misconduct or issues that perhaps were caused by a deficiency in the FCRL Division's policies and practices.

In summary, the conclusions and recommendations in the report include the following:

- The review identified a number of areas in which the FCRL Division's policies, procedures, and practices could be improved. As a result of the review, Mr. Webb and his team have made more than 50 individual recommendations for changes in the FCRL Division's policies, procedures, and practices, primarily in the areas of discovery and attorney training and supervision.
- The main areas for such improvements relate primarily to document discovery. Among the key recommendations are that the FCRL Division should:
 - ensure that its attorneys are provided comprehensive and up-to-date knowledge regarding relevant CPD and other City department documents and document systems;
 - improve processes regarding document collection, including communications between FCRL Division attorneys and CPD/OEMC;
 - improve policies and procedures with respect to document request processing, tracking, and follow-up; and
 - improve policies and procedures concerning production of electronic communications.
- Other areas in which recommendations for improvements were made include:
 - pre-litigation document preservation;
 - training and supervision of FCRL Division personnel, primarily as to discovery-related matters;
 - management of outside counsel; and
 - conflict of interest policy, including conducting separate initial interviews of defendant CPD officers.
- With respect to whether the review found any intentional misconduct:
 - The review team did not find evidence establishing a culture or practice in the Division of intentionally concealing evidence or engaging in intentional misconduct relating to discovery practices or other obligations.
 - Aside from *Colyer v. City of Chicago, et al.*, Case No. 1:12-cv-4855 (N.D. Ill.) — in which the court found, in an opinion issued shortly before the Winston review began, that a former FCRL Division attorney had intentionally concealed from the court and plaintiffs' counsel the existence of certain relevant evidence — the review did not uncover any other evidence establishing any instances of intentional misconduct during the last five years.
 - The review found one other instance of intentional misconduct in a case filed in 2005, which involved discovery-related conduct in 2009-10. In that case, *Johnson v. City of Chicago*, No. 05-cv-6545 (N.D. Ill.), the attorney self-reported the incident in 2010 to FCRL Division supervisors, who disciplined the attorney, and to the Illinois Attorney Registration and Disciplinary Commission.

- The recommendations made by the review team have been discussed with DOL and FCRL Division leadership and, during the course of the review, the FCRL Division, working with consultants and conferring with the review team, initiated substantial steps to effectuate improvements in the areas where recommendations were made. This included adopting and implementing a number of new policies, procedures, and practices which make improvements in discovery policies and practices; training and supervision of attorneys, paralegals and outside counsel; and other matters. Some of the key new policies and practices include:
 - improving the knowledge base of FCRL Division attorneys and outside counsel regarding CPD and OEMC documents;
 - instituting a new process by which FCRL Division attorneys and paralegals directly access CPD and OEMC documents;
 - improving supervision of attorneys and paralegals on discovery-related matters;
 - improving procedures concerning electronic discovery; and
 - conducting initial interviews of defendant CPD officers separately.

The report finds that implementing these and other changes will help facilitate that the Division is operating consistent with best litigation practices and standards.

Mr. Webb thanks those who provided information critical to the success of the review, including Mr. Patton, FCRL Division leadership and attorneys, and the many plaintiffs' counsel who gave of their time to provide their perspective and information.

Mr. Webb also thanks his team, who worked tirelessly on gathering and analyzing the information necessary to conduct the review, and assisted in preparing the final report.

The Winston & Strawn team included, in addition to Mr. Webb: Robert L. Michels, Joseph L. Motto, as well as paralegal Grace Rubalcava.
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