



Citizen Oversight Board

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November 24, 2023

To: Mayor Mike Johnston
Council President Jaime Torres
City Auditor Timothy O'Brien
EDOS Armando Saldate
City Attorney Kerry Tipper
Monitor Lisabeth Pérez Castle

Dear City Leaders,

Since their inauguration in July, City Council has reviewed and approved payments totaling over \$9.5 million for 18 settlements related to the conduct of the Denver Police Department. These are just the most recent examples of the more than \$17.3 million the City has paid out since the start of 2022 due to the conduct of members of the Department of Public Safety (DOS). Though financial reparations are often the more publicized element, settlements can include compliance requirements, studies, or deliverables aimed at addressing the underlying issues leading to the settlements in the first place. These non-monetary provisions are often critical to making systems level or structural changes that can help prevent and avoid future harm. Recent research by the Citizen Oversight Board (COB) has revealed multiple instances where the City has either failed to comply with a settlement term or has missed opportunities for real change by only minimally complying with settlement terms. Furthermore, in the past, the City has not taken advantage of opportunities to build public trust by publicly disclosing its compliance with non-monetary settlement terms and the resulting changes that have been made.

While all settlements requiring the City to pay \$5,000 or more must be approved by City Council, the full terms of those agreements are not usually made public. Our conclusions are therefore limited to a small number of data points, typically high-profile cases where the settlement terms have been published.¹ Our review of these settlements (as described below) is sufficient for this Board to conclude that a measure of independent oversight of settlements is warranted—not just for legal reasons, but for the welfare of the Denver community as well.

Our mission statement is “To foster change towards cooperative, just and accountable relationships between Denver’s community and law enforcement.” This letter is written in furtherance of our mission in order to stress the importance of public safety accountability. The information presented below relates to actions of previous administrations. We believe that with this knowledge our new administration and city leadership have the opportunity to help create a new collaborative and transparent approach. We believe that improving oversight of settlement agreements will meaningfully contribute to both better operational outcomes and a greater degree of community trust in City government and the DOS in particular. A focus on improving policy and process involving public safety settlements will reduce community harm and the risk of additional claims and settlements.

COB Mission Statement: To foster change towards cooperative, just, and accountable relationships between Denver’s community and law enforcement.

We request a meeting of City stakeholders in Q1 of 2024, to include (at minimum) representatives from the DOS, the City Attorney's Office (CAO), the Office of the Independent Monitor (OIM), and the City Auditor's Office to discuss a variety of possible solutions to our concerns.

Sincerely,

Denver Citizen Oversight Board

Julia Richman, Chair
Nick Webber, Vice Chair
Terrance Carroll

Karen Collier
David Martinez
Larry Martinez

Alfredo Reyes²
Stefan Stein
Tymesha Watkins

CC: Councilwoman Stacie Gilmore

Jennifer Ridder
Chief Ron Thomas
Sheriff Elias Diggins
Emily Lauck

Michael Marshall Settlement

This week marks eight years since Michael Marshall, an inmate experiencing a mental health crisis, died as a result of actions of the Denver Sheriff Department (DSD).³ DSD deputies inappropriately restrained Marshall in a prone position for over 10 minutes after his medical emergency, causing him to choke on his own vomit and stopping his already weak heart. Throughout that time, several supervisors stood nearby and did not intervene.⁴ Ultimately two deputies received 10 and 14-day suspensions for inappropriate use of force and one captain received a 10-day suspension for failing to properly supervise.⁵

Approximately two years after Marshall's death, the City agreed to a \$4.65 million settlement with his family. In addition to the financial terms, the settlement contained several non-financial requirements such as hiring mental healthcare providers to provide 24/7 service in the jails and enhanced training for DSD deputies on how to handle mental health crises. In order to verify that the various non-financial terms were implemented, the settlement required the CAO to create reports on the DSD's compliance with these terms for a period of five years (2018-2023). The reports were also required to be included in each DSD annual report during that time period.⁶

The COB recently requested copies of these compliance reports from the CAO and the DOS. Neither department has been able to produce these documents. Only the first of the DSD's annual reports from 2018 – 2022 contains the required reporting on this matter. During a recent COB meeting with Executive Director of Public Safety Armando Saldate, he relayed that the CAO had created the required reports and sent them to the law firm representing Mr. Marshall's family, but that they had not been provided to either the DOS or DSD, had been improperly stored and then were lost in a former employee's email purge. The Board subsequently requested and received copies from the Marshall family's counsel. The records include a variety of irregularly scheduled and inconsistently structured updates ranging from formal memos to informal emails.

Several aspects of this case are troubling to the Board, including the CAO's failure to establish a consistent process to provide the required reports, share those reports with the DOS or DSD, preserve records related to a settlement agreement with ongoing requirements, and the DSD's non-compliance with the requirement that the CAO's reporting be included in each of DSD's annual reports.

Jamal Hunter Settlement

Another concerning compliance matter involves the 2014 settlement that the City entered into with Jamal Hunter, an inmate who in 2011 was abused by other inmates, and two weeks later was assaulted by a DSD deputy against whom he had filed a grievance the day before.⁷ That settlement included a \$3.25 million payment to Mr. Hunter and two key non-financial terms.

The first term required the City to hire independent investigators to review various DSD policies and practices. That investigation resulted in a report in 2015 from consultant Hillard Heintze which set forth hundreds of recommendations that served as the foundation for a top-to-bottom reform effort in the DSD between 2016 – 2018.⁸ That effort formally culminated in a 2018 report in which the DSD announced that they had taken action on 99% of the 2015 report's recommendations.⁹

The second key non-financial term of the settlement required the City to hire independent investigators to review the CAO, due to numerous criticisms of the CAO by federal district court judge John Kane related to the way the CAO handled the internal investigation of the Hunter matter and lawsuit on behalf of the City.¹⁰ Specifically, the scope of the review was required to include, at a minimum, “protocols for handling and supplementing discovery in civil actions; protocols related to ongoing internal affairs investigations in the City; and best practices related to professional development.”¹¹

Shortly after the settlement was finalized, the City entered into a \$35,000 contract with the law firm Lewis Roca Rothberger (now Lewis Roca) to perform that review.¹² Then-City Attorney Scott Martinez reportedly committed to publishing the report after he resolved a personnel matter involving one of the City’s attorneys involved in the Hunter lawsuit.¹³

In July 2014, just before Hunter’s lawsuit was settled, the CAO suspended assistant city attorney Stuart Shapiro for allegedly pressuring police investigators and allegedly withholding related emails in the lawsuit. After being suspended with pay for over a year, the CAO fired Shapiro in July 2015 before reinstating him two weeks later and destroying the initial termination letter in violation of open records laws.¹⁴ After another period of paid suspension that brought the total to 19 months, Shapiro was officially reinstated in February 2016. A few months later, during which time then-City Attorney Scott Martinez resigned, the City entered into a settlement agreement with Shapiro, paying him \$660,000 and issuing an official apology that included the “complete exoneration of Mr. Shapiro.”¹⁵ While Shapiro’s settlement agreement was published in full, many questions about the CAO’s conduct have never been publicly answered.

Unfortunately, not only was the independent investigation of the CAO’s conduct never published after the Shapiro settlement, but the COB recently confirmed with the investigating law firm that they never completed or delivered a final report to the City as part of their engagement. While the settlement states that the “engagement, in good faith, of an independent, outside third party . . . shall constitute satisfaction of this term of the Settlement Agreement,” the mere engagement of an outside investigator without the delivery of a report with findings and recommendations is cursory and insufficient to drive change.

Emily Rice Settlement

The investigations related to Hunter’s lawsuit revealed another instance that adds to the COB’s concerns related to the City’s compliance with settlement terms, among other alleged instances of misconduct.¹⁶ Specifically, revelations from Hunter’s case cast doubt on whether the City was complying with the terms of a 2008 settlement with the family of Emily Rice, an inmate who died of severe internal bleeding in 2006 after medical staff failed to evaluate her because they allegedly thought she was being dramatic and faking her symptoms.¹⁷ Three deputies were found to have lied about conducting rounds, and inmates reported hearing her crying for hours without attention.¹⁸

In addition to a payment of \$3 million to Rice’s family, Denver agreed to make numerous changes related to medical care in its jails, collectively referred to as “Emily’s Protocols.”¹⁹ One such change was the inclusion of a recurring training session discussing Rice’s death. That training video came to light

during the Hunter lawsuit, to the outrage of the Rice family.²⁰ The video failed to acknowledge the mistakes DSD deputies had made, significantly diminishing the video's training value.²¹

Another of Emily's Protocols clarifies the responsibility of DSD supervisors to resolve conflicts with medical staff, including escalating it to the Division Chief level or calling 911 to transport an inmate to an area hospital. It is possible such actions may have prevented the death of inmate Leroy Taylor after his medical emergency in February 2022.

¹ It is noteworthy that most of the publicly available settlement terms relate to cases involving the conduct of the Denver Sheriff Department, whereas the vast majority of public safety settlements are related to conduct of the Denver Police Department.

² Alfredo Reyes was appointed to the Citizen Oversight Board earlier this month and did not take part in the drafting of this letter.

³ Marshall had been arrested four days earlier on trespassing charges and was being held on a \$100 bond. He had been diagnosed with schizophrenia, and had refused medications for two days. His death was ruled a homicide by the medical examiner.

⁴ For more information about the circumstances of Marshall's death, District Attorney Mitchell Morrissey's [2016 letter explaining his decision](#) not to file criminal charges against the deputies involved, as well as the Office of the Independent Monitor's [2018 report on the subject](#), are useful context.

⁵ Although the discipline against these three individuals was overturned in the initial appeal, the City also appealed and the discipline was ultimately upheld at the Career Service Board, the District Court, and the Court of Appeals.

⁶ See: Michael Roberts, "[Denver to Pay \\$4.65M, Change Policies Over Michael Marshall Jail Death](#)," Westword, November 1, 2017.

⁷ See: Michael Roberts, "[Jamal Hunter sues city after fellow inmates scald his genitals](#)," Westword, September 13, 2012.; Kirk Mitchell, "[Jamal Hunter's jail abuse case shakes Denver law enforcement offices](#)," The Denver Post, July 26, 2014.

⁸ See: Hillard Heintze, "[New Vision, Brighter Future, The Denver Sheriff Department: Transforming the Leadership, Operations, and Culture of the Department](#)," May 21, 2015.

⁹ DSD, "[Beyond Reform](#)," 2018.

¹⁰ Related: Associated Press and Jeremy Jojola, "[Judge wants probe of Denver police conduct in case](#)," 9News, June 10, 2014.; Scott Greenfield, "[Because Judge Kane Did His Job](#)," Simple Justice, July 24, 2014.; Mark Smiley, "[Federal Judge Kane Goes After Denver Government](#)," Glendale Cherry Creek Chronicle, June 20, 2014.

¹¹ The CAO was unable to provide us with a copy of this settlement. We obtained a copy from the plaintiff's law firm.

¹² Noelle Phillips, "[Costs for Denver continue to mount in Hunter case fallout](#)," The Denver Post, September 17, 2014. In contrast, the contract for the DSD review [was valued at \\$687,417](#), plus another \$80,000 for an individual consultant. See: Noelle Phillips, "[Denver to pay \\$80K to former FBI agent helping with sheriff reform](#)," The Denver Post, September 3, 2014.

¹³ Noelle Phillips, "[Suspended Denver assistant city attorney blasts Jamal Hunter deal](#)," The Denver Post, November 3, 2015.

¹⁴ Brian Maass, "[Lawyer: City Attorney Lied, Violated Open Records](#)," CBS News, March 17, 2016.; Brian Maass, "[No Charges In City Attorney Open Records Case](#)," CBS News, October 28, 2016.

¹⁵ Jon Murray and Noelle Phillips, "[Denver officials: Assistant city attorney Shapiro deserves 'full and complete exoneration'](#)" in Hunter jail-abuse case," The Denver Post, August 22, 2016.; The Denver Post Editorial Board, "[Something stinks about Denver's Shapiro settlement](#)," The Denver Post, August 19, 2016.

¹⁶ Michael Roberts, "[Porn, pot, drunkenness and brutality allegedly routine in Denver jail, new docs claim](#)," Westword, June 13, 2014.

¹⁷ Cara Degette, "[Historic \\$3 million settlement in Emily Rice case; horror lingers](#)," Colorado Independent, November 13, 2008.

¹⁸ Christopher N. Osher, "[Deputy lied, quit after jail death](#)," The Denver Post, January 7, 2008.; Chris Vanderveen, "[Documents show inmate who bled to death, cried for hours](#)," 9News, July 18, 2007.

¹⁹ Denver Health also entered into a settlement with the Rice family in which it paid the family \$4 million.

²⁰ See #14: [Emily's Protocols](#), 2008; Denver7, "[Jail training video outrages Emily Rice's family](#)," YouTube, August 24, 2014. Executive Director of Safety Stephanie O'Malley ordered the video to be removed after it garnered attention from the media, according to the Denver7 news segment in footnote 16.

²¹ Denver Post Editorial Board, "[In Denver jail training video, blaming victim Emily Rice again](#)," The Denver Post, August 27, 2014.