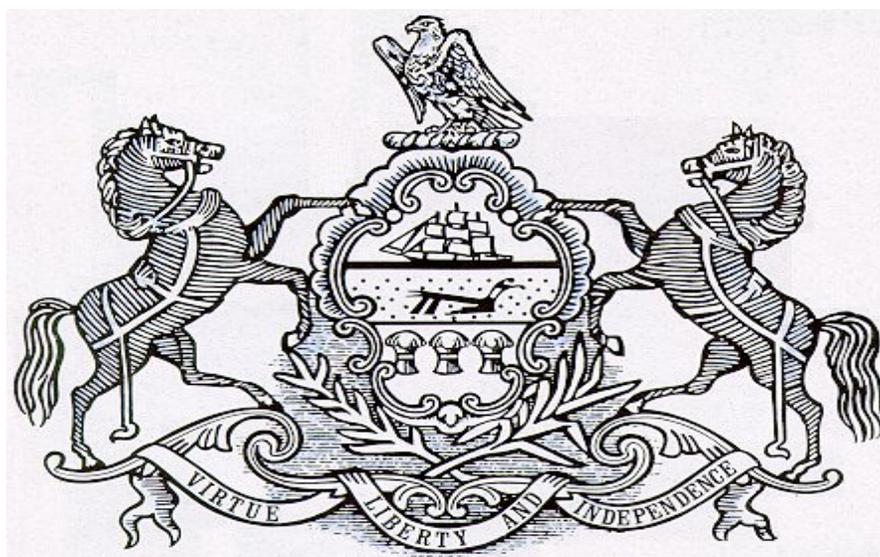


**REPORT OF
THE INDEPENDENT MONITOR
OF THE
PENNSYLVANIA STATE POLICE**



**SECOND QUARTERLY REPORT
FOR THE PERIOD ENDING
APRIL 30, 2004**

ISSUED JUNE 25, 2004

Kroll

*Office of the Independent Monitor
of the Pennsylvania State Police*

EXECUTIVE SUMMARY

This Second Quarterly Report of the Independent Monitor of the Pennsylvania State Police (PSP) covers the period beginning on February 1, 2004 and ending on April 30, 2004. This quarter was marked by a significant change in the PSP's organizational structure when Col. Jeffrey B. Miller, the Commissioner of the PSP (Commissioner), announced during a press conference on March 3, 2004 that he was naming Lt. Col. John R. Brown to a newly created position as the Deputy Commissioner of Professional Responsibility. As head of the new Department of Professional Responsibility, Lt. Col. Brown assumed jurisdiction over the Bureau of Integrity and Professional Standards (BIPS),¹ the Early Intervention Program Office (EIPO), the Equal Employment Opportunity Office (EEOO), and the Department Discipline Office (DDO). While the Office of the Inspector General (OIG) did not recommend this change in the PSP's organizational structure, the Monitor recognizes that there may well be advantages to this change. The creation of this new Deputy Commissioner position appears to be an important step in centralizing control and oversight of implementation of the OIG's recommendations, and focusing the PSP's efforts to address issues related to misconduct, including sexual harassment and sexual misconduct.

During the second quarter the PSP, as well as the Pennsylvania State Troopers Association (PSTA), has continued to cooperate fully with the Monitor. The Monitor met and/or spoke with many individuals, including, among others, senior staff in Departmental Headquarters, attorneys with the Office of Chief Counsel, union representatives, Troopers in the field, retired Troopers, civilians, lawyers, and complainants. The purpose of these meetings was to gather additional perspectives on the PSP and to monitor the wide ranging activities addressed in the OIG's Investigative Report on Sexual Harassment and Sexual Misconduct at the Pennsylvania State Police (OIG Report).

Specifically, the Monitor met with the Deputy Commissioner of Professional Responsibility, the Deputy Commissioner of Administration, and other members of the PSP's senior staff, to more fully understand the internal dynamics at the PSP and to review the PSP's efforts to implement the OIG's recommendations. The Monitor recognizes the Department's and the PSTA's attempts to resolve, in mutual good faith, numerous outstanding (and some very dated) disciplinary actions pending against members involved in sending, receiving and/or accessing sexually explicit materials on the PSP's intranet, referred to as the Enterprise Network. It should be noted that the Deputy Commissioner of Professional Responsibility, Department Discipline Officer, the PSTA Grievance Committee Chairman, and a representative from the Governor's Office of Administration have been cooperating on this issue.

¹ The Monitor notes that, due to a reorganization, the functions of the Bureau of Professional Responsibility (BPR) have been assumed by the BIPS as of March 13, 2004. For the purposes of this Report, the BPR/BIPS will be referred to as the BIPS.

In this quarter, the Monitor has continued to review all new and pending non-adjudicated investigations involving sexual harassment and sexual misconduct. The Director of the BIPS and members of his staff have provided the Monitor with access to all materials and files necessary to monitor all new and pending investigations involving sexual harassment and sexual misconduct, and to enable the Monitor to assess compliance with the OIG's recommendations. The Monitor has continued to work with the Director of the BIPS and has carefully reviewed all of the materials provided to it by the BIPS.

The Monitor met and spoke with the Director of the Early Intervention Program (EIP) on several occasions to evaluate the progress and functioning of this early warning system.

The Monitoring team met with the President of the PSTA on March 30, 2004 at the PSTA's headquarters in Harrisburg. Also present at the meeting were members of the PSTA Board of Directors and the PSTA's attorney. On behalf of the PSTA, the President invited members of the Kroll monitoring team to meet to discuss the issues the PSTA felt were the most important, based on the OIG Report and on the Monitor's First Quarterly Report. The PSTA President, Board members and attorney all addressed what they felt were the most problematic of the recommendations in the OIG Report. The meeting was informative and helpful.²

The Monitor met with the President of the Guardians, to understand the working relationship of this organization with the PSP and the PSTA.

The Monitor met with the Department Discipline Officer to, among other things, review the impact of the disciplinary process on an investigation pending during the second quarter which may be problematic. The Monitor has also met with the Director of the EEOO to review training on sexual harassment and sexual misconduct issues, to evaluate the implementation of new training programs, and to assess the effectiveness of such training programs.

The Monitor met and spoke with lawyers representing both the Department and the PSTA regarding the impact of the Collective Bargaining Agreement (CBA) on implementation of the recommendations in the OIG's Report, and the upcoming Act 111 arbitration proceedings.

As Governor Edward G. Rendell recognized at a news conference on September 16, 2003, it will take time to repair the damage arising from the conduct of former Trooper Michael Evans and others. The Monitor continues to see progress in "lay[ing] the groundwork for change and insur[ing] that these kinds of problems are not a part of [the PSP's] future." However, due to the complex nature of this problem, the Monitor reiterates its call for the PSP to form a collaborative

² After the meeting between members of the Kroll monitoring team and of the PSTA, on March 30, 2004, the Monitor invited the PSTA to submit written responses to the recommendations made by the OIG Report. The PSTA initially advised that it would provide the Monitor with responses prior to expiration of the second quarter. The Monitor has made additional requests to the PSTA for its written responses to the OIG's recommendations, with negative results. As of the date of issuance of this Second Quarterly Report, the PSTA has not provided the Monitor with its written position on the OIG Report.

working group to meet regularly on compliance issues. In order for the PSP to continue its progress in implementing change, the Monitor recommends that the PSP form a compliance committee which includes representation from all relevant bureaus and offices that are directly impacted by the OIG's recommendations, including, at a minimum, Office of General Counsel, Bureau of Human Resources, Bureau of Training and Education (BTE), Member Assistance Office, BIPS (formerly BPR), DDO, EEOO, and EIPO.

As outlined in this Report, there have been accomplishments by the PSP during this quarter, and there are, as well, a number of areas where more needs to be done. While the Monitor recognizes the progress achieved by the PSP, the Monitor is also aware that this Second Quarterly Report will, by its nature, be the one that includes the longest recitation of tasks to be completed. Kroll's First Quarterly Report stressed the comparative positions of the OIG and the PSP, and provided explanatory background information on all the issues. While the first Report did include a number of assessments of the PSP's compliance with the recommendations in the OIG's Report, they were necessarily preliminary evaluations, because it was the first quarter. In this Report, for the second quarter, the Monitor has been able to examine the issues in more depth.

The Monitor has been told that there are certain budgetary constraints on the PSP's time and resources, as well as the restrictions due to the CBA. Because the Commonwealth's budgets are drawn with fiscal restraint, the PSP indicates that extra resources cannot be devoted to the OIG's recommendations without, in some areas, taking personnel and/or money from existing administrative or law enforcement duties. According to the PSP, some of the needed reforms cannot be finally resolved without the cooperation of the PSTA in the Act 111 arbitration proceedings, set to begin in July 2004.

The Monitor recognizes the progress made by the PSP in the following areas, among others:

- The Commissioner and Deputy Commissioners have embraced a zero tolerance policy on sexual harassment and sexual misconduct. The PSP now treats sexual harassment and sexual misconduct as serious offenses.
- The PSP has amended its organizational structure by creating the position of the Deputy Commissioner of Professional Responsibility. The Deputy Commissioner of Professional Responsibility reports directly to the Commissioner.
- On March 10, 2004, the PSP issued to the BIPS Bureau Special Order 2004-01 which requires, among other things: assignment of all investigations of sexual harassment and sexual misconduct to a BIPS investigator; documentation in writing, or by an audio tape recording, of all witness interviews during a sexual harassment or sexual misconduct investigation; follow-up on all complaints of sexual harassment and/or sexual

misconduct, even in cases where the complainant had not submitted a written Complaint Verification Form; and face-to-face interviews with complainants.³

- On April 30, 2004, the PSP issued draft Administrative Regulation (AR) 4-26, Sexual Harassment Policy, which provided comprehensive definitions of sexual harassment and sexual misconduct. This draft AR is currently being reviewed by counsel for the PSP and the Bureau of Research and Development. As recommended by the OIG, the IAD will investigate all allegations within the definitions of sexual harassment and sexual misconduct.
- The Monitor has reviewed the 18 files containing complaints of sexual harassment and/or sexual misconduct that were opened during the first and second quarters and found no instances where Bureau Special Order 2004-01 concerning Complaint Verifications and face-to-face interviews had been violated.
- The PSP has conducted a two-day session on adjudication training. The Monitor reviewed the curriculum, attended the training, and discussed the training with instructors and attendees.
- The PSP has added two investigators to BIPS off-site units in Pennsylvania, and has made plans to further reorganize the BIPS by moving a Lieutenant from Department Headquarters to be permanently assigned to the BIPS to handle case intake. The PSP has advised that it will be conducting an audit in the third quarter to further evaluate staffing needs and reassignment of personnel.
- The PSP has established a toll-free telephone hotline. Citizens can now telephone the toll-free hotline number at 866-426-9164 and either speak with a PSP representative during normal business hours or leave a message for a return telephone call the next business day. The PSP's Internet site (www.psp.state.pa.us) has a direct link to the PSP Compliment/Complaint Procedures and offers plain language instructions on filing a compliment or complaint by downloading the required form. The Monitor has verified that the toll-free telephone hotline is operating, and that the online form is accessible and can be easily downloaded from the PSP's Internet site.
- The EIP is operational and the PSP expects the program to be a useful resource and tool to aid supervisors in identifying members/enforcement officers for potential inclusion in the program before the need for discipline may arise. None of the candidates identified for possible inclusion in the EIP has been involved in incidents of sexual harassment or sexual misconduct nor has any exhibited a pattern of questionable conduct in these areas.

³ The PSP intends to incorporate the terms of Bureau Special Order 2004-01 into further revisions of AR 4-25, Internal Investigations, and AR 4-26, Sexual Harassment Policy.

The Monitor identifies the following areas of progress, among others:

- The PSP has drafted a Field Regulation prohibiting supervisors from independently investigating allegations of sexual harassment and/or sexual misconduct on the part of a direct subordinate. This draft Field Regulation received final approval internally on April 29, 2004. The PSP has advised that the Field Regulation will be issued in the third quarter.
- Although the PSP currently attends township meetings and conducts Citizen Police Academies throughout the Commonwealth, the PSP has not conducted community outreach meetings to inform communities on proper PSP functions and procedures within the ambit of the OIG's recommendations. The PSP has made progress in this area during the second quarter by drafting a proposal identifying and facilitating an effective outreach program. The PSP has advised that it will implement the community outreach component of its Problem Specific Policing Initiative during the third quarter.
- The PSP has developed a draft revision to AR 7-6, relating to Protection From Abuse (PFA) Orders. This draft is currently being reviewed internally by counsel for the PSP and the BIPS.
- The PSP has advised that it began, on February 25, 2004, transmitting records of complaints and dispositions from the BIPS to supervisors when members are transferred to a new command. The PSP has advised that it will make policy changes to AR 4-25 to reflect this change during the upcoming quarters.
- The PSP is working to establish a policy of serious disciplinary consequences for members engaging in sexual harassment and/or sexual misconduct. While the Monitor recognizes the considerable work and thought both the PSP and the PSTA have put into the proposed Discipline Matrix, the Monitor is concerned that deficiencies in the Discipline Matrix, as currently proposed, will result in inconsistent penalties. Despite the good faith efforts of the PSP and the PSTA to draft the current Discipline Matrix, both parties recognize that this Matrix is deficient. The Monitor encourages the PSP and the PSTA to move quickly to reach a consensus on these issues. The PSP is currently drafting a letter to be sent to the PSTA during the third quarter that will identify violations warranting serious disciplinary consequences.
- The PSP has taken steps to coordinate the probationary review of Troopers with the IAD and the Bureau of Human Resources before the Troopers complete their 18 month probationary period. The Monitor recommends that the PSP take additional steps to establish policy to include the EEOO in the coordination of this background investigation, as recommended by the OIG. The PSP has stated that revised AR 4-25 will direct the BIPS to notify the EEOO of all sexual harassment and sexual misconduct complaints before Troopers complete their 18 month probationary period.

- The PSP has made progress in its training initiatives. The BTE instituted specific training on sexual harassment in November 2003. The PSP provided Basic Supervision Classes, including training on sexual harassment, to new supervisors during the second quarter. The PSP has stated that all personnel (with the exception of those individuals who may be on military leave or extended sick leave), including supervisors at all levels, will receive sexual harassment training by July 23, 2004. This training will serve as the in-service training for the current year. Sexual harassment training has been included in the PSP's "Honor in the Force" training, and sexual harassment and sexual misconduct are included in the PSP's "Core Values and Core Purpose" training. The Monitor recommends that the PSP continue to develop more comprehensive training to include specific PSP examples. Although the PSP has provided some sexual harassment training for newly promoted supervisors, it has not provided department-wide training for supervisors.
- The PSP has provided, to EEOO liaisons, "Train-the-Trainer" training on Sexual Harassment: Awareness and Prevention. The PSP has stated that the EEOO liaisons will provide sexual harassment training to their constituents during the third quarter. The Monitor recommends, among other things, that the trainers be provided with written examples specific to law enforcement.
- The Monitor recognizes that the EEOO is currently supported by 39 EEOO liaisons throughout the Commonwealth. The Monitor recommends that the PSP make a determination as to whether the EEOO needs additional staffing and resources at its headquarters. The PSP should also evaluate the role and effectiveness of the EEOO liaisons in helping the EEOO carry out its duties in light of the issues identified in the OIG Report. This determination should be based on an evaluation of the EEO Office to determine specific staffing levels and resources needed based on the PSP's full response to the OIG's recommendations and concerns.
- Although the PSP has stated that it is developing an IAD tracking system, it has not yet established a method by which the BIPS and the EEOO can measure and monitor sexual harassment and sexual misconduct complaints. The BIPS has evaluated the IAB Pro software system; however, sole sourcing and contract issues have delayed acquisition. The PSP is considering other options and has assigned the development of this project to its Bureau of Technology Services.

The Monitor identifies the following areas of concern where additional progress needs to be made in future quarters:

- The Monitor is concerned about the lack of time limits, and the possibility for delay, from the time when complaints are first filed to the time when complaints are adjudicated. This lack of internal controls may, under certain circumstances, allow the subject of a sexual harassment and/or sexual misconduct investigation (or any other type of

investigation) to accrue enough hours to be eligible for retirement with increased benefits and without any discipline having been imposed.⁴ The Monitor finds from its review of cases during the second quarter that the PSP has complied with time limits imposed by the CBA; however, the possibility for delay exists with no corresponding time limits placed on the prosecutorial review process.

- The PSP has not developed or distributed any informational material describing the complaint and feedback process in English, Spanish, and other languages for distribution at PSP headquarters, PSP stations, state-operated rest stops, and other locations throughout the Commonwealth.
- The PSP has not conducted any special training programs where members of the BIPS have been instructed as to the nuances and subtleties of handling sexual harassment and sexual misconduct investigations.
- The PSP has made some progress to increase the consistency with which the pre-employment background investigations are conducted; however, the PSP has not provided any training, nor have specific standards been articulated or burdens of proof established, to guide the Background Investigation Appeal Panel in rendering decisions on applicants.
- The PSP should increase its support to the EEOO to develop a computer-based training module, as well as other methods designed to reinforce the PSP's strict prohibition of sexual harassment and sexual misconduct, and to develop a database that will track notifications to the victim and the BIPS.

The Monitor will continue monitoring the PSP's implementation of the recommendations in the OIG Report. The Monitor will issue its Third and Fourth Quarterly Reports in or about September and December of this year.

⁴ The Monitor recognizes that the PSP does not control the date on which a subject of an investigation may choose to retire, however, there is a concern that a delay could be manufactured to aid a subject's accrual of time on the job to increase his/her retirement benefits.

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SECTION ONE: INTRODUCTION

A. APPOINTMENT OF THE MONITOR

Kroll Associates, Inc. (Kroll) has been appointed by the Governor to serve as the Independent Monitor of the PSP. Accordingly, Kroll is acting on behalf of the Governor, working through his General Counsel, to monitor the implementation of recommendations contained in the OIG Report. In addition, the Governor has requested Kroll to perform other services, including providing technical assistance and assisting with the implementation of best practices. Kroll will serve as the Independent Monitor of the PSP for a period of one year, beginning on November 1, 2003 and ending on October 31, 2004.

As the Independent Monitor of the PSP, Kroll has two major responsibilities: 1) to monitor and assess implementation by the State Police of measures to improve State Police processing and investigation, disciplinary procedures, pre-employment background investigations and probationary employment, and training with respect to all matters of sexual harassment and sexual misconduct issues; and 2) to monitor and assess the State Police's implementation of recommendations for improving its processes for the prevention, investigation and proper disposition of complaints of sexual harassment and sexual misconduct.

This Report is for the second quarter. The Report for the first quarter was issued on March 1, 2004. The current Report continues the Monitor's assessment of all the areas outlined in the preceding paragraph. The Report finds that the PSP has made progress in certain areas and needs to do more in a number of other areas. The Monitor appreciates the full cooperation of the PSP and the PSTA in working to meet the recommendations made in the comprehensive and analytical Report issued by the OIG.

B. THE MONITORING TEAM

The Monitoring team includes William C. Nugent, Sheryl L. Robinson and Michael A. Pavlick in leadership roles.

Mr. Nugent serves as a Senior Managing Director and Regional Counsel and is head of Kroll's Pennsylvania office. In addition to his accomplishments as a prosecutor where, among other matters he investigated and prosecuted cases involving organized crime, political corruption, and federal civil rights, he has conducted numerous internal investigations and reviews at Kroll, including internal investigations involving alleged sexual harassment and sexual misconduct.

Ms. Robinson serves as Vice President and Managing Director of Kroll Government Services, Inc. and leads Kroll's practice in Washington, D.C. She offers unique expertise in police integrity practices in both the litigation and policy development areas. During her time in the Civil Rights Division of the U.S. Department of Justice (DOJ), Ms. Robinson evaluated, investigated and/or prosecuted hundreds of allegations of excessive use of force and sexual abuse matters in police

agencies across the country. Furthermore, in the policy area, she actively participated in DOJ's efforts to identify promising police practices for state and local police agencies. Ms. Robinson served as the Department's primary contact for state and local law enforcement agencies and associations on police integrity and civil rights policy matters. Ms. Robinson was recently appointed by the Honorable Julian A. Cook, Jr., United States District Court Judge for the Eastern District of Michigan, to serve as the Independent Monitor for the Detroit Police Department.

Mr. Pavlick provides extensive law enforcement experience including an outstanding career at the Drug Enforcement Administration and work as a consultant with the United States State Department and the Executive Branch of the United States Government. Mr. Pavlick has conducted numerous investigations in Internal Affairs of corrupt DEA agents and police officers, and handled many allegations of sexual harassment while at the DEA.

Walter S. Batty, Jr., formerly the Chief of Appeals at the United States Attorney's Office for the Eastern District of Pennsylvania, also contributed to this Report.

The Monitoring team has, where appropriate and advantageous to the Commonwealth of Pennsylvania, the public, and the State Police, utilized designated subject matter experts on specific issues including internal investigations, policing, training, and report writing. In addition to acting as the Independent Monitor of the PSP in this matter, Kroll is currently acting as the Court-Appointed Independent Monitor of both the Los Angeles Police Department and the Detroit Police Department. Both of these monitorships are five-year appointments. The Kroll team monitoring the PSP will be able to draw upon the insights and experience of the Kroll teams working in Los Angeles and Detroit.

The Monitor takes this appointment by the Governor very seriously. Sexual harassment and sexual misconduct by police officers is especially intolerable. This is a trying time for the vast majority of State Troopers, honorable men and women who risk their lives to protect the public, and who have not been accused of wrongdoing; these good men and women cannot help but feel ashamed by the improper and immoral acts of some fellow officers. However, it is also a time of opportunity. The Monitor is confident that, with the promised support of all the parties, significant improvements will occur in this important area of police conduct.

SECTION TWO: BRIEF HISTORY

The relevant history leading up to the Governor's hiring of Kroll as the Independent Monitor of the PSP is set forth in the First Quarterly Report for the period ending January 31, 2004. This brief history outlines significant events such as: the guilty plea of former Pennsylvania State Trooper Michael K. Evans to various crimes of sexual misconduct; the federal civil rights lawsuits filed against the PSP arising from the criminal conduct of former Trooper Evans; the extensive local and national media coverage; the aggressive actions to accelerate change taken

by the Governor, the Commissioner, the General Counsel and the OIG; and legislative efforts to reform discipline within the PSP.⁵

SECTION THREE: THE OIG'S RECOMMENDATIONS, THE PSP'S RESPONSES AND THE MONITOR'S ASSESSMENT OF COMPLIANCE AND RECOMMENDATIONS

This section contains the Monitor's compliance assessments for the second quarter ending April 30, 2004 for: (1) Complaint Processing and Investigations; (2) Discipline; (3) Pre-Employment Background Investigations and Probationary Employment; (4) Sexual Harassment Training; and (5) Attitudes Regarding Sexual Harassment and Sexual Misconduct.

I. COMPLAINT PROCESSING AND INVESTIGATIONS

A. DIRECT REPORTING TO BIPS

The OIG Report (p. 16) recommended that all members of the PSP be required to report in writing, directly to the BPR,⁶ any knowledge they have or complaints they have heard of sexual harassment or sexual misconduct. The Report also recommended that members who did not report such conduct be disciplined, and that the PSP provide revised, comprehensive definitions of sexual harassment and sexual misconduct. The Monitor previously reported that all members are required to report misconduct by the existing Field Regulations (FR), including FR 1.17b. In September 2003, the Director of the BIPS, in consultation with the Director of the IAD, began personally reviewing all complaints filed with the PSP and directed that all investigations of sexual harassment and sexual misconduct be investigated by the BIPS. This process was not formalized initially by issuance of a written directive. In addition, the PSP did not have comprehensive definitions of sexual harassment or sexual misconduct. Accordingly, in the First Quarterly Report, the Monitor stated that the PSP did not satisfy the OIG's recommendations in this area.

⁵ Kroll's First Quarterly Report, as well as the Second Quarterly Report, is available for review on the Internet on the PSP's site at <http://www.psp.state.pa.us/>. The report can be accessed by first selecting the link for "Department Information," then clicking the link for "PSP Information and Online Services," and finally selecting "Kroll First Quarterly Report." The report can be downloaded and/or viewed online using Adobe Acrobat Reader which is available for free on the PSP's Internet site. The First Quarterly Report, as well as the Second Quarterly Report, is also available for review on the Internet on Kroll's site at <http://www.krollworldwide.com/psp>.

⁶ As noted in footnote 1, the BIPS has assumed the functions of the bureau formerly known as the BPR.

Current Assessment of Compliance

In this quarter, the PSP issued a Special Order and revised an Administrative Regulation to address two of the OIG's recommendations in this area. On March 10, 2004, the PSP issued to BIPS Bureau Special Order 2004-01, which required that investigations of sexual harassment and sexual misconduct be assigned to a BIPS investigator.⁷ This Bureau Special Order, among other things, created an exception to the usual procedure, where the Troop Commander would be the one initially responsible for all matters of Troop discipline. On April 30, 2004, the PSP issued a draft of revised Administrative Regulation (AR) 4-26, Sexual Harassment Policy,⁸ which provided comprehensive definitions of sexual harassment and sexual misconduct. This draft AR is currently being reviewed by both counsel and the Bureau of Research and Development. By issuing and revising these directives, the PSP is in compliance during the second quarter with the policy requirements of the OIG Report's recommendations in this section.

In our discussion of this issue in the First Quarterly Report (p. 11), the Monitor stated that it would evaluate whether the existing regulations regarding the duty of each member to report violations by any other members were being enforced and that we would also evaluate whether the BIPS were scrutinizing complaint files "to determine if Members present at the scene of a violation are forthcoming in providing information." During the compliance reviews, the Monitor has not obtained any information suggesting that a member has violated this regulation; also, the Monitor is informed that officials at the BIPS were not aware of any such failures to report, on the appropriate forms, during the first or second quarters.

⁷ The specific language of Bureau Special Order 2004-01 on this point is as follows:

All Internal Affairs Investigations alleging sexual misconduct or sexual harassment shall be assigned to an investigator within the Bureau of Professional Responsibility, Internal Affairs Division.

⁸ AR 4-26 provides the following definitions of sexual misconduct and sexual harassment:

- I. Sexual Misconduct: Sexual Misconduct includes any uninvited or unwelcome sexual touching or sexual contact or conduct of a sexual nature which victimizes another person. Sexual touching or sexual contact includes intentional touching or other physical contact of a sexual nature, done either directly or through the clothing, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person. Sexual misconduct also includes those types of conduct (whether or not criminally charged) which are described in the sexual offenses subchapter of the Crimes Code, as defined in 18 PA CS 3121 through 3129, 5901, and 6301 (but only as it relates to acts of a sexual nature), and equivalent offenses committed (whether or not criminally charged) in other jurisdictions.
- II. Sexual Harassment: Sexual Harassment is defined to include: unwelcome sexual advances, requests for sexual favors, and/or other verbal, visual, or physical conduct of a sexual nature (whether or not criminally charged) where:
 - a. submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
 - b. submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individuals; or
 - c. such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

The Monitor has determined, however, that there is a notable omission from Bureau Special Order 2004-01, AR 4-25, Internal Investigations, and/or AR 4-26 which can and should be remedied to bring the PSP into compliance with the recommendations in this section of the OIG Report. The omission is that there is no directive concerning the time limits for referrals if a complaint alleging sexual harassment and/or sexual misconduct is first made to either personnel at a Troop or to the EEOO, or is made to the BIPS. Our compliance reviews show that, of the 18 complaints alleging sexual harassment and/or sexual misconduct filed during the first and second quarters, there were three complaints filed initially with the BIPS, 14 complaints filed initially with the Troop Commanders' offices, and one complaint filed initially with the EEOO. There is, however, no provision in Bureau Special Order 2004-01, AR 4-25, and/or AR 4-26 as to the timing of referrals to the BIPS when complaints are filed initially with the Troops or with the EEOO. Similarly, there is no provision in these directives as to the timing of referrals to the EEOO when complaints are filed initially with the BIPS. The Monitor recommends that the PSP remedy this omission by adding suitable provisions to a revised Bureau Special Order 2004-01⁹ (or to another Bureau Special Order) and later, to a revised AR 4-25 and/or AR 4-26. These provisions would establish time limits for the referrals from the Troop Commanders and from the EEOO to the BIPS, and from the BIPS to the EEOO.

The Monitor's concern about the lack of time limits when complaints are first filed, also applies to the time within which complaints are adjudicated. This concern has been highlighted by a matter currently under review by the Monitor.¹⁰ Our preliminary examination of this matter shows that there was a complaint filed approximately 18 months ago, in which a noncommissioned officer alleged that her immediate superior had groped her and otherwise engaged in unwanted sexual touching. According to the Monitor's initial review, the subject of the investigation accrued enough hours so that he could retire, in April 2004, at 50% of his then salary, without any discipline having been imposed. While we do not express any view as to the accuracy of the statements made to us by the complainant, the Monitor offers this now as an illustration of what could go wrong as a result of the above-described omission from Bureau

⁹ The Monitor also would note two technical matters in Bureau Special Order 2004-01 which may need to be clarified: one is substantive, the second is typographical. The substantive point is that the Bureau Special Order, by its own terms, "will remain in effect until it is incorporated into the revisions of [AR 4-25] and rescinded." Although there is clearly no intention on the part of the PSP to rescind Bureau Special Order 2004-01, the fact that AR 4-25 has recently been revised in other areas, effective March 31, 2004, could possibly lead to confusion, in that it might be mistakenly concluded that the latest version of AR 4-25 effectively rescinded Bureau Special Order 2004-01. However, since the March 31, 2004 revision of AR 4-25 does not attempt to "incorporate" the policies set out in Bureau Special Order 2004-01, it appears that there has, in fact, been no unintended rescission. The second matter is merely typographical – the rescission clause refers to "Reference (c)," when it is clear that the citation should have been to "Reference (b)," or that there was an omitted reference at what should have been "Reference (c)" to AR 4-26.

¹⁰ At this point, the Monitor has not had sufficient time to investigate all the facts concerning this matter; accordingly, we will not make any judgment as to whether, in fact, there have been any deficiencies. However, even if we subsequently determine that there were no lapses on the part of any personnel in this matter, the potential for non-compliance with the OIG's recommendation on this point is illustrated by taking the scenario related in the text on a merely hypothetical basis.

Special Order 2004-01, AR 4-25, and/or AR 4-26. The Monitor finds from its review of cases during the second quarter that the PSP has complied with time limits imposed by the CBA; however, the possibility for delay in the adjudicative process can occur, over which the PSP has no control, when a matter is referred to a county, state or federal prosecutor.

While the recommendations contained in the OIG Report are always well-supported and well-articulated, the Monitor understands that there are, as a practical matter, situations where complaints – as shown by the figures cited above – are filed first with the Troop Commanders or with the EEOO. If a member of the PSP believes that he or she would not be in any way prejudiced by doing so, the ordinary course might well be to first file a complaint with “the chain of command” at the Troop level. Alternatively, a complainant might first wish to file with the EEOO, as that office has traditionally been a place where such complaints would be made if the complainant felt there might be some prejudice to his or her filing a complaint at the Troop level.

The Monitor believes that adding time limits for referrals, as we recommend, is a necessary complement to the OIG Report’s recommendation of direct reporting to the BIPS. Because the PSP adopted a new policy, in September 2003, that all complaints of sexual harassment and/or sexual misconduct must be referred to the BIPS for investigation, and because this new policy, from the Monitor’s assessment, is being followed, the PSP has complied with the OIG Report’s policy recommendation. Other than the delays – which the Monitor expects will be kept to a minimum – inherent in referrals, there is no difference of which the Monitor is aware between a complaint’s being initially filed with the BIPS, on the one hand, and a complaint’s being initially filed with the Troop Commander or with the EEOO, on the other. Once the PSP adopts and implements strict timing requirements, it will, in the Monitor’s view, have met the intent of the OIG Report’s recommendations on this point. Finally, the Monitor observes that Bureau Special Order 2004-01 is an interim measure, which the PSP intends to incorporate into further revisions of AR 4-25 and/or AR 4-26.

Based on the foregoing, the PSP has complied with the recommendations in this section of the OIG Report, with the exception of the recommendation that all complaints are to be initially filed with the BIPS, which the Monitor determined was not necessarily practical or advantageous.

B. BIPS’S ROLE

The OIG Report (pp.17-18) recommended that the PSP issue an FR prohibiting supervisors from independently investigating allegations of sexual harassment and/or sexual misconduct on the part of a direct subordinate. In addition, the OIG Report recommended that supervisors who violate such an FR should be disciplined. As of our First Quarterly Report, the BIPS had initiated a new policy of taking investigative jurisdiction of all complaints of sexual harassment and/or sexual misconduct. See discussion under Direct Reporting to BIPS, at Section I.A., above. Under this new practice, the BIPS will use its own personnel to investigate the case.¹¹

¹¹ In addition, the BIPS can also refer the case to the County District Attorney’s office; such referrals certainly do not run afoul of the OIG’s recommendations.

Current Assessment of Compliance

As noted in our discussion of Direct Reporting to BIPS, at Section I.A. above, the PSP's new policy is reflected in Bureau Special Order 2004-01, which was issued by the PSP on March 10, 2004. Based on our compliance reviews during the first and second quarters, we have found no instances where any Troop supervisor investigated a sexual harassment or sexual misconduct matter in violation of the new policy. If a Troop supervisor were to violate this new policy, PSP regulations require that, depending upon the circumstances, the member would be disciplined under existing FR's, such as FR 1-2.02 (failure to strictly adhere to rules, regulations, or directives promulgated by the PSP), FR 1-1.17b (failure to report information indicating violation of any law, rule, regulation or order), as well as other regulations.

Based on the foregoing, the PSP has complied with the implementation aspect of this OIG recommendation. The PSP has not complied, however, with the policy recommendation to issue an FR prohibiting supervisors from independently investigating allegations of sexual harassment and/or sexual misconduct on the part of a direct subordinate. The PSP has advised that it has developed a draft FR which will address the requirement for the issuance of a FR in the third quarter. This draft FR received final approval internally on April 29, 2004. The Monitor will evaluate the FR during the third quarter.

C. CONFIDENTIALITY

The OIG Report (pp.18-19) recommended that the PSP reiterate that its members, other than the assigned investigator, are not permitted to disclose or otherwise discuss a pending investigation with the subject of the investigation. The OIG further recommended that the PSP enforce violations of this policy with discipline. The situations noted in the OIG Report concerned unauthorized "leaks" by members of the PSP in which the subjects were improperly advised that they were under investigation. As we stated in our First Quarterly Report, there are currently several different FR's which implicitly protect the confidentiality of an investigation. As the OIG Report noted, "a State Police regulation [AR 4-25] specifically requires that personnel 'insure the confidentiality of all complaints.'" While the PSP agrees with the OIG's recommendation on this issue, the Monitor believes that the regulation referenced above and in the OIG report is not sufficiently explicit to cure the problem cited in the OIG Report. Accordingly, the Monitor recommends that the PSP consider whether Bureau Special Order 2004-01 should be revised promptly (or a separate Bureau Special Order issued) and whether, subsequently, AR 4-25 should be amended to make more explicit the requirement that only the assigned investigator(s) from the BIPS discuss the contents of any internal investigation (including the contents of any investigation concerning sexual harassment and / or sexual misconduct) with the subject of the

investigation, until after the investigation is complete.¹²

Current Assessment of Compliance

The Monitor, in our compliance reviews during this quarter, has found no evidence of any violations of the OIG Report's recommendations on this point. The Monitor interviewed officials at the BIPS who were aware of all 18 investigations which had been opened during the first two quarters and who stated that they knew of no situations where the subject of the investigation had been improperly "tipped-off" to the existence of the investigation prior to being contacted by the case investigator(s).

D. COMPLAINT VERIFICATION

The OIG Report (p. 20) recommended that the PSP should follow-up on all complaints of sexual harassment and/or sexual misconduct, even if the complainant had not submitted a written Complaint Verification Form. The OIG also recommended that the letter accompanying the Complaint Verification should include a statement that assures complainants that the PSP is interested in aggressively pursuing any misconduct by PSP personnel. Before the OIG submitted its Report, it had been the policy of the PSP not to follow-up on complaints without a Complaint Verification Form since the PSP would treat such a complaint as having been withdrawn. The PSP, however, would follow-up, even without a Complaint Verification Form, in cases of criminal activity, but not in cases of non-criminal activity. On September 26, 2003, the PSP issued an oral directive consistent with the OIG's recommendation.

Current Assessment of Compliance

Bureau Special Order 2004-01, issued on March 10, 2004, formalized the oral directive cited above (using the same language).¹³ The Monitor has reviewed the 18 files containing complaints of sexual harassment and/or sexual misconduct which were opened during the first and second

¹² The Monitor recognizes that, in the vast majority of cases, the subject will become aware of the existence of a sexual harassment and/or sexual misconduct investigation before the investigation is complete because his or her duty status may be effected immediately upon the filing of a complaint; for example, the subject may be transferred temporarily or permanently, placed on restricted duty status, or suspended without pay pending completion of the investigation. However, notification to the subject as a result of change in duty status is not the problem cited by the OIG; the problem is having an unauthorized member or employee other than the assigned BIPS investigator(s) making a unilateral determination to notify the subject prior to the assigned investigator(s) from the BIPS determining that it is appropriate to do so. With more explicit requirements of strict confidentiality, enforced through discipline, the PSP can further strengthen its efforts to investigate fully all allegations of sexual harassment and sexual misconduct. The assigned investigator(s) from the BIPS can then determine what, if any, investigative work needs to be conducted before the subject is notified for any reason, other than a change in duty status.

¹³ Bureau Special Order 2004-01 states, in part:

No complaint alleging sexual misconduct or sexual harassment shall be deemed withdrawn on the basis of a complainant failing to return a Complaint Verification Form. In such cases, personal contact with the complainant shall be pursued by the IAD.

quarters and found no instances where either of the new PSP policies concerning Complaint Verification and face-to-face interviews, as described in the next section, had been violated.¹⁴

E. FACE-TO-FACE INTERVIEWS

The OIG Report (p. 20) recommended that the PSP establish a policy to pursue face-to-face interviews with complainants in all cases, even if the complainant fails to submit and sign a Complaint Verification Form. The PSP's initial response to the OIG's recommendation was that a face-to-face meeting would be pursued, where the complainant had not filed a Complaint Verification Form but only in cases involving criminal allegations. (This was the same procedure previously followed in determining whether or not a complaint would be considered withdrawn, as discussed at Section I.D., above.) In other cases, the decision as to whether to pursue such a meeting was determined by the availability of investigative personnel. On September 26, 2003 the PSP issued an oral directive, consistent with the OIG's recommendations.

Current Assessment of Compliance

The PSP formalized this new policy in Bureau Special Order 2004-01, which went into effect on March 10, 2004.¹⁵ Based on our compliance reviews during the first and second quarters, as described above in Section I.D. and at footnote 13, the Monitor has found that, in those instances where there was no Complaint Verification, this new policy and this Order were adhered to by the PSP.

F. OUTREACH PROGRAM

The OIG Report (p. 21) recommended that the PSP develop an effective outreach program to facilitate the ability of citizens to complain or otherwise provide feedback on the performance of PSP personnel directly to the BIPS. The OIG recommended that the PSP's outreach program permit a complaint to be made in person, by mail, by telephone, via the Internet, by e-mail, by facsimile transmission, or by a 24-hour toll-free telephone hotline. The OIG also recommended that the PSP should document all calls to the hotline, and should refer to the hotline all citizens who call a PSP barracks to make a complaint. Finally, the OIG also recommended that the PSP publicize the complaint process and the 24-hour telephone hotline number on the PSP's website. The PSP initially agreed that it would follow most of the OIG's recommendations, with the exception of the 24-hour toll-free telephone hotline, due to the expense. As we noted in our First Quarterly Report, the PSP placed on the Internet in September 2003 complete instructions as to how an individual can file a compliment and/or complaint regarding a member of the PSP. The PSP also provides a form that can be used to file such a compliment and/or complaint on the Internet.

¹⁴ Our review of the 18 open files included: (1) an examination of all the contents of each file, including reports of witness interviews; (2) interviewing selected witnesses in several of the files; and (3) listening to selected audiotapes of witness interviews in several of the files.

¹⁵ See footnote 13.

Current Assessment of Compliance

The PSP has set up, as of April 8, 2004, a toll-free telephone hotline.¹⁶ Citizens can telephone the toll-free hotline number at 866-426-9164 and speak with a PSP representative during normal business hours from 8:00 AM to 3:30 PM, Monday to Friday. During holidays and non-business hours, citizens can leave a message on a voicemail recorder at the toll-free hotline number and they will receive a return telephone call the next business day. The PSP's Internet site (www.psp.state.pa.us) has a direct link to the PSP Compliment/Complaint Procedures and offers plain language instructions on filing a compliment or complaint by downloading the required form. The online form requires Adobe Acrobat Reader and the website offers a quick link to have that program installed so a user can continue with the Compliment/Complaint Procedure. The PSP has informed the Monitor that it can only track the number of times the form is downloaded from its website, which does not necessarily equal the number of complaints received, as users are required to sign the form and mail it to the designated office in Harrisburg.¹⁷ The Monitor has verified that the online form is accessible and can be easily downloaded from the PSP's Internet site. The Monitor has also verified that the toll-free telephone hotline is operating. The Monitor will continue to evaluate the PSP's documentation of callers to the hotline, the handling of callers by hotline operators and the publicity of the complaint process.

Based on the foregoing, the PSP has complied with the OIG's recommendation to permit complaints to be made in person, by mail, by telephone, via the Internet, by e-mail, by facsimile transmission or by a toll-free telephone hotline.

G. INFORMATIONAL MATERIAL

The OIG Report (p. 21) recommended that the PSP develop informational material describing the complaint and feedback process for distribution at PSP headquarters, PSP stations, state-operated rest stops, and other locations throughout the Commonwealth. The OIG also recommended that the PSP consider making the informational material available in English, Spanish, and other languages. The PSP's response to this recommendation was that it would be implemented by the EEOO. However, the PSP did not comply with this recommendation during the first quarter.

Current Assessment of Compliance

The informational material describing the complaint and feedback process has not yet been developed or distributed. Therefore, the PSP has not complied with this recommendation during the second quarter.

¹⁶ The hotline was operational as of April 1, 2004, however, the press release issued April 8, 2004 marked the hotline's official start date.

¹⁷ The CBA requires Complaint Verifications to be signed.

H. OUTREACH MEETINGS

The OIG Report (p. 22) recommended that the PSP host quarterly or other periodic informational meetings designed to inform communities on proper PSP functions and procedures. The OIG Report also recommended that, at these meetings, the PSP advise those in attendance how to report complaints and compliments regarding members of the PSP. The PSP did not comply with this recommendation for outreach meetings during the first quarter. As the Monitor stated in the prior Report, the PSP planned to implement this recommendation through the Problem Specific Policing Initiative, which requires monthly community outreach meetings for each Troop. This Initiative is described in our summary of the Outreach Program, at Section I.F., above.

Current Assessment of Compliance

The PSP currently attends township meetings and conducts Citizen Police Academies throughout the Commonwealth. The PSP drafted a proposal during the second quarter identifying and facilitating an effective outreach program as part of its Problem Specific Policing Initiative. According to the PSP, this portion of the Problem Specific Policing Initiative, which requires all Troop and Bureau Commanders to facilitate a Community Outreach Program, will be implemented during the third quarter. This program will result in monthly meetings at a community facility, such as a high school, in the vicinity of each Troop's barracks, at which time members of the public will be encouraged to make such complaints, or give such compliments, as they wish. At these meetings, the PSP plans to have its representatives meet with the community to learn what is most affecting the community's quality of life. According to the PSP, the community outreach component of its Problem Specific Policing Initiative¹⁸ is expected to satisfy the OIG's recommendations on this point.

Although the PSP currently attends township meetings and conducts a Citizen Police Academies throughout the Commonwealth, the PSP did not comply with this OIG recommendation during the second quarter.

I. ASSIGNMENT OF CASES

The OIG Report (pp. 24-25) recommended that the PSP should assign all allegations of sexual harassment or sexual misconduct directly to the BIPS. (This recommendation is related to the other OIG Report recommendations discussed in the sections regarding Direct Reporting to BIPS and BIPS's Role, at Sections I.A. and I.B., above.)

Current Assessment of Compliance

The PSP has advised the Monitor that, as of September 26, 2003, all allegations involving sexual harassment and/or sexual misconduct have been investigated by the BIPS, either at its headquarters or at one of its three off-site field units. The PSP has further advised that no investigations involving sexual harassment and/or sexual misconduct are being referred out to

¹⁸ The PSP's Problem Specific Policing Initiative went into effect on May 1, 2003.

the Troops. Bureau Special Order 2004-01, issued on March 10, 2004, quoted above in relevant part at footnote 7, provides that all such investigations, shall be assigned to the BIPS. In performing its compliance reviews for this quarter, the Monitor has found that all of these investigations came from complaints either initially filed with the BIPS, or from complaints referred to the BIPS from the Troops or the EEOO. The Monitor finds that the PSP has complied with this recommendation, even though the PSP does not “assign” any of these investigations “directly” to the BIPS, for the reasons stated above in Section I.A.

J. COMMIT ADDITIONAL INVESTIGATORS

The OIG Report (p. 25) recommended that additional investigators be assigned to the BIPS sufficient to permit the BIPS to conduct all investigations of sexual harassment and sexual misconduct by permanently assigned personnel. In our prior Report, the Monitor noted that two BIPS investigators have been added to BIPS off-site units in Pennsylvania. In that Report, the Monitor recommended that one additional investigator be added to the Philadelphia Office of the BIPS to meet the demanding workload being generated in the Philadelphia area. The Monitor also recommended adding one officer and one non-commissioned officer to BIPS headquarters, as well as one civilian intake employee.

Current Assessment of Compliance

The PSP has supplemented its organizational structure in this area by creating the position of Deputy Commissioner for Professional Responsibility. The Deputy Commissioner of Professional Responsibility has jurisdiction over the BIPS, the EIPO, the EEOO, and the DDO.¹⁹ While the OIG did not recommend this change in the PSP’s organizational structure, the Monitor recognizes that there may well be advantages to this change. The creation of this new Deputy Commissioner position appears to be an important step in centralizing control and oversight of implementation of the OIG’s recommendations, and focusing the PSP’s efforts to address issues related to misconduct, including sexual harassment and sexual misconduct.

In addition to committing two investigators to BIPS off-site units, the PSP has made plans to further reorganize the BIPS by moving a Lieutenant from Department Headquarters to be permanently assigned to the BIPS to handle case intake. The PSP has advised that it will be conducting an audit in the third quarter to further evaluate staffing needs, reassignment of personnel and budgetary constraints. The Monitor recommends that the PSP make a determination as to whether the BIPS needs additional staffing and resources at its headquarters and/or its off-site units. This determination should be based on the audit and evaluation of the BIPS to determine specific staffing levels and resources needed in light of the issues identified by the OIG.

Based on the foregoing, the Monitor currently withholds a determination of compliance with this OIG recommendation.

¹⁹ Two other divisions come under the BIPS – The Internal Affairs Division (IAD) and the Systems Process and Review Division (SPR).

K. DOCUMENTATION OF WITNESS INTERVIEWS

The OIG Report (p. 26) recognized that the PSP has a policy that all BIPS investigations should include documentation for each witness interview. The OIG recommended that, if the PSP did not follow the OIG's prior recommendation that all sexual harassment / sexual misconduct investigations be conducted by BIPS personnel, then the PSP should establish a written policy requiring all PSP members to document all witness interviews. In our First Quarterly Report, the Monitor stated that the BIPS had established a policy, promulgated on September 26, 2003, requiring that only BIPS personnel conduct sexual harassment and sexual misconduct investigations and requiring documentation in all BIPS investigations. As of the issuance of the September 26, 2003 oral directive, the PSP had complied with the literal requirements of the OIG recommendations.

Current Assessment of Compliance

The PSP issued Bureau Special Order 2004-01 on March 10, 2004 that mandates that all witness interviews during a sexual harassment or sexual misconduct investigation, must be documented in writing, or by an audiotape recording. By issuing this written directive, the PSP went beyond the literal requirements of the OIG recommendations. Furthermore, requiring written and/or audiotaped witness statements is consistent with best policing practices. This directive in the Bureau Special Order will become part of revised AR 4-25, Internal Investigations. Based on its compliance reviews during the first and second quarters of the approximately 18 files opened during these two quarters, the Monitor has determined that the PSP has complied with the OIG's recommendation on this point.

L. PROTECTION FROM ABUSE ORDERS

The OIG Report (pp. 27-28) recommended that the PSP implement additional measures in addressing Protection From Abuse (PFA) Orders involving members of the PSP. The OIG Report encouraged the PSP to consult and consider the model policy adopted by the International Association of Chiefs of Police (IACP) on Police Officer Domestic Violence in amending its regulations. In addition, the OIG Report recommended that the BIPS continue a domestic violence investigation even if the complaining victim recants or withdraws a PFA Order. The relevant Administrative Regulation, AR 7-6, which was in effect at the time of the OIG Report, was issued on April 27, 2000.²⁰ The Monitor previously reported that the BIPS was in the process of drafting a policy, consistent with the OIG's recommendation, based on the model policy of the IACP.

²⁰ The prior version of FR 7-6, issued on April 27, 2000, provided, in part: "Domestic violence incidents and violations of PFA Orders shall not, under any circumstances, be cancelled by the complainant or by any other person(s). All incidents shall require personal contact with the victim and the complainant."

Current Assessment of Compliance

The Monitor has been advised that the PSP is planning to issue a revised AR 7-6. The PSP examined the IACP model, but found the model to be inadequate for the PSP's specific needs. The PSP is continuing to develop its policy on this issue.

Based on the foregoing, the PSP has not yet complied with the recommendations in the OIG Report.

M. FULL INVESTIGATIONS

The OIG Report (p. 30) recommended that the PSP emphasize the importance of completing a full investigation into allegations of sexual harassment and sexual misconduct, through training and supervisory reviews. While the Monitor previously reported that the PSP already required full investigations of such allegations, it was necessary for the PSP to provide comprehensive definitions of sexual harassment and sexual misconduct so that there would be written policies as to what kind of matters would be fully investigated.

Current Assessment of Compliance

As noted above, comprehensive definitions of sexual harassment and sexual misconduct were set out in AR 4-26, issued on April 30, 2003. To date, there have not yet been any training programs where members of the BIPS have been instructed as to the necessity of full investigations in such cases. The Monitor notes that the PSP does require full investigations into all cases; however, the PSP has not conducted any specific training programs where members of the BIPS have been instructed as to the nuances and subtleties of handling sexual harassment and sexual misconduct investigations.

Based on the foregoing, the PSP is not in compliance with this OIG recommendation.

N. SUMMARY OF THE MONITOR'S RECOMMENDATIONS

1. Direct Reporting to BIPS (Section I.A.). The Monitor recommends that the PSP provide specific procedures, by way of a prompt revision of Bureau Special Order 2004-01 (or by issuing a separate Bureau Special Order), and later by a revision to AR 4-25 and/or AR 4-26, which would establish time limits for referrals of any complaints alleging sexual harassment and/or sexual misconduct. These complaints would have been initially filed with the complainant's Troop or with the EEOO, so that any such complaint will be referred forthwith to the BIPS.²¹ The Monitor also recommends that the PSP establish time limits for referrals to the EEOO, when the complaints are first filed with the BIPS. Finally, the Monitor recommends that the PSP establish time limits for complaints to be adjudicated.

²¹ The Monitor refers in these recommendations to specific Bureau Special Orders and specific provisions of the Administrative Regulations. The Monitor identified specific provisions only as a suggestion; the PSP may well be able to fulfill these recommendations by selecting other provisions to revise or to supplement.

2. Confidentiality (Section I.C.). The Monitor recommends that the PSP, through a prompt revision of Bureau Special Order 2004-01 (or by a separate Bureau Special Order), and by a subsequent revision of AR 4-25 and/or AR 4-26, make more explicit the confidentiality of all internal investigations. This should be done so that all members of the PSP, other than the assigned investigator(s), are prohibited from speaking to the subject of the investigation about any knowledge they may have of the investigation, until after the investigation has been completed.

II. DISCIPLINE

A. MEMBER TRANSFERS

The OIG Report (p. 34) recommended that, when a member of the PSP is transferred, information about all “sustained,” “not-sustained,” “unfounded,” and “withdrawn” cases should be provided to the current supervisor and new supervisors. The Monitor previously reported that the PSP stated that it would implement this policy, beginning in 2004. The Monitor also observed that certain items of information, which the PSP has recently included in its transmittals of information to the current and new supervisors, were obtained pursuant to the EIP discussed at pages 27-28 of our First Quarterly Report. We also noted that, on December 31, 2003, the PSTA filed, with the Pennsylvania Labor Relations Board, a charge of an unfair labor practice against the PSP for implementation of the EIP. This matter is still pending.

Current Assessment of Compliance

The Monitor has observed progress during this quarter on the PSP’s transmittal of information, specifically records of complaints and dispositions, from the BIPS to current and new supervisors when members were transferred under their command. The OIG’s recommendation has been implemented as of February 27, 2004, with the first transmittal of information to new supervisors when members were transferred under their command. The Monitor would note that the PSP is currently using documentation to furnish the information described above to the new supervisors. The PSP is continuing to try to find appropriate software to improve the reliability of the method of communications of this information. The PSP has advised that it will make policy changes to AR 4-25 to reflect this change during the upcoming quarters.

Based on the foregoing, the PSP is in compliance with the implementation of this OIG recommendation. The PSP has not complied with the policy portion of this recommendation.

B. TREAT SEXUAL HARASSMENT AND SEXUAL MISCONDUCT AS SERIOUS OFFENSES

The OIG Report (p. 37) recommended that, consistent with the PSP’s zero tolerance policy on sexual harassment and sexual misconduct, the PSP should establish and embrace a policy treating sexual harassment and sexual misconduct as serious offenses, and discouraging them

institutionally. As the Monitor stated in the First Quarterly Report, this recommendation has been accomplished through Bureau Special Order 2003-39, setting out the PSP's zero tolerance policy.

Current Assessment of Compliance

The PSP has complied with this recommendation. The PSP has actively investigated 18 complaints in the first and second quarters consistent with enforcing its rules and regulations regarding sexual harassment and sexual misconduct and discouraging these offenses institutionally.²²

C. ESTABLISH DEFINITIVE GUIDELINES

The OIG Report (pp. 37-39) recommended that the PSP establish uniform and consistent disciplinary guidelines, with serious consequences, for members engaging in sexual harassment and/or sexual misconduct. The OIG Report found that there were "disparities in the discipline imposed . . . on different individuals engaging in similar sexual activity while on duty" (p. 38). The Report also stated (p. 39):

Furthermore, to add uniformity and consistency to disciplinary decisions, the State Police should attempt to set definitive guidelines stating the appropriate discipline for specific kinds of misconduct. For example, the guideline could provide that a Member found to have engaged in sex on duty will be subject to dismissal. In some instances, a maximum and minimum sanction might be appropriate. Such guidelines will establish consistency as well as notify Members and the public of the State Police's expectations and standards.

The PSP agrees with these recommendations and has developed a proposed Discipline Matrix in consultation with the PSTA.

As is more fully described in the OIG Report (p. 31-34), once the PSP initially imposes a disciplinary penalty, the member may take what is essentially an administrative appeal by filing a grievance, pursuant to the CBA. The ten-person grievance committee may settle the grievance, with the agreement of both the PSP and the PSTA. If there is no such settlement, the member may proceed to arbitration, in front of one of the five neutral arbitrators jointly selected by the PSP and the PSTA.

²² It should be noted that, while the PSP has complied with the recommendations in the OIG Report to treat seriously all allegations of sexual harassment and/or sexual misconduct, the number of cases currently outstanding, as well as the numbers of cases filed in any given time period, are now lower than they were a year ago. One reason for this reduction in the number of cases is that, at the urging of the Monitor, the PSP has changed the classification of a number of cases which were not truly sexual harassment or sexual misconduct cases. Once the PSP issued new definitions of sexual harassment and sexual misconduct, in draft AR 4-26, issued on April 30, 2004, a number of cases which consisted of the use of the PSP's intranet system, referred to as the Enterprise Network, have been reclassified from sexual harassment/sexual misconduct infractions to infractions charging misuse of the Enterprise Network. Examples of the cases which have been so reclassified include cases where one colleague transmitted pornographic images and/or words to another colleague, without any intention to harass anyone.

The OIG Report (p. 40) noted that the PSP has “expressed concern that arbitration decisions have modified the discipline it imposes on members.” The Report also observed (pp. 35-36):

In determining discipline, the State Police, prior to making its determination, has considered the anticipated result of the grievance process rather than focusing exclusively on what is the best interest of the State Police and the public. In doing so, the State Police has lowered the discipline it imposed because it assumed the grievance and arbitration process would impose less severe discipline. The Commissioner has stated that the practice will not continue.

The Report (p. 42)

makes the following recommendations to enhance the State Police’s ability to more effectively uphold its disciplinary decisions for sexual harassment and sexual misconduct before arbitrators. The State Police should establish a practice of imposing higher levels of discipline for sexual misconduct by consistently imposing heavier, more appropriate discipline. A routine practice of imposing more serious sanctions for sexual harassment and sexual misconduct will support the State Police’s position when those disciplinary actions are grieved in the future.

The proposed Matrix, discussed below, was a central part of the PSP’s approach to meet the problems identified in the OIG Report.

The purpose of the PSP’s proposed Matrix is to achieve consistency in the application of discipline for all the infractions in the Field Regulations, not just those dealing with sexual harassment and/or sexual misconduct. The PSP’s proposed Matrix is an 18-page set of charts, showing, along the left-hand side of the page, all of the various FR infractions and, across the top, the four different Categories of penalties.²³

²³ The four Categories and associated disciplinary measures are as follows:

1. **Category 1 Discipline**
 - a. Written Reprimand
 - b. Suspension Without Pay of 5 working days or less
 - c. Disciplinary Transfer
2. **Category 2 Discipline**
 - a. Suspension Without Pay of more than 5 and less than 31 working days
 - b. Disciplinary Transfer
3. **Category 3 Discipline**
 - a. Suspension Without Pay of 31 working days or more
 - b. Disciplinary Transfer
 - c. Demotion
 - d. Dismissal
4. **Category 4 Discipline**

Misconduct classified as Category 4 is conduct that is criminal in nature punishable by a maximum term of imprisonment of more than one year. Category 4 violations shall result in a recommendation that a member be dismissed from the Department.

In the spaces on the charts where the infractions intersect with the Categories, an “x” is placed in each block if the PSP, in consultation with the PSTA, determined that the PSP could (as distinguished from must) impose that Category of penalty for that infraction. As we note below, on over 87% of the infractions, the proposed Matrix lists two or more Categories as the possible penalty. Even then, the PSP could take aggravating or mitigating circumstances into account, as well as the member’s work history and disciplinary record, to choose a Category that was not initially designated as one of the appropriate Categories on the Matrix.²⁴

Current Assessment of Compliance

After the PSP issued a proposed Discipline Matrix, as described above, the PSP submitted the proposed Matrix for evaluation by the Monitor. Even though the scope of the Monitor’s assignment is focused on the area of sexual harassment and/or sexual misconduct, it would be counter-productive for the Monitor to review the proposed Discipline Matrix for just these kinds of misconduct. The PSP, in consultation with the PSTA, has proposed an across-the-board Discipline Matrix; because the Monitor believes that the Discipline Matrix must be considered as a whole, we do so here.²⁵

The Monitor has reviewed the proposed Discipline Matrix in detail. The Monitor believes - as do both the PSP and the PSTA - that the proposed Discipline Matrix has serious deficiencies, and needs to be revised. While the Monitor knows that a lot of work and thought was put into the current Matrix by both the PSP and the PSTA, it would be a disservice if the Monitor stated that the current Matrix could be saved with some minor tweaking. The current Matrix suffers from three fundamental flaws.

²⁴ In an effort to achieve consistent discipline, the Commissioner, effective June 25, 2003, announced that members who have been disciplined can no longer trade their remaining annual leave days for suspension days, if suspension days were part of the discipline for that particular member. The PSTA has filed, with the Pennsylvania Labor Relations Board, a charge of unfair labor practice for implementation of this policy. The petition is still pending, as of the date of the issuance of this Report.

²⁵ The OIG Report began its discussion of Discipline (which the Monitor analyzes in Section II, pp. 15-23, of this Report) with the following statement (p. 31):

In 1986, the Pennsylvania House of Representatives established a “Special Committee to Investigate the Pennsylvania State Police” to review allegations of misconduct. The Committee issued the Deal Commission Report in which it reached conclusions regarding the imposition of discipline by the State Police, particularly the lack of consistency. The Deal Commission Report recommended the establishment of a codified system of disciplinary guidelines. To date, no such codified guidelines exist.

At the end of the Section on Discipline, the OIG Report states (p. 43):

As noted earlier in this Report, the Deal Commission Report recommended the establishment of a codified system of disciplinary guidelines for the State Police. Seventeen years have passed since the Deal Commission Report and no guidelines have been established and the problem persists.

While the OIG did not make this a formal recommendation, the Monitor trusts that the PSP, in whatever proposal it makes to revise the current version of the Matrix, will be mindful of the 1986 Deal Commission Report.

The first flaw in the current Matrix is that it does not list a single penalty or penalty range in each penalty Category. For example, Category 3 lists three different kinds of penalties: suspension of more than 30 days, demotion, and dismissal. This grouping, which favors flexibility over consistency, is too broad.

The second flaw is that the current Matrix does not list a single Category for each infraction of the Field Regulations. Over 87% of the infractions listed on the Matrix show two or more penalty Categories. As drafted, the current Matrix permits penalties in all four Categories to be imposed for 15 of the infractions. That means, for example, that for gambling, a member of the PSP could receive any of the entire range of penalties – from a letter of reprimand to a dismissal. This is not the kind of targeted discipline which would produce consistent results.

The third flaw in the current Matrix is that there is no systematic way of adjusting an infraction based on aggravating or mitigating circumstances.²⁶

Based on the informal discussions that the Monitor has had with members of the PSP and of the PSTA, there appears to be broad consensus that the proposed Discipline Matrix produces penalties that are not consistent, promotes unnecessary litigation, wastes the time and money of both the PSP and the PSTA, and results in lengthy delays. If the parties are serious about achieving both consistency and fairness, they are going to have to be prepared to explore approaches substantially different from the PSP's and the PSTA's jointly proposed Matrix. One possible approach would be for the parties to focus revisions on a core group of the most serious infractions, including sexual harassment and sexual misconduct, and to later revise the remainder of the Matrix, to meet the recommendations of the Deal Commission, as suggested by the OIG.

The Monitor applauds the parties, acting in mutual good faith, for having successfully resolved 31 outstanding disciplinary actions involving inappropriate use of the Enterprise Network by using a method of grouping the outstanding matters into several different types of cases, each requiring a consistent penalty.²⁷ The Monitor also recommends that the parties agree on a method of resolving any outstanding disciplinary actions involving inappropriate use of the Enterprise Network. As to the unresolved cases, the parties would need to agree that the proposed groupings were acceptable and would need to agree upon the penalties to be imposed for each type of case. Kroll would then also expect that the parties would agree that, going forward, the newly revised Matrix would be applied after a specific date and that, once the new Matrix went into effect, the former practice of looking to prior results in other cases would be eliminated.

The PSP is working to establish a policy of serious disciplinary consequences for members engaging in sexual harassment and/or sexual misconduct. The Monitor has noted deficiencies in

²⁶ The Monitor is mindful that the parties might agree that there are some infractions which are so serious that few, if any, mitigating circumstances could be considered as to those infractions,

²⁷ These 31 cases involving inappropriate use of the Enterprise Network were resolved, by final agreement, during the third quarter, in early May, 2004.

the Discipline Matrix, as currently proposed. The Monitor encourages the PSP and the PSTA to move quickly to reach a consensus on these issues. The Monitor understands that the PSP has drafted a letter to the PSTA to be sent during the third quarter that will identify violations warranting serious disciplinary consequences. The Monitor notes that the negotiations have been in good faith by all parties and recommends that the parties continue to negotiate the revised Matrix, and/or a system of serious disciplinary consequences for a core group of the serious infractions, including sexual harassment and sexual misconduct, and attempt to complete these revisions by the end of the third quarter.

Based on the foregoing, the PSP has not complied with the OIG's recommendations to establish uniform and consistent disciplinary guidelines, with serious consequences, for members engaging in sexual harassment and/or sexual misconduct.

D. CENTRALIZE DISCIPLINE IN THE DDO

See discussion in the section below.

E. REMOVE DISCIPLINE FROM TROOP COMMANDERS

The OIG Report (pp. 38-39) recommended that the PSP centralize its disciplinary procedures in the DDO to make all disciplinary determinations. The OIG Report (pp. 38-39) also recommended that the PSP remove the Troop Commanders from involvement in certain disciplinary decisions. The Monitor has grouped these two recommendations together because they are so closely related. The OIG Report provided two reasons for its recommendations.

First, the Report explained that once the Troop Commander receives the investigative report (now only from the BIPS), the Troop Commander then determines whether the allegations contained in the initial complaint are "sustained" (proven), "not sustained" (not proven), or "unfounded" (without merit). Cf. OIG Report (pp. 1-2). But, the Report notes, even if a Troop Commander finds that the allegations are "sustained," the Commander can, nonetheless, decline to send the case to the DDO by declining to issue a Discipline Action Report (DAR). If the Troop Commander sustained the allegation, but declined to issue a DAR, then the Troop Commander would "counsel" the member and there would be no actual discipline imposed.

Second, the OIG Report, asserting that there was "disparate discipline," noted "instances of sustained allegations of having sex on duty, [where] Troop Commanders who issued Discipline Action Reports included [different] infractions" (p. 38).

The PSP, in its response to these recommendations, stated that it opposed these recommendations. Rather, the PSP contended that its field commanders should continue to be able to decide what charges should be included in the DAR's, and to make "adjudications" as part of their command role. Furthermore, the PSP argued that centralizing adjudications and disciplinary procedures in the DDO would be unwieldy and costly.

Current Assessment of Compliance

The PSP has made progress to comply with some of the recommendations made by the OIG Report on these points. The PSP, in consultation with the PSTA, worked to draft the current version of the proposed Discipline Matrix. If the deficiencies noted by the Monitor in the Discipline Matrix, as described above in Section II.C., result in a revised Matrix adopted by the parties, and/or a system of serious disciplinary consequences for violations of, among other things, sexual harassment and sexual misconduct, then the PSP will have taken a major step forward. Such a revised Matrix and/or other system would result in significantly increasing the consistency and fairness of the penalties imposed. Moreover, such a Matrix would necessarily have to be administered, in terms of the imposition of penalties, by the DDO. Because the PSP also adopted a new oral directive on October 29, 2003, requiring the Troop Commanders to refer to the DDO all cases where allegations were found by the Commanders to be “sustained” (proven), the PSP has satisfied another key component of the recommendations in the OIG Report. No longer can the Commanders “sustain” the allegations, and merely “counsel” a member found to have violated one or more FR’s. The Monitor recommends that this oral directive requiring referrals to the DDO of all sustained allegations should be formalized by inclusion in a revised FR, or Bureau Special Order, as the PSP believes appropriate. This policy revision should make specific that the Troop Commander is required to issue a DAR in all such cases. If the PSP issues an appropriate Bureau Special Order, the Monitor believes that this would accomplish the objectives of the recommendations on this point in the OIG Report.

Because the PSP has not removed the Troop Commanders from their role in the discipline process of drafting the charges in the DAR’s and acting as adjudicators, in favor of the DDO’s assuming these functions, the PSP is not in compliance with these recommendations in the OIG Report. However, with due respect to the well-crafted OIG Report, the only explanation offered in the OIG Report, on these points, is not, on balance, sufficiently persuasive. The assertion of “disparate discipline,” was not, in our view, sufficiently supported by analysis to show that the charges in the particular DAR’s cited were “disparate.”

But even if there had been different charges for the same or similar offenses, the Monitor believes that there are less drastic means to achieve consistency than taking the Troop Commanders entirely out of the discipline process. Moreover, based on our six months of experience with the way the PSP works and with the ways in which its functions need to be improved, the Monitor maintains that there are other reasons to keep the Troop Commanders in the discipline process. One of these reasons is that the only officials who would be qualified, by reason of their training, experience and position in the chain of command, to replace the Troop Commanders in the discipline process would not be the DDO, but rather the Area Commanders. Since the Area Commanders are already part of the process of reviewing the Troop Commanders’ discipline decisions, it would be counter-productive to have them replace the Troop Commanders in the discipline process.

Instead, the Monitor recommends that the PSP train the Troop Commanders in how the various possible scenarios of sexual harassment and sexual misconduct complaints can and should be charged. The PSP should also produce a training manual concerning sexual harassment/sexual

misconduct, so that the Troop Commanders would always have reference materials to consult. This manual should emphasize that all colorable charges should be included in the DAR. The training should also include all the Area Commanders, who must review the DAR's issued by the Troop Commanders.

Moreover, because there is no stated analysis to support the implicit assertion in the OIG Report that the Troop Commanders should be removed from their role as the adjudicators, the Monitor sees no reason to substitute DDO personnel as the adjudicators.

For these reasons, the Monitor believes that the Troop Commanders should retain their functions as making charging decisions in the DAR's and as the initial adjudicators, subject to review by the Area Commanders.

During the second quarter, the PSP conducted a two-day session on adjudication training. Based on its receipt and review of the curriculum, attendance at this training, and discussions with instructors and attendees, the Monitor believes that this training met its intended goal of providing adjudicators with the tools needed to render fair and informed adjudications.

Based on the foregoing, the PSP has partially complied with the recommendations in the OIG's Report.

F. PROVIDE ADDITIONAL STAFFING AT DDO

The OIG Report (p. 39) recommended that the PSP provide additional staffing to the DDO to handle the increased responsibility of issuing all the penalties to the members of the PSP on complaints of sexual harassment and/or sexual misconduct. In the Monitor's First Quarterly Report, Kroll stated that it would provide further evaluations of the PSP's efforts on this matter.

Current Assessment of Compliance

Once the parties have implemented the proposed revised Discipline Matrix, the PSP will then be in a position to evaluate the need for additional staffing at the DDO. Based on the foregoing, the Monitor withholds a determination of compliance with this recommendation.

G. SUPPORT S.B. NO. 877

The OIG Report (p. 43) recommended that the PSP support S.B. No. 877, or similar legislation, requiring the dismissal of members convicted of felonies and some misdemeanors. As stated in our prior Report, the PSP supported this legislation. Also as previously reported, Governor Edward G. Rendell signed into law the Confidence in Law Enforcement (CLE) Act on January 29, 2004, which mandated that the PSP suspend, without pay, any members charged with serious offenses, and that the PSP terminate from employment any members convicted of such offenses.

Current Assessment of Compliance

Since the PSP has supported the CLE, and the law has been enacted and will become effective on July 1, 2004, the PSP has complied with this recommendation.

H. SUMMARY OF THE MONITOR'S RECOMMENDATIONS

1. Establish Definitive Guidelines (Section II.C.). The Monitor recommends that the PSP, in consultation with the PSTA, negotiate in good faith to achieve a revised Discipline Matrix and/or to establish a system of serious disciplinary consequences for violations of, among other things, sexual harassment and sexual misconduct, to achieve the goals of consistency and fairness, as set out more fully above in Section II.C.

2. Centralize Discipline in the DDO (Section II.D.); Remove Discipline from Troop Commanders (Section II.E.). The Monitor recommends that the oral directive requiring referrals to the DDO of all sustained allegations should be formalized by inclusion in an appropriate Field Regulation or Bureau Special Order, as more fully set out in Sections II.D. and II.E., above. The Monitor also recommends that, pursuant to a substantially revised Matrix and/or a system of serious disciplinary consequences for violations of, among other things, sexual harassment and sexual misconduct, the DDO would determine the appropriate discipline in all cases. The Monitor also recommends that the PSP train the Troop Commanders, the Area Commanders, and the Adjudication Review Committee in how the various possible scenarios of sexual harassment and sexual misconduct complaints can and should be charged, as more fully set out in Sections II.D. and II.E. above.

3. Provide Additional Staffing to DDO (Section II.F.). In light of our recommendation that the DDO set the penalties, in accordance with the revised Matrix, the Monitor recommends that the PSP evaluate the need for additional staffing to the DDO, as set out above, in Section II.F.

III. PRE-EMPLOYMENT BACKGROUND INVESTIGATIONS AND PROBATIONARY EMPLOYMENT

A. INCONSISTENCIES IN BACKGROUND INVESTIGATIONS

The OIG Report (p. 51) recommended that the PSP limit the number of investigators performing pre-employment background investigations to be able to increase the consistency with which the investigations are conducted, thereby better screening the applicants for positions as Troopers with the PSP. The OIG also recommended that the PSP should continue to encourage its investigators to offer their views as to the qualifications of the applicants. In the First Quarterly Report, the Monitor stated that the PSP had taken limited steps to address deficiencies in its pre-employment screening and probationary employment practices. While the PSP stated that its investigators are encouraged to express opinions as to the suitability of the applicants, the Monitor did not verify this statement in the First Quarterly Report. The Monitor recommended that the PSP consider having the background checks done by a private company that focuses

exclusively on pre-employment background screening and not, as suggested by the PSP, by retired State Troopers. The Report also recommended that the PSP encourage these investigators to express their opinions as to the suitability of the applicants.

Current Assessment of Compliance

During the current quarter, the Monitor assessed the PSP's current pre-employment background investigation process. The Monitor interviewed the Director of the Bureau of Human Resources and other PSP personnel. The Monitor also met with the Board of Directors of the PSTA and its counsel to obtain the union's position on the OIG's recommendations concerning, among other things, background investigations and probationary employment.

The PSP is continuing to use Troopers to conduct pre-employment background investigations.²⁸ One issue that has been identified is that Troopers have busy caseloads which impact on the amount of time available to conduct these investigations. Although the PSP has directed that all background investigations shall be completed by Troopers, the PSP has not limited the number of investigators who are performing background investigations. The PSP has stated that limiting the number of investigators would limit its flexibility in conducting background investigations. The PSP does encourage investigators to express their opinions; however, the investigator's opinion alone will not disqualify an applicant. Opinions that are supported by facts are given more weight than unsupported opinions. Human Resources will be providing training to the background investigators in June 2004. According to the PSP, this training will be scheduled periodically going forward.

The PSP has implemented additional standards for investigators by directing any investigator who discovers an automatic disqualification factor during the course of the investigation to contact the Bureau of Human Resources immediately. Investigators shall not offer the applicant a Withdrawal Form or stop the investigation (unless directed to do so by the Bureau of Human Resources). If an applicant wants to withdraw from the processing, the investigator shall inform the applicant that he or she must contact the Bureau of Human Resources.

The Deputy Commissioner of Administration, through the Bureau of Human Resources, has directed that all Cadet applicants must complete a pre-employment polygraph examination. If an applicant wants to withdraw from the processing, polygraph examiners must tell the applicant to contact the Bureau of Human Resources and cannot offer the applicant a Withdrawal Form. The Polygraph Review Committee makes pass/fail decisions and examiners are prohibited from informing the applicant that they either passed or failed the polygraph. If the examiner believes a second issue-specific polygraph examination is needed, a request, accompanied with justification, shall be forwarded, through channels, to the Bureau of Human Resources for approval/disapproval. An issue that has been identified is whether polygraph examiners should be permitted to conduct post-test interrogations of applicants. A secondary issue that has arisen is to place a polygraph examiner on the polygraph review committee.

²⁸ The CBA prohibits the PSP from using any outside party, including retirees, from conducting pre-employment background investigations.

The PSP has also issued a prohibition that polygraph examiners and background investigators shall not conduct an examination or background investigation on an applicant they know either personally or professionally.

Based on the foregoing, the PSP has partially complied with this OIG recommendation.

B. STANDARDS AND TRAINING OF THE APPEAL PANEL

The OIG Report (p. 57) recommended that the PSP takes steps to guide the Background Investigation Appeal Panel and to assist the Panel in making more considered decisions. Specifically, the Report recommended that the PSP provide the Appeal Panel with additional training, especially by articulating more specific standards for evaluating appeals by applicants who have initially been rejected as unsuitable. The OIG also recommended that the "Panel should exercise great caution in reversing a disqualification of a candidate" by the PSP following its investigation. In the prior Report, the Monitor found that the PSP was not in compliance with the OIG Report's recommendations. As of that Report, standards had not yet been developed for the Appeal Panel, nor had training been provided.

Current Assessment of Compliance

During the current quarter, the Monitor assessed the PSP's standards and training for the Background Investigation Appeal Panel. The Appeal Panel is comprised of three Majors and one person from the Office of Administration. The Panel reviews appeals from the background investigation process. In the appeal process, an applicant can submit a written rebuttal. There have not been any new standards issued for the Appeal Panel. The Appeal Panel (which has rotating members) has not received any training, nor have specific standards been articulated or burdens of proof established for the Appeal Panel to consider prior to rendering a decision on an applicant.

Based on the foregoing, the PSP has not complied with the OIG's recommendations to address deficiencies in the appeal process.

C. COORDINATE PROBATIONARY REVIEW WITH BIPS AND EEOO

The OIG Report (p. 58) recommended that the PSP take steps to coordinate the probationary review of Troopers with the BIPS and the EEOO before the Troopers complete their 18 month probationary periods. If, during the probationary period, there is an open investigation of a Cadet/Trooper for alleged misconduct, of any kind, the Report recommended that the PSP should take steps to extend the probationary period until the matter under investigation is resolved. In the previous Report, the Monitor reported that the PSP was following the recommendations to extend probationary periods but that the PSP stated that a formal change extending probationary periods would require the cooperation of the PSTA and a change in the CBA.

Current Assessment of Compliance

During the current quarter, the Monitor assessed whether the PSP is taking steps to coordinate the probationary review with the BIPS and the EEOO before a member passes his or her probationary period, and, whether the PSP is extending the probationary period whenever a BIPS investigation is pending. According to the PSP, the Department is extending probationary periods now. Currently, when requested, PSTA has been allowing the probationary periods to be extended under these circumstances.²⁹

The PSP has taken steps to coordinate the probationary review of Troopers with the BIPS/IAD and the Bureau of Human Resources before the Troopers complete their 18 month probationary period. The Monitor recommends that the PSP take additional steps to establish policy to include the EEOO in the coordination of this background investigation, as recommended by the OIG. The PSP has stated that revised AR 4-25 will direct the BIPS to notify the EEOO of all sexual harassment and sexual misconduct complaints before Troopers complete their 18 month probationary period.

During the first and second quarters (November 1, 2003 through April 30, 2004) there has been one Trooper who had his/her probationary period extended as a result of a pending BIPS investigation.³⁰ This is the only Trooper who had a pending BIPS investigation during his/her probationary period during these quarters.³¹

The PSP has complied with the OIG's recommendation by implementing extensions of the probationary periods; however, it has not complied with the policy and procedure recommendations.³² In any event, the procedure describing the coordination surrounding the probationary review between the BIPS and the EEOO and requesting an extension of the probationary period, where appropriate, should be reflected in written policy.

²⁹ Otherwise, a Cadet/ Trooper who is still in his or her probationary period could be terminated.

³⁰ The investigation did not involve sexual harassment or sexual misconduct, but filing late reports. The Trooper's probationary period was extended and he/she was retained by the PSP.

³¹ The PSP has had numerous Troopers' probationary periods extended for reasons other than a pending BIPS investigation.

³² Cadets in the police academy are not members of the PSTA. Troopers become members of the PSTA after graduation, even though subject to an 18 month probationary period. As probationers, Troopers obtain limited benefits, but have no job protection and do not obtain the right to file grievances. While the CBA provides that Troopers will serve an 18 month probationary period, it does not specifically address the issue of extending probationary periods. Thus, if the PSTA and the Trooper, during the probationary period, refuse to extend the probationary period, the Trooper can be dismissed by the PSP. The Trooper has no right to contest such dismissal. Accordingly, as a practical matter, the PSTA and the Trooper under investigation virtually always agree to an extension of the probationary period.

D. COORDINATE WITH OTHER OFFICES

The OIG Report (p. 58) recommended that the BIPS, the EEOO, and the member assigned to conduct the general background investigation of the Trooper coordinate their activities before the end of the Trooper's probationary period. The Monitor previously reported that this recommendation requires better coordination and has raised the awareness of the PSP. This recommendation also appears to have created a climate for more information sharing.

Current Assessment of Compliance

The required coordination with the BIPS, the EEOO, and the assigned member before the end of the probationary period is not taking place. The Monitor recommends that the PSP consider developing standards to require coordination among relevant Bureaus, Offices, and personnel. Based on the foregoing, the PSP has not complied with this OIG recommendation.

E. COMPLAINTS AGAINST PROBATIONARY MEMBERS

The OIG Report (p. 59) recommended that the PSP re-examine the pre-employment background investigation when a complaint is made against a probationary member. In the earlier Report, the Monitor stated that the PSP had said that it was re-examining its investigation practices when a complaint is made against a probationary member. The PSP also said that the CBA would have to be renegotiated on this point before the PSP could implement such a practice.

Current Assessment of Compliance

During the current quarter, the Monitor assessed whether the PSP is re-examining pre-employment background investigations when a complaint is made against a probationary member. According to the PSP, the Department is committed to carrying out this recommendation. Relevant personnel are unaware of an order or other instruction that has been issued directing that a re-examination of the background investigation take place when a complaint is filed against a probationary member. The Monitor will review specific instances for compliance in the next quarter.

Accordingly, while the PSP has not yet complied with the policy requirements of this OIG recommendation, in that there is no new written directive on this point,³³ the Monitor has not yet evaluated the implementation aspect of this recommendation.

F. CAUTIONARY APPROACH

The OIG Report (p. 59) recommended that the PSP exercise greater caution in preparing and reviewing the general investigation of every probationary member. In the Report for the first

³³ Although the OIG did not make a specific recommendation that the PSP develop a policy and/or procedure requiring re-examination of pre-employment background investigations where a complaint is made against a probationary member, such a policy and/or procedure is necessary to effectively implement the OIG's recommendations.

quarter, the Monitor stated that the PSP agreed to emphasize greater caution as recommended in the OIG Report.

Current Assessment of Compliance

During the current quarter, the Monitor assessed whether the PSP is exercising a greater degree of caution in preparing and reviewing the general investigation of each probationary member. The general investigation is conducted at the end of the probationary period. The Troop is responsible for this investigation. Among other things, interviews are conducted with the probationary member's supervisors, citizens with whom the member interacted, judges, prosecutors, etc. According to the PSP, the review panels are using greater caution, although the PSP has not issued any instructions to the personnel who conduct the investigations or the panels that review them. The Monitor is evaluating the OIG's recommendation and assessing whether it makes sense for the PSP to issue a Bureau Special Order directing that greater caution be taken in preparing and reviewing the general investigation of every probationary member. The PSP should identify a mechanism for insuring that this order is carried out.

For these reasons, the Monitor is withholding a determination of compliance at this time.

G. SUMMARY OF THE MONITOR'S RECOMMENDATIONS

- 1. Coordinate with other offices (Section III.D.).** The Monitor recommends that the PSP develop standards to require coordination among the BIPS, the EEEO, other Bureaus and Offices, together with the assigned member, as is more fully set out in Section III.D., above.
- 2. Cautionary Approach (Section III.F.).** The Monitor recommends that the PSP issue a Bureau Special Order directing that greater caution be taken in preparing and reviewing the general investigation of a probationary member. The PSP should identify a mechanism for insuring that this order is carried out.

IV. SEXUAL HARASSMENT TRAINING

A. ADMINISTRATIVE REGULATION

The OIG Report (p. 64) recommended that the PSP amend Administrative Regulation 4-26, Sexual Harassment Policy, to reflect that the BIPS will investigate all allegations of sexual harassment. The OIG Report specifically suggested that the PSP should not require that the complaint be in writing or that it be supported by a Complaint Verification. As the Monitor stated above, the PSP has changed its policy and no longer insists on these former requirements on sexual harassment and/or sexual misconduct cases. See Section I.D., above. The PSP responded that it opposes implementation of such an amendment of the Administrative Regulations as suggested, because such amendments would conflict with the existing organizational structure as well as with an existing Management Directive.

Current Assessment of Compliance

According to the PSP, the BIPS is investigating all allegations of sexual harassment and sexual misconduct. Shortly after the OIG Report was issued, the PSP advised that it would not implement this recommendation, stating that amending its Administrative Regulations to reflect this fact would adversely impact the duties and responsibilities of the EEOO and would directly conflict with Management Directive 410.10. The PSP has since reversed its position and issued Bureau Special Order 2004-01, which requires that investigations of sexual harassment and sexual misconduct be assigned to a BIPS investigator. This special order will be incorporated into the revisions of AR 4-25, Internal Investigations.³⁴

The Monitor has been tracking all new sexual harassment and sexual misconduct complaints and has confirmed that BIPS is in fact assigned to investigate all allegations of sexual harassment as recommended by the OIG.

Based on the foregoing, the PSP has complied with the implementation requirements of this OIG recommendation. The Monitor will further evaluate the policy requirements in the third quarter.

B. ADOPT CONSISTENT POLICIES

The OIG Report (p. 64) recommended that the PSP adopt policies consistent with applicable Commonwealth Executive Orders and Management Directives on Sexual Harassment. Specifically, the Report recommended that AR 4-26 be amended to permit the EEOO “to have more responsibility in the investigation and resolution of sexual harassment complaints.” The PSP responded that AR 4-26 was written to comply with the applicable Commonwealth Executive Orders and Management Directives. The PSP also replied that the CBA imposes certain constraints on the PSP’s policies in this area.

Current Assessment of Compliance

During the current quarter, the Monitor evaluated the PSP’s Administrative Regulations, AR 4-25 (Internal Investigations) and AR 4-26 (Sexual Harassment Policy). According to the PSP, AR 4-26 was written to be consistent with the applicable Commonwealth Executive Orders and Management Directives. However, the current CBA imposes certain constraints on the PSP. For example, anonymous complaints are not investigated unless the allegations could result in criminal charges. Executive Orders and Management Directives require that all sexual harassment complaints be investigated. The PSP is negotiating this and other related issues for the next CBA.

Based on the foregoing, the PSP has not yet complied with this recommendation because of constraints imposed by the CBA.

³⁴ The OIG recommended that the PSP amend its Sexual Harassment Policy, AR 4-26. The PSP responded by amending its Internal Investigations Policy, AR 4-25 (initially through issuance of Special Order 2004-01). The Monitor recommends that the PSP consider amending not only AR 4-25, but also AR 4-26 to incorporate the important policy requirement that BIPS investigators handle sexual harassment and sexual misconduct cases.

C. TRAINING OF BIPS INVESTIGATORS

The OIG Report (p. 66) recommended that the PSP consider providing specific training on sexual harassment and sexual misconduct investigations to BIPS investigators and to the EEOO liaisons. The PSP responded that specific training in this area was to begin for all enlisted personnel in November 2003. In the First Quarterly Report, the Monitor stated that the PSP had made efforts to increase the amount of training on these issues. Moreover, the BIPS had advised that it was developing a training course specifically designed to meet the needs of the BIPS's IAD investigators.

Current Assessment of Compliance

During the current quarter, the PSP states that it has been in contact with one state official and one official with a relevant community-based organization to seek their assistance in the development of training for BIPS investigators. According to the PSP, both of these individuals have expertise which could be used to develop a course of instruction specifically geared toward conducting sexual harassment and sexual misconduct investigations. According to the PSP, the training program has been developed and will be delivered in June or July 2004. The PSP is also seeking relevant training in this area that is being offered outside the Department. According to the PSP, the EEOO will contribute to this training.

Based upon the sexual harassment training that the Monitor has attended to date, it is recommended that the PSP consider retaining an outside consultant with extensive experience in developing sexual harassment and sexual misconduct training for law enforcement and investigators to work with the PSP and the EEOO to develop this training. In any event, the Monitor suggests that the PSP provide the Monitor with the full lesson plan prior to delivering this training to the BIPS investigators.

Based on the foregoing, the PSP has partially complied with the OIG's recommendation to provide specific training on sexual harassment and sexual misconduct investigations to the BIPS investigators.

D. CADET TRAINING

The OIG Report (p. 68) recommended that the PSP consider making instruction on sexual harassment and sexual misconduct a more significant part of Cadet training. The PSP responded that the 115th Cadet class received training from the EEOO on sexual harassment in November 2003. Now that the definitions are in place specific training on sexual misconduct is also needed. In the First Quarterly Report, the Monitor stated that we had determined that this is an ongoing priority within the Bureau of Training and Education (BTE).

Current Assessment of Compliance

According to the PSP, the BTE instituted specific training on sexual harassment in November 2003. The Monitor's assessment found that sexual harassment was in fact included in the "Honor of the Force" training that was instituted in November 2003. The Monitor also

confirmed that Cadets receive “Core Values and Core Purpose” training which includes topics on sexual harassment and sexual misconduct. The Monitor’s assessment also revealed that prior to the OIG’s Report, Cadets were given two hours of training on sexual harassment and Cadets are also currently being given two hours of training on sexual misconduct. The Monitor attended the sexual harassment portion of the Cadet training and determined that the subject matter was adequately covered. The training has been changed to use the State of Pennsylvania Office of Administration’s (OA) lesson plan (described below in Sections E and F). However, the OA training does not include specific law enforcement examples. Accordingly, the Cadet training is now consistent with the training the rest of the department will be receiving. Recommendations with regard to this training are outlined below in Section F.

Based on the foregoing, the PSP needs to continue to develop its sexual harassment and sexual misconduct training to include specific law enforcement examples. The Monitor withholds a determination of compliance concerning the OIG’s recommendation to make sexual harassment and sexual misconduct a more significant part of Cadet training.

E. SUPERVISOR TRAINING

The OIG Report (p. 68) recommended that the PSP consider offering specific training in sexual harassment and sexual misconduct to PSP supervisors at all levels. In the First Quarterly Report, the Monitor stated that in November 2003, the PSP began offering mandatory training entitled “Honor of the Force.” We stated that this training was developed to deal with the impact of the sexual misconduct reported in the media and with the subsequent OIG investigation. The PSP sought input from several community organizations, including the Pennsylvania Coalition Against Rape, the Pennsylvania Coalition Against Domestic Violence, and the Victims Advocate. The PSP had advised that this training had been provided to all members. The PSP stated that it planned to give Honor of the Force training for civilian employees in March 2004.

Current Assessment of Compliance

See compliance assessment and recommendations in Section F below.

F. ANNUAL IN-SERVICE TRAINING

The OIG Report (p. 68) recommended that the PSP consider making training regarding sexual harassment and sexual misconduct a part of the annual in-service training for all members. The PSP responded that specific training in sexual harassment and sexual misconduct was being provided through the “Honor of the Force” in-service training for all personnel, as described above in Section IV.E.

Current Assessment of Compliance

During the current quarter, the Monitor assessed the PSP’s compliance with the OIG’s recommendation to require sexual harassment and sexual misconduct training for supervisors and in-service sexual harassment training. The PSP has made progress in its training initiatives. The BTE instituted specific training on sexual harassment in November 2003. The PSP provided

Basic Supervision Classes, including training on sexual harassment, to new supervisors during the second quarter. The PSP has stated that all personnel (with the exception of those individuals who may be on military leave or extended sick leave), including supervisors at all levels, will receive sexual harassment training by July 23, 2004. This training will serve as the in-service training for the current year. Sexual harassment training has been included in the PSP's "Honor in the Force" training, and sexual harassment and sexual misconduct are included in the PSP's "Core Values and Core Purpose" training. The Monitor recommends that the PSP continue to develop more comprehensive training to include specific PSP examples. Although the PSP has provided some sexual harassment training for newly promoted supervisors, it has not provided department-wide training for supervisors.

The PSP trained the EEOO liaisons with a Core Training curriculum on Awareness and Prevention of Sexual Harassment that all Commonwealth agencies under the Governor's jurisdiction have been directed to use. The training was developed by the Office of Administration, Bureau of Equal Employment Opportunity, and the Office of General Counsel. This training covers the law on sexual harassment. This training curriculum had not been implemented by the PSP prior to the issuance of the OIG Report.

In April 2004, the PSP instituted "Train-the-Trainer" training on "Sexual Harassment: Awareness and Prevention" for EEOO liaisons. Having received the "Train-the-Trainer" training, the liaisons were directed to commence providing mandatory three hour "Sexual Harassment: Awareness and Prevention" training to all personnel within their respective Troops/Bureaus/Offices. The PSP has directed that this training for all personnel be completed during the third quarter. The EEOO liaisons are responsible for conducting the training.³⁵

After attending a portion of the "Train-the-Trainer" training held on April 26, 2004, and reviewing all of the course materials, the Monitor makes the following recommendations:

- (1) The OA PowerPoint presentation and notes for the trainers should include written examples specific to law enforcement.
- (2) More time should be provided for the substantive course portion (the PowerPoint slides on sexual harassment and the portion on PSP regulations) of the "Train-the-Trainer" training.
- (3) PSP specific video vignettes should be developed.
- (4) The training classes conducted by the liaisons should be monitored by the PSP to evaluate the effectiveness and overall quality of the training.

Based on the foregoing, the PSP has not complied with the recommendation to require sexual harassment training for all supervisors and in-service sexual harassment training.

³⁵ It should be noted that a number of the EEOO liaisons have no experience conducting formal training courses.

G. COMPUTER-BASED TRAINING MODULE

The OIG Report (p. 68) recommended that the PSP support the EEOO's efforts to develop a computer-based training module, as well as other methods designed to reinforce the PSP's strict prohibition of sexual harassment and sexual misconduct. The PSP responded that it is supporting these efforts. In our first Report, the Monitor stated that the EEOO was in the process of developing a database that will track notifications to the victim and the BIPS, as well as, investigations and training needs. The EEOO was in the process of designing this confidential database to also identify repeat complainants, repeat offenders, and dispositions of complaints, thereby serving as a risk management tool.

Current Assessment of Compliance

During the current quarter, the Monitor found that the PSP is supporting the EEOO's efforts to develop a computer based training module. The EEOO is working with the Bureau of Technology Services to develop a database to track sexual harassment complaints and a computer based training module. The Monitor will provide further information as the development process progresses.

Based on the foregoing, the PSP has not complied with this recommendation.

H. INCREASE EEOO STAFFING

The OIG Report (p. 69) recommended that the PSP consider increasing the staffing and support levels for the EEOO to promote greater visibility of the EEOO and to make for the EEOO's having a greater role in training and in investigations. The PSP responded that it opposed this request but would give it further evaluation, in light of budget constraints. In the first Report, the Monitor stated that it would continue to evaluate the need for increased staffing and support for the EEOO.

Current Assessment of Compliance

During the second quarter, the Monitor's assessment found that the EEOO is currently has one full-time staff person, the Director. During the OIG's investigation, the EEOO also had one administrative support person. The duties of the EEOO are generally listed in AR 4-26. Additional duties are set out in the OIG's recommendations and the PSP's response. The EEOO Director is currently supported by 39 EEOO liaisons representing all Troops/Bureaus/Offices throughout the Commonwealth. As set forth above, the EEOO liaisons attended the PSP's "Train-the-Trainer" training on "Sexual Harassment: Awareness and Prevention." The Monitor recommends that the PSP make a determination as to whether the EEOO needs additional staffing and resources at its headquarters. The PSP should also evaluate the role and effectiveness of the EEOO liaisons in helping the EEOO carry out its duties in light of the issues identified in the OIG's Report. This determination should be based on an evaluation of the EEO Office to determine specific staffing levels and resources needed based on the PSP's full response to the OIG's recommendations and concerns.

Based on the foregoing, the Monitor is withholding a determination of compliance with this OIG recommendation.

I. EEOO INVOLVEMENT

The OIG Report (p. 70) recommended that the EEOO become involved in an investigation when the allegation potentially constitutes sexual harassment and/or sexual misconduct, even if the BIPS is already investigating the allegations as more generalized misconduct. Previously, the Monitor reported that the BIPS and the EEOO have stated that the BIPS notifies the EEOO when an allegation potentially constitutes sexual harassment. The Monitor stated that it would conduct compliance reviews in future quarters to assess whether the BIPS is sufficiently involving the EEOO in such investigations.

Current Assessment of Compliance

During the current quarter, according to the PSP, the BIPS and the EEOO are working closely on sexual harassment investigations. In practice, the BIPS notifies the EEOO of any complaints of sexual harassment and sexual misconduct, and vice versa. The dialogue appears to primarily end there. According to the PSP, there will be dialogue on these matters between the BIPS and the EEOO. The Monitor will further evaluate this issue going forward.

Based on the foregoing, the PSP has not yet complied with the OIG's recommendation for more EEOO involvement.

J. SUMMARY OF THE MONITOR'S RECOMMENDATIONS

1. Training of BIPS Investigators (Section IV.C.). The Monitor recommends that the PSP consider retaining an outside consultant in sexual harassment training, as is more fully set out in Section IV.C., above.

2. Annual In-Service Training (Section IV.F.). The Monitor recommends that the PSP continue to develop its annual in-service training by, as more fully set out in Section IV.F., above: 1) including written examples specific to law enforcement; 2) providing more time for the substantive course portion of the "Train-the-Trainer" training; 3) developing PSP specific video vignettes; and, 4) monitoring training classes conducted by the liaisons.

V. ATTITUDES INVOLVING SEXUAL HARASSMENT AND SEXUAL MISCONDUCT

A. METHOD TO MEASURE AND MONITOR COMPLAINTS

The OIG Report (p. 77) recommended that the PSP establish a method by which the BIPS and the EEOC can measure and monitor sexual harassment and sexual misconduct complaints. The PSP responded that an IAD complaint tracking system was being developed to insure that the BIPS and the EEOC could measure and monitor complaints. In the first Report, the Monitor recommended that the PSP explore developing a risk management function to assist the identification of negative trends. The PSP responded that they would consider the Monitor's recommendations on this point.

Current Assessment of Compliance

During the current quarter, although the PSP has stated that it is developing an IAD tracking system, it has not yet established a method by which the BIPS and the EEOC can measure and monitor sexual harassment and sexual misconduct complaints. The BIPS has evaluated the IAB Pro software system; however, according to the PSP, sole sourcing and contract issues have delayed acquisition. The PSP is considering other options. Due to budget constraints, the PSP has assigned the development of this project to its Bureau of Technology Services. The Monitor recommends that all relevant personnel take part in the development of the tracking system. The Monitor has been receiving periodic status reports on the PSP's progress.

Based on the foregoing, the PSP has not complied with the recommendation to establish a method to measure and monitor sexual harassment and sexual misconduct complaints.

B. PERIODIC REPORTS

The OIG Report (p. 77) recommended that the Monitor should receive periodic status reports from the PSP on any proposed changes and statistical data regarding complaints of sexual harassment and sexual misconduct. The OIG also recommended that the statistics be evaluated for trends and for comparisons of the PSP to other comparable organizations. In its earlier Report, the Monitor stated that the PSP has provided us with all information requested, including status reports on proposed changes to rules, regulations and policies, and statistical data regarding complaints of sexual harassment and sexual misconduct.

Current Assessment of Compliance

The Monitor has received regular status reports from the PSP. Based on the foregoing, the PSP has complied with this recommendation. The PSP has not provided to the Monitor statistical evaluations for trends and for comparisons of the PSP to other comparable organizations.

C. DIRECT REPORTING BY BIPS TO THE COMMISSIONER

The OIG Report (p. 78) recommended that the PSP amend its organizational structure to require that the Director of the BIPS report directly to the Commissioner.

Current Assessment of Compliance

During the current quarter, the Monitor's assessment found that the PSP has determined that amending the organizational structure to require the Director of the BIPS to report solely and directly to the Commissioner would pose a legal issue by compromising the Commissioner's ability to serve in an adjudicative function in court martial cases. According to the PSP, Special Order 98-22 gives the Director of the BIPS the authority to report directly to the Commission in matters requiring the highest level of executive awareness. Legal issues only arise if the details of the investigation are provided to the Commissioner prior to an adjudication that warrants a court martial. However, according to the PSP, this does not prevent the Director of the BIPS from contacting the Commissioner directly and making recommendations on those matters of policy and procedures to initiate, conduct, or control all necessary investigations and process all complaints, and allegations of misconduct by personnel. It should be noted that members of the BIPS, when performing IAD duties, can contact the Commissioner directly.

Except under the circumstances outlined above, the PSP does not intend to comply with this OIG recommendation. Since the PSP has articulated sound reasoning for its failure to comply with the recommendation, the Monitor will not evaluate this recommendation unless circumstances require.

SECTION FOUR: ADDITIONAL ACTIONS TAKEN BY THE MONITOR

I. NEW INVESTIGATIONS

The OIG Report (p. 78) recommended ongoing monitoring of the PSP's progress in handling sexual harassment and sexual misconduct complaints, which the Monitor and General Counsel have concurred includes a review of all new and pending non-adjudicated investigations. The Monitor previously reported that the BIPS assumed investigative responsibility for all sexual harassment and sexual misconduct investigations in September 2003, and established a database of all active investigations involving sexual content. However, the Monitor noted that the BIPS database did not track complaints of sexual harassment and sexual misconduct separately from other types of complaints and recommended that the BIPS define a specific category of offenses as sexual harassment and sexual misconduct to facilitate more efficient tracking of complaints. The Monitor also recommended that the BIPS and the EEOO coordinate the development of relevant databases to facilitate notifications and other requirements applicable to such investigations.

In this quarter, the Monitor has continued to review all new and pending non-adjudicated investigations involving sexual harassment and sexual misconduct.³⁶ The PSP has provided the Monitor with complete access to all PSP personnel, personnel files, and BIPS files. At the end of the second quarter, the Monitor was actively reviewing 31 pending cases involving sexual content (these include both civilian employees and members) which had been opened after November 1, 2003. The Monitor will not make a determination of compliance at this time regarding the PSP's handling of these active cases. If observed, the Monitor will identify any deficiencies in handling these investigations in future Reports.

The BIPS has complied with the Monitor's recommendation to modify its database and has defined a specific category of offenses as sexual harassment and sexual misconduct. The Monitor recommends that the PSP increase the level of coordination among the various bureaus and the EEOO to facilitate notifications and other requirements applicable to sexual harassment investigations. The PSP has stated that, during the third and fourth quarters, it will continue to evaluate the level of coordination necessary among the various bureaus and the EEOO.

II. EARLY INTERVENTION PROGRAM

The OIG Report (p. 35) noted that the PSP was implementing an Early Intervention Program (EIP) to aid supervisors in identifying members/enforcement officers who may be experiencing stress or exhibiting patterns of questionable conduct and to take corrective action before such conduct requires enforcement and discipline.³⁷ The OIG encouraged the PSP to proceed with its EIP program. The Monitor previously reported that the EIP was officially established on November 24, 2003 with the issuance AR 4-36. The PSP appointed a Director of the EIP and has created an electronic database.

The PSTA has since filed a charge of unfair labor practices (ULP) against the PSP alleging violations of the Pennsylvania Labor Relations Act and Act 111 of 1968.³⁸ The PSTA alleges, among other things, that the implementation of AR 4-36 revises the reasons a member may be disciplined and the manner in which disciplinary records may be utilized. The PSTA further alleges that the PSP unilaterally modified existing terms of employment without fulfilling its mandatory bargaining obligation. The ULP is pending.³⁹ The Monitor has met with the leadership of the PSTA and its counsel regarding the EIP and the filing of the ULP. The PSTA stated that it is not against the concept of the EIP, however, it has concerns with the current

³⁶ The Monitor has reviewed all new and pending non-adjudicated investigations involving sexual content, including inappropriate uses of the PSP Enterprise Network (such as sexually explicit emails, etc.). Because many of these cases do not constitute sexual harassment and/or sexual misconduct, the Monitor has determined that these cases are outside its scope of review. The Monitor will continue to review all cases involving sexual content on the PSP Enterprise Network that otherwise meet the definitions of sexual harassment and/or sexual misconduct.

³⁷ See AR 4-36, at 36.01.

³⁸ Case No. PF-C-03-161-E, filed with the Pennsylvania Labor Relations Board on December 31, 2003.

³⁹ The PSP has advised that the EIP continues to function notwithstanding the pendency of the ULP.

implementation and design of the program, including issues of equal treatment and maintenance of strict confidentiality. The Monitor is concerned that the PSTA has not met with the PSP regarding its concerns about the implementation of AR 4-36 and the EIP. The Monitor believes that the EIP benefits both the PSP and its bargaining members, and encourages the parties to meet to resolve any outstanding issues.

Since the program's inception through the date of this Report, ten candidates have been identified for potential inclusion in the EIP.⁴⁰ These candidates have been identified both from the EIP database and by Troop Commanders. Pursuant to AR 4-36, Troop Commanders have reviewed (or are currently reviewing) these candidates' records of conduct, with the following results: three members were included in the EIP; two members were not included in the EIP; two members were dismissed from the PSP or suspended with intent to dismiss; and three members are currently being reviewed. The Director of the EIP concurred with the Troop Commanders' recommendations not to include the two members mentioned above. None of the ten candidates identified for possible inclusion in the EIP has been involved in incidents of sexual harassment or sexual misconduct nor has any of the candidates exhibited a questionable pattern of conduct in these areas.

Based on the foregoing, the PSP has complied with the OIG's recommendation/encouragement to proceed with the EIP program. The Monitor will continue to evaluate the effectiveness of this early warning system.

CONCLUSION

During the third quarter, the Monitor will continue to conduct compliance assessments and offer recommendations and technical assistance. The Monitor is confident that, with the continued cooperation and hard work of the PSP, the PSTA, and all other relevant entities, real and meaningful reforms will occur.

Kroll Associates, Inc.
Independent Monitor

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⁴⁰ In the first quarter, four candidates were identified for potential inclusion in the EIP. In the second quarter, six additional candidates were identified.