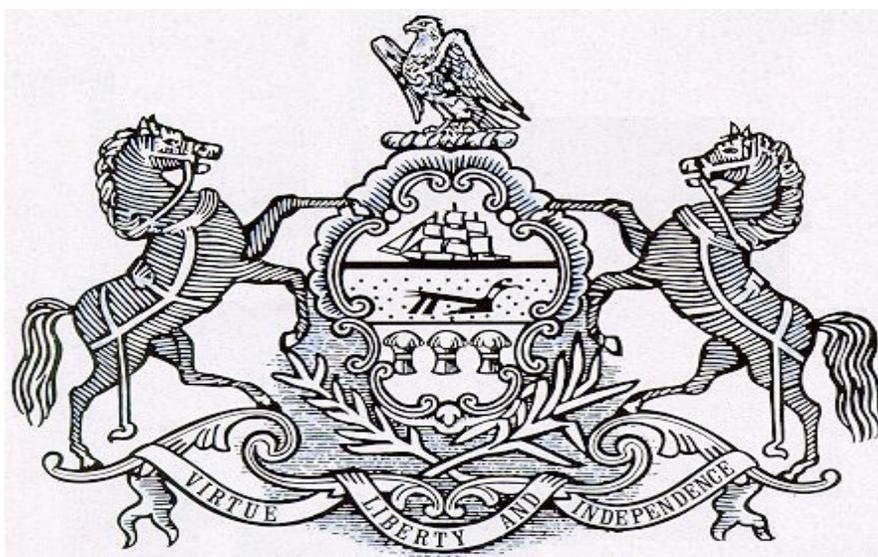


**REPORT OF
THE INDEPENDENT MONITOR
OF THE
PENNSYLVANIA STATE POLICE**



**FOURTH QUARTERLY REPORT
FOR THE PERIOD ENDING
DECEMBER 31, 2004**

ISSUED FEBRUARY 21, 2005

Kroll

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

EXECUTIVE SUMMARY

This Fourth Quarterly Report of the Independent Monitor of the Pennsylvania State Police (PSP) covers the quarter beginning on August 1, 2004, ending on October 31, 2004, and then extended to December 31, 2004. This Report concerns the compliance by the PSP with the recommendations of the Office of Inspector General (OIG) in its Investigative Report on Sexual Harassment and Sexual Misconduct at the Pennsylvania State Police (OIG Report). As this Report demonstrates, the PSP has complied or substantially complied¹ with all 40 of the recommendations in the OIG Report. The Monitor has also made a number of its own recommendations in its Second, Third and Fourth Quarterly Reports. The PSP has complied with all of the Monitor's recommendations made in its Second and Third Reports, with the exception of the discipline guidelines issue, as explained below.²

Much of this Executive Summary will be devoted to the many accomplishments of the PSP in working to address a difficult situation. This Executive Summary also makes several important recommendations for the PSP to continue its considerable progress in the future.

This Executive Summary consists of five sections:

First, the Monitor acknowledges the valuable contributions of the PSP, the Pennsylvania State Troopers Association (PSTA), and a number of others, to the Monitor's four Reports.

Second, the Monitor focuses on several aspects of the discipline issue. Initially, the Monitor describes the previous recommendations of the OIG and of the Monitor on this issue. Next, the Monitor explains the dramatic impact of the arbitrators' Award in the Act 111 interest arbitration. Finally, the Monitor again sets out the need for firm, fair, and consistent guidelines for the remainder of the internal misconduct violations.

Third, the Monitor outlines the achievements of the PSP during the 14 months of the Monitor's assignment.

Fourth, the Monitor analyzes statistics regarding complaints of sexual harassment and sexual misconduct.

¹ Of the 40 recommendations by the OIG, there were several as to which the Monitor determined that it would be inadvisable or impractical for the PSP to be held to the full extent of the OIG's recommendations. In each instance the Monitor has explained its reasoning, in the relevant section of this Report.

² The PSP has not, of course, yet been able to respond to the recommendations the Monitor makes in this Report.

Fifth, the Monitor recommends that the PSP “self-monitor” its continuing administration of the issues raised in the OIG Report.

1. Acknowledgments

The Monitor appreciates the contributions of the PSP to all four of the Monitor’s Reports. The PSP provided an extensive amount of information, which was crucial to the Monitoring Team’s ability to fulfill its responsibilities. The Commissioner and a number of senior officers of the PSP, including the Deputy Commissioner of Professional Responsibility, provided invaluable assistance to the Monitor.

The Monitor also appreciates the full cooperation of the President and other officers of the PSTA. They provided insight into the various issues raised in the OIG Report, especially regarding the discipline issue.

Finally, the Monitor appreciates the valuable advice it has received from a number of different individuals, on a range of topics.

2. Discipline – The Central Issue

The OIG made discipline a central focus, if not the central focus, of the OIG Report.³ In the key part of the Discipline section of the OIG Report, the OIG “recommended that the PSP establish uniform consistent disciplinary guidelines, with serious consequences, for members engaging in sexual harassment and/or sexual misconduct.” The OIG found that there were “disparities in the discipline imposed... on different individuals engaging in similar sexual activity while on duty.” The OIG 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 guidelines 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.

³ The OIG Report began its discussion of Discipline (which the Monitor analyzes in Section II, pp. 15-23, of its Second 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.

While the OIG did not make this a formal recommendation, the Monitor believes that the Deal Commission Report is at least as important now as it was when it was issued in 1986.

The PSP apparently agreed with these recommendations and, as of the second quarter, had developed a proposed Discipline Matrix in consultation with the PSTA.⁴

In the context of the inconsistent discipline imposed, concluding with the grievance process,⁵ the OIG 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 Discipline Matrix, discussed at length in the Monitor's Second Report (pp. 17-19), 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 was 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. After the PSP issued a proposed Discipline Matrix, the PSP submitted the proposed Matrix for evaluation by the Monitor. As the Monitor stated in its Second Report, (p. 18), "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." Because the PSP, in consultation with the PSTA, proposed an across-the-board Discipline Matrix, the Monitor believed that the Discipline Matrix had to be considered as a whole.

In the Monitor's Second Report, the Monitor stated that it believed - as did both the PSP and the PSTA - that the proposed Discipline Matrix had serious deficiencies, and needed to be revised. Despite the many years of work and thought which was put into the Matrix by both the PSP and the PSTA, the Monitor found that the proposed Matrix, as it then existed, was fundamentally unworkable.

As the Monitor stated in its Second Report (p. 19):

⁴ The PSP and the PSTA had formed a Discipline Committee and began meetings in 1996 for the purpose of resolving inconsistencies and injustices in the PSP's discipline procedures and penalties. As part of its attempt to remedy the widespread problems in the discipline system, the Discipline Committee developed a "Discipline Matrix." The proposed Discipline Matrix reviewed by the Monitor in the second quarter was the product of the many-year collaborative effort of the PSP and the PSTA, acting through their joint Discipline Committee.

⁵ 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 Collective Bargaining Agreement (CBA).

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.

Although the Monitor found that the prior negotiations for the proposed Matrix had been in good faith, the Monitor urged the parties to continue to negotiate to meet the recommendations in this section of the OIG Report.

During the third quarter, the PSP stopped negotiating the Matrix, because it believed, (as the Monitor stated in its Second Report), that the Matrix was essentially unworkable. The PSP also presented to the PSTA a proposed Memorandum of Understanding (MOU) setting out Discipline Standards for what the PSP viewed as the most significant disciplinary violations. By cover letter dated June 10, 2004, from Commissioner Jeffrey B. Miller to Sgt. Bruce Edwards, President of the PSTA, the PSP forwarded its initial proposed MOU to the PSTA. After a series of meetings with the PSTA, the PSP submitted several revisions of the initial MOU. The last MOU was presented by the PSP on July 28, 2004. This proposal, which was made during the Collective Bargaining Agreement (CBA) negotiations with the PSTA, set out 11 infractions for which the sanction would be automatic dismissal. Of those 11 infractions, one applied to sexual harassment and sexual misconduct. As phrased in the July 28, 2004 proposal, this infraction was described as follows:

[7] Engaging in sexual misconduct; or serious sexual harassment as defined in Administrative Regulation 4-26, including use of position, to obtain or attempt to obtain sexual favors; or engaging in further sexually harassing conduct despite prior disciplinary action.

Despite the approximately seven weeks of hard work and diligent effort put forth by both parties, on July 29, 2004, the PSTA told the PSP that the negotiations were "at an impasse," and announced their withdrawal from the CBA negotiations on the discipline issue. Because the PSTA withdrew from the CBA negotiations on this issue, and decided to proceed with its case on discipline in the Act 111 interest arbitration proceedings, there was no agreement as to any of the PSP's proposals.

At the end of the third quarter, the Monitor expressed its deep disappointment that the parties had not reached an agreement to reform at least some aspects of what both parties agreed was a mostly ineffective and inconsistent system of discipline.

Since the PSTA willingly agreed to participate in the CBA negotiating sessions, and since the PSP produced several revised MOUs, apparently in response to comments by the PSTA, the

withdrawal by the PSTA was puzzling. While it is true that the PSTA was not required to negotiate a new CBA – the PSTA was well within its rights to defer to the Act 111 interest arbitration proceedings – the PSTA’s stance as of the end of third quarter seemed at odds with its prior statements that they wanted to work out a fair system of discipline.

In its Third Report, the Monitor stated that, although the PSP had made progress, on a broad variety of issues, that would help deter any recurrences of the type of conduct engaged in by former Trooper Michael K. Evans and other former and current PSP Troopers, as the Monitor had detailed in its first three Reports, these reforms, no matter how laudable, would fall well short of the mark set by the OIG Report unless the PSP could also achieve the fundamental reforms advocated in the Discipline section. Ultimately, the issue was not whether the PSTA could have been more agreeable in their negotiations with the PSP; rather, the issue was how and when the PSP could achieve the reforms recommended in the OIG Report.

In its Third Report, the Monitor stated that the PSP had 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.

During the fourth quarter, the PSP achieved major advances in its efforts to comply with the OIG’s recommendations on the discipline issue. Specifically, the PSP prevailed on almost all of its arguments on the discipline issues in the Act 111 interest arbitration proceedings. The arbitration panel’s decision was issued on December 22, 2004.

Before discussing the major effects of the arbitration panel’s Award, the Monitor will provide a brief history of the events between the Monitor’s Third Report, issued on September 27, 2004, and the arbitration panel’s decision on December 22, 2004.

The initial reaction of the PSTA, as stated by the PSTA’s President, Sgt. Bruce Edwards, to the Monitor, was that, despite the Monitor’s request to resume the CBA negotiations on the discipline issues with the PSP, the PSTA would not resume such negotiations due to the pending Act 111 interest arbitration proceedings. But, on or about October 21, 2004, the PSTA stated to the Monitor that it was willing to resume negotiations with the PSP. On November 3, 2004, the PSP and the PSTA resumed negotiations; the parties met on several occasions and made substantial progress in narrowing the issues. However, the negotiations could not be concluded before the deadline of November 15, 2004, set by the PSP, in that the Act 111 arbitration panel was scheduled to begin executive session deliberations on that date.

The arbitration panel determined the terms of the new CBA to replace the one that had expired on July 1, 2004. The panel considered the issues raised in the OIG Report concerning the misconduct of certain members of the PSP. The panel “recognized the need...to provide both [the PSP and the PSTA] with the means to restore the public confidence that the [PSP] is one of the finest law enforcement organizations in the country.” Furthermore, the panel stated that “this

Award makes significant changes to disciplinary rules and processes to ensure that individuals who violate the public trust shall not serve among the ranks of the [PSP].”

The panel’s Award set in place fundamental changes in the standards and procedures for discipline for what the PSP had argued were the 12 most serious categories of misconduct. The system in place under the prior CBAs relied on a neutral arbitrator to decide whether the PSP had made out its case, both in terms of the sufficiency of the evidence and in terms of the appropriate penalty for all infractions. The new system changes the standards and procedures for the 12 enumerated categories of offenses, but for all of the numerous other infractions, the old system is still in effect. The panel’s Award requires that, for a member of the PSP who has been found to have violated any of the 12 new standards, the member is to be dismissed. Under the new system, “notwithstanding any mitigating circumstances,” the individual arbitrators⁶ who determine that the Commonwealth has met its burden of proof regarding the charged violation(s) cannot reduce the penalty from that of dismissal. Regarding sexual harassment and sexual misconduct, the description of the new standard, or category of infractions, is stated as follows:

[4] Engaging in sexual misconduct, as defined in AR 4-25; or engaging in sexual harassment as defined in AR 4-26 which is of a serious nature, including use of position or attempt to obtain sexual favors; or engaging in conduct which constitutes sexual harassment as defined in AR 4-26, subsequent to disciplinary action for prior serious sexual harassment.

This provision is almost identical to the language contained in paragraph [7] of the last Memorandum of Understanding (MOU) that had been proposed on July 28, 2004 by the PSP, as quoted above (p. iv). This standard is straightforward in its language. The definition of sexual misconduct was revised as part of the 2004 revisions of AR 4-25; similarly, the definition of sexual harassment was revised in the 2004 revisions of AR 4-26. The only substantial question in interpreting standard [4] is the meaning of the word “serious,” which is used to limit the applicability of sexual harassment in two instances. As this standard is worded, it will be up to the individual arbitrators to determine what acts of sexual harassment are “of a serious nature” or “serious.”

The other 11 standards are set out in Section II. C.

The Award also stipulates that the penalty of dismissal for the infractions stated in the sexual harassment/sexual misconduct standard ([4]), quoted above – as well as the penalty of dismissal for the other 11 enumerated standards – is not to be affected by any prior results in other cases. Rather, there is a “clean slate” clause which governs the punishment for all 12 standards:

⁶ By “individual arbitrators,” the Monitor is referring to the neutral arbitrators, each of whom is the sole decider of all factual and legal issues whenever a penalty set by the PSP is grieved. There is no overlap between the individual arbitrators, on the one hand, and the arbitration panel members who decided the Act 111 interest arbitration Award, on the other.

[T]hese standards shall constitute a “clean slate” relating to the twelve terminable offenses described below in that they shall supersede and replace all prior standards, agreements, past practices and arbitration awards on the same subjects.

This provision, together with the provision described above which prohibits the individual arbitrators from altering the penalty of dismissal for the 12 enumerated offenses, effectively addresses one of the problems identified in the OIG Report, that of there being repeated softening of the penalties set by the individual arbitrators in sexual harassment and/or sexual misconduct cases.

One of the advantages of the new system of disciplinary standards, which require dismissal for any violations of these standards, is that they apply to all members of the PSP, regardless of rank. The 12 enumerated standards should dispel any possible perception – whether warranted or not – of preferential treatment due to rank, for violations of any of these standards.

The Award expands the prior practice, as required by the PSP’s 2003-04 directives and regulations, of permitting internal investigations to be based on anonymous complaints. Previously, internal investigations could be initiated based on anonymous complaints only in situations where criminal charges might result from the allegations, or, after the issuance of Bureau Special Order 2004-01, in sexual harassment and sexual misconduct cases.

In addition, the Award removes the requirement under the prior CBA that discipline could be imposed only after the arbitration hearing. In the Award, suspensions without pay, in non-dismissal cases, for violations of any of the more than 200 disciplinary infractions, including sexual harassment and sexual misconduct, now can be implemented at any time after the PSP issues the Notice of Disciplinary Penalty to a member who was engaged in such misconduct.

However, as dramatic as are the improvements brought about by the Act 111 arbitration Award, these improvements only concern the 12 enumerated standards, including sexual misconduct and sexual harassment, which are sufficiently serious to merit dismissal. Even with the dismissal penalties for the 12 enumerated standards, the PSP still needs to provide appropriate guidelines for infractions that do not result in dismissal, which would constitute the great majority of the disciplinary actions brought by the PSP. To satisfy the recommendations of the 1986 Deal Commission Report, the suggestions in the OIG Report, and the recommendations of the Monitor’s Second and Third Report, the PSP also needs to undertake the considerable work necessary to provide the consistent and fair penalties, narrowly targeted for specific types of infractions, which would not be expected to result in dismissal. As stated in the Monitor’s Second and Third Reports, this might well involve drafting a greatly improved Discipline Matrix, or a codified system of disciplinary guidelines with a comprehensive set of penalties covering all the infractions in the Field Regulations. One of the many advantages of this approach would be, as with the 12 enumerated standards, that it should dispel any possible perception of preferential treatment due to rank. Because the revised Matrix, or guideline system, would have to be tailored to cover scores of different infractions, the Monitor further

recommends that the PSP and the PSTA reconvene their joint Discipline Committee to explore new approaches to achieve this end.

Although the Monitor recognizes that its jurisdiction is limited to sexual harassment and sexual misconduct, the Monitor also continues to recommend that the PSP give favorable consideration to the recommendations made in 1986 by the Deal Commission. It is now 19 years since the Deal Commission issued its landmark Report. While the panel's Award accomplishes a major advance in discipline for 12 of the most egregious categories of infractions, including sexual misconduct and sexual harassment, this advance leaves the old system in place as to the great majority of infractions. The Monitor has demonstrated in its Second and Third Reports, following the OIG's suggestions, that the old system produces results which are inconsistent, frequently too lenient and involves hearings before arbitrators which are more costly – both to the Commonwealth and to the PSTA – than they would have to be if there were a revised Matrix or guideline system to cover the remainder of the infractions.

3. An Outline of the PSP's Accomplishments

In the area of Complaint Processing and Investigations (Section I), the PSP had the following accomplishments:

- **DIRECT REPORTING TO BIPS⁷ (Section I. A.).** All members of the PSP are now required to report in writing, directly to the BIPS, any knowledge they have or complaints they have heard of sexual harassment or sexual misconduct. Members who do not report such conduct will be disciplined. All investigations of sexual harassment and sexual misconduct are now investigated by the BIPS/IAD. The PSP issued comprehensive definitions of sexual harassment and sexual misconduct.

Pursuant to the Monitor's recommendations, the PSP has established time limits for referrals of complaints alleging sexual harassment and/or sexual misconduct from the Troop Commanders and from the EEOO to the BIPS, and from the BIPS to the EEOO.

- **BIPS'S ROLE (Section I. B.).** The PSP now prohibits supervisors from independently investigating allegations of sexual harassment and/or sexual misconduct on the part of a direct subordinate, and supervisors or other members who interfere with BIPS/IAD investigations are subject to disciplinary action. The BIPS/IAD has investigative jurisdiction of all complaints of sexual harassment and/or sexual misconduct (and complaints can still be referred for prosecution to the County District Attorney's Offices).

In addition, all BIPS investigators assigned to a sexual harassment and/or sexual misconduct investigation shall have received training in conducting such investigations before being assigned to any such case.

⁷ All acronyms used in this section are defined in the body of the Report, below.

- **CONFIDENTIALITY (Section I. C.).** PSP members, other than the assigned investigator, are not permitted to disclose or otherwise discuss a pending investigation with the subject of the investigation; if they do, they are subject to disciplinary action.
- **COMPLAINT VERIFICATION (Section I. D.).** The PSP follows-up on all complaints of sexual harassment and/or sexual misconduct, even if the complainant has not submitted a written Complaint Verification Form. In addition, the letter accompanying the Complaint Verification now includes a statement that assures complainants that the PSP is interested in aggressively pursuing any misconduct by PSP personnel.
- **FACE-TO-FACE INTERVIEWS (Section I. E.).** The PSP has established a policy to pursue face-to-face interviews with complainants in all cases involving sexual harassment and sexual misconduct, even if the complainant fails to submit and sign a Complaint Verification Form. Moreover, all such interviews are now being recorded, in the form of the investigator's written summary of the interview and/or by means of an audiotape recording.
- **OUTREACH PROGRAM (Section I. F.).** The PSP has developed an outreach program to facilitate the ability of citizens to complain or otherwise provide feedback on the performance of PSP personnel. The PSP's outreach program permits 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 PSP documents all calls to the hotline. The PSP has publicized the complaint process and the 24-hour telephone hotline number on its website. The PSP's website contains instructions as to how an individual can file a compliment and/or complaint regarding a member of the PSP, along with a form that can be easily downloaded and used to file such a compliment and/or complaint on the Internet.
- **INFORMATIONAL MATERIAL (Section I. G.).** The PSP has developed informational material, in English and Spanish, describing the complaint and feedback process for distribution at PSP headquarters, PSP stations, state-operated rest stops, and other locations throughout the Commonwealth.
- **OUTREACH MEETINGS (Section I. H.).** The PSP's Community Outreach Program, facilitated by all Troop and Bureau Directors as part of the PSP's Problem Specific Policing Initiative, has been initiated by the hosting of several informational meetings throughout the Commonwealth. These meetings have been designed to inform communities on proper PSP functions and procedures, including how to report compliments and complaints regarding members of the PSP. The PSP has mandated that the Troop Commands, each of which consists of a headquarters and several substations,

are to hold community outreach meetings periodically, at the discretion of the Troop Commander, either at headquarters or one of the substations, on a rotating basis.

- **ASSIGNMENT OF CASES (Section I. I).** The BIPS/IAD investigates all allegations of sexual harassment or sexual misconduct, and no investigations involving sexual harassment and/or sexual misconduct are being referred out to the Troops.
- **COMMIT ADDITIONAL INVESTIGATORS (Section I. J).** The PSP has reorganized the BIPS, including the creation of a new Intake Unit and the addition of several investigators throughout the Commonwealth, sufficient to permit the BIPS to conduct all investigations of sexual harassment and sexual misconduct by permanently assigned personnel. Among other things, this reorganization allows the BIPS to more easily insure that all sexual harassment and sexual misconduct cases are being handled by the BIPS, rather than elsewhere in the PSP, and to better coordinate the sexual harassment cases with the EEOO.

The PSP also made organizational improvements to improve investigative timeliness and performance, including assigning high-priority sexual harassment and/or sexual misconduct complaints only to investigators whose caseloads permit them to work the new assignments promptly, and to investigators who have been specifically trained on how to investigate the unique aspects of these cases.

The PSP amended its organizational structure in this area by creating the position of Deputy Commissioner of Professional Responsibility. The Deputy Commissioner of Professional Responsibility has jurisdiction over the BIPS, the EIPO, the EEOO, and the DDO. While neither the OIG nor the Monitor recommended this specific change in the PSP's organizational structure, 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.

- **DOCUMENTATION OF WITNESS INTERVIEWS (Section I. K).** The PSP requires that all witness interviews during a sexual harassment or sexual misconduct investigation must be documented in writing, or by an audiotape recording.
- **PROTECTION FROM ABUSE ORDERS (Section I. L).** The PSP, after consideration of the model policy adopted by the International Association of Chiefs of Police (IACP) on Police Officer Domestic Violence, and consultation and technical assistance provided by the Monitor, has amended its regulations and implemented a new policy. This policy requires that all instances where a Protection From Abuse (PFA) Order has been issued against a Trooper are considered serious matters and are investigated by BIPS investigators, rather than being assigned to Troopers in the field. Consistent with the IACP model policy, the PSP's new policy provides, among other things, that Troopers against whom a PFA Order has been lodged: (1) will be assigned

restricted duty during the pendency of the PFA Order; and (2) will have to surrender their service firearms.

- **FULL INVESTIGATIONS (Section I. M.).** The PSP has emphasized the importance of completing a full investigation into allegations of sexual harassment and sexual misconduct. Among other things, the Director of the EEOO and more than half of the BIPS/IAD investigators have received formalized training in the area of sexual harassment and sexual misconduct.

In the area of Discipline (Section II), the PSP had the following accomplishments:

- **MEMBER TRANSFERS (Section II. A.).** When a member of the PSP is transferred, a revised regulation requires the BIPS to insure that an IAD history of each promoted and/or transferred member is furnished to the Troop and Area Commanders of the location to which the member will be assigned. The new Intake Unit at the BIPS is required to do a search of the BIPS database to determine if there are any records of any discipline matters, within two weeks of the BIPS receiving notice of a member's transfer or promotion. If the BIPS finds any discipline matters, that information would be transmitted to the appropriate Commander.
- **TREAT SEXUAL HARASSMENT AND SEXUAL MISCONDUCT AS SERIOUS OFFENSES (Section II. B.).** The PSP has issued a zero tolerance policy on sexual harassment and sexual misconduct, and treats sexual harassment and sexual misconduct as serious offenses. A revised regulation now prohibits discrimination or harassment based on an individual's sexual orientation.
- **ESTABLISH DEFINITIVE GUIDELINES (Section II. C.).** The PSP achieved major advances in establishing uniform and consistent disciplinary guidelines, with serious consequences, for members engaging in sexual harassment and/or sexual misconduct. Specifically, the PSP prevailed on almost all of its arguments on the discipline issues in the Act 111 interest arbitration proceedings. The arbitration award issued on December 22, 2004 requires that, for a member of the PSP who has been found to have violated any of the 12 most serious categories of misconduct, including sexual misconduct and/or serious sexual harassment, the member is to be dismissed. (This accomplishment is described in more detail above.)

On a separate issue, the PSP revised a regulation, to provide a new, higher standard of conduct for all Commanders and supervisors and represents an important improvement in the PSP's regulations regarding the accountability of high-ranking officials.

- **CENTRALIZE DISCIPLINE IN THE DDO AND REMOVE DISCIPLINE FROM TROOP COMMANDERS (Section II. D., and E.).** Although the PSP did not centralize its disciplinary procedures in the DDO and did not remove the Troop Commanders from involvement in certain disciplinary decisions, as recommended by the

OIG, the PSP achieved consistency in the discipline process by, among other things: (1) following the Monitor's recommendation to train the Troop Commanders in how the various possible scenarios of sexual harassment and sexual misconduct complaints can and should be charged (at the end of the fourth quarter, all Troop Commanders and Area Commanders had received "adjudication" training); (2) producing a training manual concerning sexual harassment/sexual misconduct, so that the Troop Commanders would always have reference materials to consult; and (3) issuing a revised version of a regulation, which contained comprehensive new directives on how adjudications shall be conducted and reviewed to insure that adjudications are consistent. (In this section of the Report, the Monitor explains the reasons for findings that it would be inadvisable and impractical to centralize procedures in the DDO.)

- **PROVIDE ADDITIONAL STAFFING AT DDO (Section II. F.).** Consistent with the Monitor's recommendations that the Troop Commanders, Area Commanders, and Bureau Commanders retain their established roles as the adjudicators for various members of the PSP under their supervision, and based on its assessment that the DDO was not assuming any expanded responsibilities, the PSP determined not to provide additional staffing to the DDO.
- **SUPPORT S.B. NO. 877 (Section II. G.).** The PSP supported S.B. No. 877, and 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.

In the area of Pre-Employment Background Investigations and Probationary Employment (Section III), the PSP had the following accomplishments:

- **INCONSISTENCIES IN BACKGROUND INVESTIGATIONS (Section III. A.).** The PSP has made considerable progress in its efforts to improve its screening process on applicants for positions as Troopers and to increase the consistency with which background investigations are conducted by, among other things: conducting training for criminal investigators and their supervisors, including training on Cadet Selection Procedures, disqualification factors, polygraph examination procedures and investigative procedures for BIPS investigators; issuing a training manual for investigators doing background checks on applicants for positions as Troopers; requiring all background investigators, reviewing officers, and Criminal Investigation Section Commanders to express their opinions regarding each applicant's suitability or non-suitability for employment as a State Police Cadet; requiring all Cadet applicants to complete a pre-employment polygraph examination; and prohibiting polygraph examiners and background investigators from conducting an examination or background investigation on an applicant they know either personally or professionally.

- **STANDARDS AND TRAINING OF THE APPEAL PANEL (Section III. B.).** To assist the various panels in making more considered decisions on the suitability or unsuitability of applicants, the PSP has provided training to members of the PRC and the BISP, whose members comprise the BIAP. The PSP has also issued a training manual containing provisions for the role of the members of the BIAP, and issued a revised version of a regulation to make changes in the composition, training and practices of the varying screening panels.
- **COORDINATE PROBATIONARY REVIEW WITH BIPS AND EEOO AND WITH OTHER OFFICES (Section III. C., and D.).** The PSP has taken steps to coordinate the probationary review of Troopers with the BIPS/IAD, the EEOO, the BHR and the member assigned to conduct the general background investigation before Troopers complete their 18 month probationary period. A revised regulation directs the BIPS to notify the EEOO of all sexual harassment and sexual misconduct complaints before Cadets/Troopers complete their 18 month probationary period. Another revised regulation requires the BHR, the BIPS, and the EEOO to determine if a probationary Cadet/Trooper is the subject of any completed, open, or pending investigation or inquiry for alleged misconduct, of any kind; and if so, requires the probationary period to be extended pending completion of the BIPS investigation, and requires coordination between the PTRP, the PTARP, the BIPS and the EEOO.
- **COMPLAINTS AGAINST PROBATIONARY MEMBERS (Section III. E.).** The PSP, pursuant to a revised regulation, now requires consideration of a probationary Trooper/Cadet's background investigation and disciplinary history while at the police academy, when a complaint is made against a probationary member.
- **CAUTIONARY APPROACH (Section III. F.).** The PSP exercises greater caution in preparing and reviewing the general investigation of every probationary member at the end of the probationary period by, among other things: interviewing the probationary member's supervisors, citizens with whom the member interacted, judges, prosecutors and other relevant parties. The PSP has stated that it intends to provide training in 2005 for members of the PTRP prior to the time the PTRP next meets to evaluate the retention of probationary Troopers.

In the area of Sexual Harassment Training (Section IV), the PSP had the following accomplishments:

- **ADMINISTRATIVE REGULATION (Section IV. A.).** The PSP amended a regulation, and satisfied the OIG's recommendations to include provisions that: (1) the BIPS will investigate all allegations of sexual harassment and/or sexual misconduct; and (2) that the PSP should not require that a complaint of sexual harassment or sexual misconduct be in writing or that it be supported by a Complaint Verification Form.

- **ADOPT CONSISTENT POLICIES (Section IV. B.).** The PSP issued final versions of two regulations, which are consistent with applicable Commonwealth Executive Orders and Management Directives on Sexual Harassment, and require that anonymous complaints will be investigated in matters where sexual harassment and/or sexual misconduct have been alleged, and in other cases. One of these regulations has also been amended to grant the EEOO more significant responsibility with regard to sexual harassment complaints.
- **TRAINING OF BIPS INVESTIGATORS AND EEOO LIAISONS (Section IV. C.).** The PSP provided specific training for nine of the 17 BIPS/IAD investigators on conducting investigations of sexual harassment and sexual misconduct complaints, and issued a revised regulation,, which requires that only BIPS/IAD investigators who have completed training, unique to conducting such investigations, shall investigate any complaint alleging sexual impropriety. The PSP also provided training to the EEOO liaisons with a curriculum covering the law and awareness and prevention of sexual harassment.
- **CADET TRAINING (Section IV. D.).** The PSP has made instruction on sexual harassment and sexual misconduct a significant part of Cadet training.
- **SUPERVISOR TRAINING (Section IV. E.).** The PSP provided mandatory training to all members and civilian employees, entitled “Honor of the Force,” which was developed specifically to deal with the impact of the sexual misconduct reported in the media and with the subsequent OIG investigation. The PSP also held annual training on sexual harassment and sexual misconduct; this training was designed for supervisors, but provided to all personnel, and included specific law enforcement examples. The PSP also provides basic supervision classes covering sexual harassment for all members who become new supervisors.
- **ANNUAL IN-SERVICE TRAINING (Section IV. F.).** The PSP has made considerable progress in improving its training in the areas of sexual harassment and sexual misconduct as part of its annual in-service training for all members. Sexual harassment training is part of the “Honor of the Force” training, and sexual harassment and sexual misconduct issues are reviewed in the PSP’s “Core Values and Core Purpose” training.
- **COMPUTER-BASED TRAINING MODULE (Section IV. G.).** The PSP, by and through the EEOO, has developed a computer-based training module to reinforce the PSP’s strict prohibition of sexual harassment and sexual misconduct.
- **INCREASE EEOO STAFFING (Section IV. H.).** The PSP, in an effort to improve the performance of the EEOO, appointed a new Director of the office, and hired a civilian EEOO Specialist to assume certain administrative responsibilities and to act as a conduit for the civilian staff of the PSP who wish to make complaints to the EEOO. The EEOO

Director is currently supported by 39 EEOO liaisons representing all Troops/Bureaus/Offices throughout the Commonwealth. The PSP audited the EEOO and has corrected deficiencies in several aspects of its operations, including: (1) complaint processing, reporting, and tracking procedures; (2) record retention and filing; and (3) record management systems.

- **EEOO INVOLVEMENT (Section IV. I.).** The EEOO has become more involved in supporting the PSP's zero tolerance policy against sexual harassment and sexual misconduct. The EEOO communicates with the BIPS regarding investigations, and the EEOO Director now participates in the development of all training, bureau-wide, covering issues of sexual harassment and sexual misconduct. The PSP has also developed a webpage to provide additional information specifically about the EEO Office, including a mission statement, a list of EEOO liaisons, information on how to file a complaint, and other relevant information. In addition, the EEOO created a tracking system for new and pre-existing EEOO cases.

In the area of Attitudes Involving Sexual Harassment and Sexual Misconduct (Section V), the PSP had the following accomplishments:

- **METHOD TO MEASURE AND MONITOR COMPLAINTS (Section V. A.).** The PSP, through the EEOO, established an incident tracking system, as discussed in Section IV.I. above, as a tool by which the BIPS and the EEOO can measure and monitor sexual harassment and sexual misconduct complaints.
- **PERIODIC REPORTS (Section V. B.).** The PSP has provided the Monitor with all information requested, including status reports on proposed changes to rules, regulations and policies. The PSP provided the Monitor with the BIPS 2003 Annual Report, which contained statistics on all the internal investigations conducted during that year by the BIPS, including statistical data regarding complaints of sexual harassment and sexual misconduct. The PSP has advised the Monitor that it reviewed the internal statistics of misconduct by PSP members, for all infractions, on a regular basis, to determine if there are any trends which suggest the PSP needs to pay special attention to preventing specific kinds of misconduct; the PSP has not, however, provided the Monitor with any sort of trend analysis verifying that such a review is taking place.
- **DIRECT REPORTING BY BIPS TO THE COMMISSIONER (Section V. C.).** The PSP amended its organizational structure by creating the Deputy Commissioner of Professional Responsibility (which oversees the BIPS). This Deputy Commissioner has the authority and flexibility to report directly to the Commissioner on matters related to BIPS/IAD investigations and, generally does so, with two limited exceptions: (1) relatively minor cases; and (2) cases which are likely to be brought as court martial (if the subject of a discipline case would choose to proceed by court martial, it would be inappropriate to brief the Commissioner since he/she will act as the deciding official in most court martial proceedings).

In addition to monitoring the PSP's progress in the areas set forth above, the Monitor reviewed new investigations and the PSP's Early Intervention Program as follows:

- **NEW INVESTIGATIONS (SECTION FOUR, Section I)** The PSP provided the Monitor with complete access to all PSP personnel, personnel files and BIPS files to allow the Monitor to fully perform its monitoring function of the PSP's progress in handling sexual harassment and sexual misconduct complaints, including a review of all new and pending non-adjudicated investigations.
- **EARLY INTERVENTION PROGRAM (SECTION FOUR, Section II)** The PSP has implemented an 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. In addition, the PSP issued a revised regulation, which formally added the EIP program to the PSP's organizational structure.

4. The Monitor's Analysis of Statistics Regarding
Complaints of Sexual Harassment and Sexual Misconduct

The OIG also recommended that the PSP regularly examine its statistics for any trends in the areas of sexual harassment and sexual misconduct. Accordingly, the Monitor has collected and compiled statistics concerning the number of "open files," or ongoing investigations, of sexual harassment and sexual misconduct within the BIPS/IAD during the four quarterly reporting periods.

During the first quarter, the BIPS/IAD opened 24 files; during the second quarter, the BIPS/IAD opened eight files; during the third quarter, the BIPS/IAD opened six files; and, during the fourth quarter, the BIPS/IAD opened seven files. The Monitor's analysis of these statistics shows that the number of files, or ongoing investigations, opened from the first to the fourth quarterly reporting periods decreased dramatically, by 70.8%. This reduction in the number of open files shows that, over the past year, the number of complaints of sexual harassment and sexual misconduct has decreased markedly.

From prior to the beginning of the first quarter to the first quarter, the BIPS/IAD carried over 22 files; from the end of the first quarter to the second quarter, the BIPS/IAD carried over 23 files; from the end of the second quarter to the third quarter, the BIPS/IAD carried over 16 files; and from the end of the third quarter to the fourth quarter, the BIPS/IAD carried over three files. The Monitor's analysis of these statistics shows that the number of files, or ongoing investigations, carried over from the first to the fourth quarterly reporting periods decreased dramatically, by 86.4%. This reduction in the number of carried over files shows that, over the past year, the BIPS/IAD has been more efficient in investigating complaints of sexual harassment and sexual misconduct.

At the end of the first quarter, the BIPS/IAD had 46 open files; at the end of the second quarter, the BIPS/IAD had 22 open files; at the end of the third quarter, the BIPS/IAD had 16 open files; and, at the end of the fourth quarter, the BIPS/IAD had 10 open files. The Monitor’s analysis of these statistics shows that the total number of open files, or ongoing investigations, from the first to the fourth quarterly reporting periods decreased dramatically, by 78.3%. This reduction in the total number of open cases shows that, over the past year, both the number of complaints of sexual harassment and sexual misconduct has decreased markedly, and the BIPS/IAD has been more efficient in investigating complaints of sexual harassment and sexual misconduct.

These statistics are set out in the chart below:

“Open Cases” at the End of Each Quarterly Reporting Period

<u>Quarter</u>	<u>Opened In Current Quarter</u>	<u>Carried Over from Prior Quarter</u>	<u>Total</u>
First	24	22	46
Second	8	23	31
Third	6	16	22
Fourth	7	3	10
Overall Reduction	70.8%	86.4%	78.3%

This overall reduction in the number of open files, carried over files and total investigations involving sexual harassment and sexual misconduct is evidence of an apparent shift in attitudes and culture within the PSP. These statistics demonstrate that there has been measurable progress from the filing of the lawsuits against former PSP Trooper Michael K. Evans and others, through the publicity these lawsuits generated in the media, to the Governor’s directing of the OIG to conduct an investigation and issue a report, the Governor’s appointment of the Independent Monitor, and the PSP’s actions in response to the OIG Report and the Monitor’s Reports.

The PSP has engaged in this process for a little over a year. These statistics, which show measurable progress in a number of areas, suggest that the approach taken by the Governor, the OIG, the Monitor and the PSP has proved successful to date. The OIG recommended changes in policy, procedure, training, and attitudes, and the PSP implemented all or substantially all of these recommendations. The Monitor recommends that the PSP measure implementation over time to insure sustained compliance with the recommended reforms.

5. The Monitor’s Recommendations for Self-Monitoring by the PSP

With the issuance of this Report for the fourth quarter, the Monitor completes its review of the actions of the PSP in response to the recommendations by the OIG. The OIG Report was a well-crafted analysis, following a comprehensive investigation. The OIG set appropriate standards for the PSP to meet. The Monitor has determined that the PSP has made substantial revisions in its



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policies and changes in its practices to meet all or substantially all of the OIG's recommendations. The Monitor commends the PSP for its progress.

The PSP has expended considerable time and thought responding to the OIG Report and to the Monitor's Reports. The Monitor is convinced that the focus by the PSP on the sexual harassment and sexual misconduct issues, first brought to light by the lawsuits filed against former PSP Trooper Michael K. Evans and by the publicity in local, regional, and national media, will continue after the involvement of the Monitor has concluded. Based on the PSP's performance over the four quarters of review, the Monitor has confidence that the PSP is committed to carrying out its continuing responsibilities concerning the issues discussed by the OIG and by the Monitor.

But, as with any organization – whether governmental, corporate or otherwise – there is a tendency to devote resources to new needs and demands, as they arise, and to become less vigilant to past problems. This tendency is not easily remedied within the existing structure of most organizations. Accordingly, the Monitor urges the PSP to consider whether additional changes should be made to its organizational structure to better enable it to resist this tendency. The Monitor also recommends that the PSP “self-monitor” its ongoing compliance with the OIG's and the Monitor's recommendations.

In the law enforcement field, organizations which have experienced problems in various areas and have either had an Independent Monitor appointed or have agreed to otherwise make substantial reforms to current practices, have adopted several ways to insure long-term implementation and compliance. These organizations recognize the need to measure compliance over time, and understand that meaningful reform takes time. The Monitor recommends that the PSP study ways in which it can best insure long-term implementation and compliance with the OIG's and the Monitor's recommendations.

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SECTION ONE: INTRODUCTION

A. APPOINTMENT OF THE MONITOR

Kroll Associates, Inc. (Kroll) was appointed by the Governor to serve as the Independent Monitor of the PSP. Accordingly, Kroll has been acting on behalf of the Governor, working through his Office of General Counsel, to monitor the implementation of recommendations contained in the OIG Report. In addition, the Governor requested Kroll to perform other services, including providing technical assistance and assisting with the implementation of the best practices. Kroll was appointed to serve as the Independent Monitor of the PSP for a period of one year, covering the period from November 1, 2003 to October 31, 2004. In October 2004, the Office of General Counsel (OGC) issued an amendment to the contract, extending Kroll's term as the Independent Monitor until December 31, 2004. The OGC issued this amendment and extension to Kroll's contract to enable Kroll to continue to monitor discipline negotiations between the PSP and the PSTA, and to report on the decision and award of the arbitration panel, in the Act 111 interest arbitration proceedings, handed down on December 22, 2004. In December 2004, the OGC issued a second amendment to the contract, extending Kroll's term as the Independent Monitor until January 31, 2005, to permit Kroll to complete its Report for the fourth quarter.

As the Independent Monitor of the PSP, Kroll had 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 fourth quarter.⁸ The Report for the first quarter was issued on March 1, 2004; the Report for the second quarter was issued on June 25, 2004; and the Report for the third quarter was issued on September 27, 2004. The current Report continues and concludes the Monitor's assessment of all the areas outlined in the preceding paragraph. This Report finds that the PSP has complied or substantially complied with all 40 of the OIG's recommendations.⁹

⁸ Kroll's First, Second, and Third Quarterly Reports, as well as the Fourth Quarterly Report, are available for review on the Internet on the PSP's site at <http://www.psp.state.pa.us/>. The reports 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," "Kroll Second Quarterly Report," etc. The reports can be downloaded and/or viewed online using Adobe Acrobat Reader, which is available for free on the PSP's Internet site. The First, Second, and Third Quarterly Reports, as well as the Fourth Quarterly Report, are also available for review on the Internet on Kroll's site at <http://www.krollworldwide.com/psp>.

⁹ As stated in this Report, the Monitor has found that it was inadvisable and/or impractical for the PSP to have complied with a limited number of the OIG's recommendations, as written.

However, the Monitor has made recommendations for further improvements in the PSP's administration of discipline, as set out elsewhere in the report.

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 has been able to draw upon the insights and experience of the Kroll teams working in Los Angeles and Detroit.

The Monitor has taken 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 also has been a time of opportunity. The Monitor is grateful that, with the support of all the parties, significant improvements have been made 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 and sentence 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 Office of General Counsel and the OIG; and legislative efforts to reform discipline within the PSP.

After the third quarter ended, the four outstanding civil suits against former Trooper Evans and a number of former and current PSP officials were settled. On September 2, 2004, attorneys for the plaintiffs, together with PSP Commissioner Miller, issued a joint press release in which it was stated that the Commonwealth, on behalf of the individual defendants, agreed to pay the plaintiffs a total of \$5 million in a global settlement.

After the fourth quarter had ended, the Pennsylvania Labor Relations Board (PLRB) issued a final decision and order, rejecting the arguments made by the PSTA in its charge of unfair labor practices against the Commonwealth of Pennsylvania and against the PSP. This petition of Unfair Labor Practices (ULP) charged that the PSP had violated certain sections of the Pennsylvania Labor Relations Act (PLRA). The particular practices of the PSP which were allegedly unfair concerned negotiated settlements, by representatives of the PSP and the PSTA, of some grievance petitions, filed on behalf of Troopers, who had been suspended for alleged violations of the Field Regulations. The particular negotiated settlements which were at issue resulted in penalties of suspension for a number of days; these negotiated settlements, in a number of cases, included trading the Troopers' vacation days for the days the Troopers were to be suspended. On July 16, 2003, the PSP advised the PSTA that it would no longer trade vacation days for days designated for disciplinary suspension, as it had in the past. Because the ULP was not filed by the PSTA until September 15, 2003, the ULP was dismissed as untimely filed because there was a time limit of six weeks in which the ULP had to be filed.

On September 14, 2004, the PSTA filed an unrelated ULP against the Commonwealth and the PSP. This ULP concerns the suggestions made by a member of the PSP legal office at adjudication training regarding testifying at disciplinary proceedings by management.

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 fourth quarter extended to December 31, 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,¹⁰ 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 stated in its First Quarterly Report 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 Internal Affairs Division (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 its First Report, the Monitor stated that the PSP did not satisfy the OIG's recommendations in this area.

In the second quarter, the PSP issued a Bureau 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 Bureau Special Order 2004-01, which required that investigations of sexual harassment and sexual misconduct be assigned to a BPR (now BIPS investigator).¹¹ This Bureau Special Order, among other things, created an exception to the usual procedure, where the Troop

¹⁰ The BIPS has assumed the functions of the Bureau formerly known as the BPR.

¹¹ 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.

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,¹² which provided comprehensive definitions of sexual harassment and sexual misconduct. By issuing and revising these directives, the PSP complied during the second quarter with the policy requirements of the OIG Report's recommendations in this section. In its Second Quarterly Report, the Monitor reported that the PSP was complying with the existing regulations regarding the duty of each member to report violations by any other members. The Second Report also stated that BIPS personnel were scrutinizing complaint files "to determine if Members present at the scene of a violation are forthcoming in providing information." During its compliance reviews, the Monitor had not obtained any information suggesting that a member had violated this regulation; also, the Monitor was 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.

For reasons which are fully set out in its Second Report, the Monitor recommended that the PSP establish 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. Similarly, the Monitor also expressed concern as to the timing of referrals to the EEOO when complaints are filed initially with the BIPS. The Monitor recommended that the PSP remedy these omissions by adding suitable provisions to a revised Bureau Special Order 2004-01 (or to another Special Order) and later, to a revised AR 4-25, Internal Investigations, 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.

¹² The draft version of AR 4-26 provided the following definitions of sexual misconduct and sexual harassment:

- I. Sexual Misconduct: Sexual Misconduct includes any uninvited or unwelcome sexual touching or sexual contact. 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.

These definitions have been retained in the final version of AR-4-26, as well as in the final version of AR 4-25.

In its Second Report, the Monitor expressed concern not only about the lack of time limits when complaints are first filed, but also about the time within which complaints are adjudicated. In that Report, the Monitor discussed a matter first reviewed by the Monitor during the second quarter.¹³ Our preliminary examination of this matter showed that there was a complaint filed in 2002, in which a noncommissioned officer (NCO) 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 – approximately 18 months after the complaint had been filed – at 50% of his then salary, without any discipline having been imposed. While we did not express any view as to the accuracy of the statements made to us by the complainant, the Monitor offered this as an illustration of what could go wrong as a result of the above-described omissions from Bureau Special Order 2004-01, AR 4-25, and/or AR 4-26. The Monitor found from its review of cases during the second quarter that the PSP had complied with the time limits imposed by the CBA; however, the Monitor recognized that the possibility for delay in the adjudicative process could occur, over which the PSP has no control, when a matter is referred to a county, state, or federal prosecutor.

For the reasons set out in its Second Report, the Monitor determined that, once the PSP adopts and implements strict timing requirements, it would have met the intent of the OIG Report's recommendations on this point. Based on this analysis, the Monitor found that the PSP had 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.

In its Third Report, the Monitor stated that its compliance reviews showed that, in matters of sexual harassment and/or sexual misconduct, there were no instances where a Trooper failed to report what he or she had seen or heard regarding such matters. The PSP advised that, while it might take some time for such information to surface, they had not received any information suggesting that Troopers had failed to follow the PSP's directive concerning the need to report any known violations. The Monitor's compliance reviews also showed that Troopers reported two cases directly to the BIPS during the third quarter.

The PSP, in response to the Monitor's recommendations in its Second Report, implemented time limits for reporting to the BIPS allegations of sexual harassment and/or sexual misconduct. Under the draft of the revision to AR 4-26 in effect during the third quarter, if the allegation were initially reported by a Trooper to the Troop Commander and/or Area Commander, the Trooper was required to make his or her report of such an allegation "forthwith" (within 24 hours) from

¹³ As of the filing of that Report, the Monitor had not had sufficient time to investigate all the facts concerning this matter; accordingly, the Monitor could not make any judgment as to whether, in fact, there had been any deficiencies. Instead, the Monitor considered the scenario related in the text on a merely hypothetical basis. In the third quarter, the complainant in this matter, who had referred it to the Monitor, filed suit in federal court. Because this litigation is now pending, the Monitor will still consider this case only on a hypothetical basis.

the alleged incident and “forthwith” (within 24 hours) of his or her first learning of the alleged incident. In turn, the Troop Commander and/or Area Commander each must report to the BIPS “forthwith” (within 24 hours) from the time he or she receives a report of such an incident from a Trooper. Also, under the draft of the revised AR 4-26, if the report of the alleged incident were first made to the EEOO, that office had a limit of ten working days in which to report the matter to the BIPS.

Regarding the recommendation of the Monitor that the PSP also establish time limits for reporting by the BIPS to the EEOO, as part of the BIPS’s duty to coordinate with the EEOO, the PSP had not established a written policy.

As to the Monitor’s view, expressed in the Second Report, concerning the time within which matters were adjudicated, the Monitor, during the third quarter, was able to further examine the PSP’s file concerning the above-mentioned complaint of sexual misconduct - groping and unwanted sexual touching - made by the NCO against her immediate supervisor. The Monitor set out, in the Third Report, the timeline of significant events in this matter. From this timeline, the Monitor drew certain tentative conclusions:

(1) There was little investigative activity during the delay of approximately eight months between the October 23, 2002 interview of the complainant and the June 17, 2003 contact of the subject by a BIPS investigator. While there were five interviews of potential third-party witnesses during the months of November 2002 to January 2003, none of these interviews was unusually complicated for this type of investigation. While the pace of this phase of the investigation was less than optimal, the Monitor was aware that the assigned BIPS investigator was handling an excessive number of other investigations. Moreover, during the months February 2002 to May 2002, there was no investigative work on this case by the assigned BIPS investigator because he had been assigned to two other, high-priority cases. In light of the priority that should have been given to a serious sexual misconduct investigation of a PSP supervisor, this investigation should have been reassigned to an investigator who could have completed the investigation in a more timely manner. Subsequent reforms by the PSP, as described below in Section I.J., meant that it was unlikely that such investigative lapses would recur in the future. The Monitor stated that the effectiveness of these reforms would be evaluated during the fourth quarter.

The Monitor also noted, from its examination of this file, that the PSP failed to communicate with the complainant on a regular basis to update her on investigation developments or to monitor her feelings, needs, and sentiments. Because of this failure to communicate, the complainant could only assume that the PSP was actively investigating when, in fact, there had been substantial delays in completing the investigation and issuing the DAR. The PSP advised that changes in staffing at the EEOO and the BIPS, along with the reorganization of the case Intake Unit at the BIPS and increased coordination between the BIPS and the EEOO, should result in better communication with the victims of all acts of misconduct, especially sexual harassment and sexual misconduct.

(2) The delay of approximately five months between the initial contact with the District Attorney for the appropriate county and the issuance of a declination letter by that District Attorney was too long. While it was certainly understandable that the District Attorney had other priority matters – the Monitor had been advised that all prosecutive decisions in that county were made by the District Attorney personally and that the District Attorney handled five homicide trials during that time period – it was also true that an allegation of sexual misconduct by a member of the PSP is an important matter.

On the issue regarding possible delays in the handling of sexual harassment and/or sexual misconduct matters, the PSP advised the Monitor that, where the PSP has referred a matter to a District Attorney's office for a prosecutive opinion, investigators for the BIPS have been required, since 1999, to send a letter to the appropriate District Attorney's office, inquiring as to the status of the case, every 30 days.¹⁴ This 1999 requirement was initially set out in Division Directive 99-5, which was revised in 2000 and finalized effective August 9, 2001. That Directive was followed by the assigned BIPS investigator here.

The Monitor stated that, although delays by the District Attorney's offices in the handling of referrals by the PSP are rare – and are almost always due to the offices' demanding case loads – the Monitor recommended, by a copy of this Report, that the Office of the Governor and/or the PSP consider methods to emphasize to the various District Attorneys the importance of treating referrals by the PSP of cases involving criminal misconduct by Troopers, especially sexual harassment and sexual misconduct, as priority cases. For example, the Monitor recommended that the Office of the Governor and/or the PSP might consider working with the Pennsylvania District Attorneys Association to distribute newsletters, articles and other outreach materials in an effort to promote more uniformity and efficiency in the handling of such cases by the 67 District Attorneys across the Commonwealth. The PSP had complied with the policy requirements of the OIG's recommendations to require members to report in writing knowledge or complaints of sexual harassment or sexual misconduct, and to issue revised, comprehensive definitions of sexual harassment and sexual misconduct. The PSP had also complied with the Monitor's recommendation to implement time limits for reporting allegations to the BIPS. The PSP had not established a written policy setting time limits for reporting by the BIPS to the EEOO.

Current Assessment of Compliance

During the fourth quarter, the Monitor's compliance reviews showed that, in matters of sexual harassment and/or sexual misconduct, there were no instances where a Trooper failed to report what he or she had seen or heard regarding such matters. The PSP had also complied with the Monitor's recommendation to implement time limits for reporting allegations to the BIPS. Of the seven cases remaining open during the fourth quarter concerning allegations of sexual

¹⁴ In addition, the Director of the IAD shall be notified if the appropriate District Attorney has not notified the BIPS of a prosecutorial decision in 30 days of receiving the BIPS's investigative report.

harassment and/or sexual misconduct, all seven were filed directly with the BIPS, and none was filed directly with the EEOO.

In the revised version of AR 4-26, issued on October 20, 2004, the PSP stipulated that the time limits for reporting matters of sexual harassment would now be “as soon as possible,” rather than the “forthwith” within (24 hours) standard that had been in effect during the third quarter. If the matter is at the level of an allegation of criminal conduct, then the revised AR 4-26 requires that the reporting be made “immediately.”

The PSP established, in the revised version of AR 4-26, issued on October 20, 2004, a written policy concerning the timing of referrals from the EEOO to the BIPS, which required that all matters alleging sexual harassment reported to the EEOO must, in turn, be reported to the BIPS within ten working days. The revised version of AR 4-26 also provided that:

Any person who believes that they have been sexually harassed are encouraged to report the incident to their immediate supervisor, the EEO Office Liaison, or the Director, EEO Office. Note: when a complaint of sexual harassment involves the immediate supervisor or another individual from the complainant’s chain of command, the complainant shall contact the immediate supervisor of the alleged sexual harasser, the EEO Office Liaison, the Director, EEO Office when an allegation of sexual harassment is made to a supervisor, the supervisor shall contact the EEO Office Liaison, the Director, EEO Office prior to taking any action.

Section 26.05 A., B.

The PSP issued the revised version of AR 4-25, on October 28, 2004. This revised regulation, in language very similar to that of Bureau Special Order 2004-01, provided that:

All complaints alleging sexual impropriety and requiring investigation shall be assigned to an investigator within the [BIPS], Internal Affairs Division.... Due to the seriousness and sensitive nature of these types’ of complaints, consideration shall be given to assignment of more than one IAD investigator.

Section 25.09, Note following 11. (It should be noted the term sexual impropriety has been newly defined, in section FR 1.38, as: “sexual misconduct or sexual harassment as defined in [FR 1.38 and AR 4-26].”)¹⁵ The revised AR 4-25 also contains additional language which provides for “immediate attention” in handling complaints of sexual impropriety. See AR 4-25, Section 25.10.

Based on the foregoing, the PSP has complied with OIG’s recommendations.

¹⁵ The terms sexual misconduct and sexual harassment are defined in the final, revised versions of AR 4-25 and AR 4-26. Both definitions have been set out in full at page 5 of this Report. The Monitor notes that the PSTA agreed to the final language of these definitions.

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 the 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., of the Second Quarterly Report. Under this new practice, the BIPS is using its own personnel to investigate all such complaints.¹⁶

As noted in Section I.A. of its Second Report, the Monitor found that the PSP's new policy was reflected in Bureau Special Order 2004-01, which was issued by the PSP on March 10, 2004. The Monitor also found that, based on our compliance reviews during the first and second quarters, there were no instances where any Troop supervisor investigated a sexual harassment or sexual misconduct matter in violation of the new policy. The PSP advised that it had developed a draft FR which would meet, in the third quarter, the recommendation for the issuance of an FR. Accordingly, the Monitor found that, during the second quarter, the PSP had complied with the implementation aspect of this OIG recommendation, but had not yet complied 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.

In its Third Report, the Monitor stated that its compliance reviews found that there were no investigations of sexual harassment and/or sexual misconduct matters which were performed by personnel at the Troops in violation of the requirement that all such investigations be performed by investigators for the BIPS. Moreover, the PSP had also advised that a written directive on this point would be incorporated into the revised AR 4-25. The PSP had submitted draft FR 1.18, Interference with Investigations,¹⁷ to the Bureau of Research and Development. This draft FR did not explicitly prohibit supervisors at the Troop level from investigating allegations of sexual harassment/sexual misconduct on the part of direct subordinates; however, when interpreted alongside other regulations, it would, in the Monitor's opinion, meet the OIG's recommendation. The PSP expected the finalized version of FR 1.18 to be issued during the fourth quarter. The Monitor stated that the PSP had partially complied with the OIG's recommendations on this point.

Current Assessment of Compliance

During the fourth quarter, the PSP issued the final version of AR 4-25 which, among other things directed that the BIPS/IAD alone handles investigations of allegations of sexual harassment

¹⁶ As noted above, 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.

¹⁷ This reference in the Third Report was in error; the correct reference was FR 1-2, Section 2.31, Command/Supervisory Responsibility.

and/or sexual misconduct. The revised version of AR 4-25 complies with the OIG's recommendation on this point.

However, the Monitor believes there is an apparent conflict between two subsections of AR 4-25, which pertains to a different issue. The language of two different provisions of AR 4-25 is applicable to the issue of the kinds of allegations necessary to initiate a BIPS/IAD of a PSP member for alleged failure to adequately perform his or her duties. Section 25.05 F. provides, as an instance which justifies a BIPS/IAD investigation:

Dissatisfaction with Performance of Duty: An allegation that personnel failed to adequately perform or document a required or expected task, e.g., improper or incomplete crash or criminal investigations, failure to assist a disabled motorist, etc.

Section 25.09 C. provides, as an instance which normally does not justify a BIPS/IAD investigation:

Performance Inadequacies: The IAD will not assume investigative responsibility for mere performance inadequacies or procedural discrepancy violations unless they are indicative of a more serious underlying problem. These investigations include, but are not limited to, alleged rudeness, tardiness, insubordination, dissatisfaction with performance of duty, etc. Addressing these types of inadequacies and violations is a function of first-line supervision and shall, in most instances, be handled at that level through counseling, training, or other remedial action.

There is no provision which provides a bright-line distinction, either in these two sections or elsewhere in AR 4-25, to define the difference between "mere performance inadequacies," which are not the basis for a BIPS investigation, on the one hand, and "dissatisfaction with performance of duty," which does merit a BIPS investigation, on the other.¹⁸

Regarding one of the OIG's main recommendations under this heading, the Monitor was advised that the PSP issued a revised version of FR 1-2, Section 2.31, on October 28, 2004. This section, as recommended by the OIG, prohibits supervisors from independently investigating allegations of sexual harassment and/or sexual misconduct on the part of a direct subordinate:

Whenever allegations of discrimination, sexual harassment, or sexual misconduct are made against a member, supervisors within the chain of command of the member alleged to have committed discrimination, sexual harassment or sexual misconduct are not

¹⁸ The Monitor recommends that the PSP consider redrafting Section 25.09 C. There are two difficulties with this section, as written. The first problem is that the "exception" in the first sentence - "unless they are indicative ..." - is not carried over into the second sentence. Accordingly, it is unclear, from the language of the second sentence, whether a single act of alleged "rudeness" would be considered as a "mere performance inadequac[y]." The second difficulty with this section is that the illustrative examples provided in the second sentence appear to be self-contradictory. A single alleged act of "rudeness" certainly sounds like it would not merit a BIPS/IAD investigation, while a single alleged act of "dissatisfaction with performance of duty" certainly could be grounds for such an investigation. (See Section 25.05 F.).

permitted to conduct any independent investigation into the allegations against said member. (An independent investigation is any investigation outside the auspices of the Internal Affairs Division, Bureau of Integrity and Professional Standards). Any such independent investigation is beyond the authority of a supervisor and as such shall not prevent the Department from investigating the allegations of discrimination, sexual harassment, or sexual misconduct against a member and, if appropriate, initiating disciplinary action against a member found to have committed that misconduct. Supervisors who become involved in such an independent investigation are subject to disciplinary action as prescribed by Department regulations and collective bargaining agreements.

Also during the fourth quarter, the PSP established a policy that all BIPS investigators assigned to sexual harassment and/or sexual misconduct investigations shall have received the appropriate training in conducting such investigations before being assigned to any such case.

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

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. While the Monitor noted that the PSP agrees with the OIG's recommendation on this issue, the Monitor stated that the regulations contained in AR 4-25 and in the OIG Report were not sufficiently explicit to cure the problem cited in the OIG Report. Accordingly, the Monitor recommended in its Second Quarterly Report that the PSP consider whether Bureau Special Order 2004-01 should be revised promptly (or a separate 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 any internal investigation (including any investigation concerning sexual harassment and/or sexual misconduct) with the subject of the investigation, until after the investigation is complete.

In the second quarter, the Monitor, in its compliance reviews, 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 involving sexual harassment and/or sexual misconduct 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 BIPS case investigator(s).

In its compliance reviews for the third quarter, the Monitor found no evidence of any violations of the OIG's recommendation against a member's "tipping off" the subject of a sexual

harassment and/or sexual misconduct investigation that he or she was the subject of such an investigation. As to the Monitor's recommendation that the PSP issue a regulation which more explicitly prohibits such "tip offs," the drafts of the revised AR 4-25, the revised FR 1-2, and the revised FR 1.18, included language which appeared to satisfy the Monitor's recommendation. However, this language was not expected to become finalized until the fourth quarter. In the Third Report, the Monitor determined that the PSP had not complied with the recommendation of the OIG and of the Monitor on this point. The Third Report concluded that, once the draft revisions of AR 4-25, FR 1-2, and FR 1.18 become finalized and issued, the Monitor expected that the PSP would have complied with the recommendations of the OIG and of the Monitor on this point.

Current Assessment of Compliance

During the fourth quarter, the PSP issued a revised FR 1.18 on October 28, 2004. This revised FR provides that:

For purposes of this regulation, interference with investigations shall include, but not be limited to: directly or indirectly divulging information regarding the contents of or statements made during an investigation to suspects or subjects of the investigation...; or taking any other action that impedes the discovery of information material to the matter being investigated and/or the successful resolution of the allegations made against suspects or subjects of an investigation.

The Monitor notes that the PSTA gave valuable input into the drafting of the final version of FR 1.18.

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

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. In its Second Quarterly Report, the Monitor observed that, 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.

Based on its review of Bureau Special Order 2004-01, issued on March 10, 2004, the Monitor found that the PSP had formalized the oral directive cited above (using the same

language).¹⁹ The Monitor had reviewed the 18 files containing complaints of sexual harassment and/or sexual misconduct which were open during the first and second quarters and found no instances where either of the new PSP policies concerning Complaint Verifications and face-to-face interviews (as described in the next section) had been violated.²⁰

The Monitor determined that, during the third quarter, there were no instances where the new policy regarding Complaint Verifications had been violated. In its compliance reviews for the third quarter, the Monitor examined the nine open files and the 13 files that were closed during the third quarter.²¹ The Monitor determined that the PSP had complied with the OIG's recommendations on this point.

Current Assessment of Compliance

During the fourth quarter, the Monitor's compliance reviews showed that there were no instances where the new policy regarding Complaint Verifications had been violated. In its compliance reviews for the fourth quarter, the Monitor examined the 16 files which were open for at least a part of the fourth quarter, including seven files that were newly opened during the fourth quarter, six files which were carried over from the third quarter, and three files which were closed during the fourth quarter.

During the fourth quarter, the PSP adopted a revised version of AR 4-25 which incorporated language similar to that found in Bureau Special Order 2004-01 on this point. The revised AR 4-25 provides:

No complaint alleging sexual impropriety shall be deemed withdrawn on the basis of a complainant failing to return the Complaint Verification and all such complainants shall be interviewed, in person, by the assigned IAD investigator.

Section 25.09, Note following 11.

Also during the fourth quarter, the Award in the Act 111 interest arbitration proceedings mandated that Complaint Verifications would not be required in any internal investigations. See Section II.C.

¹⁹ 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.

²⁰ The Monitor's review of the BIPS 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.

²¹ During the third quarter, 13 files were closed on the merits - because the PSP and/or the neutral arbitrator determined that the allegations were "sustained," "not-sustained," "unfounded," or "withdrawn." Also during the third quarter, ten files were reclassified because they involved the misuse of the PSP's Intranet system, referred to as the Enterprise Network, either for pornographic images or pornographic stories/jokes, where there were no intended victims.

Based on the foregoing, the PSP has complied with the OIG's recommendation.

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 involving sexual harassment and sexual misconduct, 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. After issuing an oral directive, on September 26, 2003, consistent with the OIG's recommendations, the PSP formalized this new policy in Bureau Special Order 2004-01, which went into effect on March 10, 2004.²² Based on our compliance reviews during the first and second quarters, as described in the Second Quarterly Report, the Monitor found that, in those instances where there was no Complaint Verification, this new policy and this Order were adhered to by the PSP.

During its compliance reviews for the third quarter, the Monitor determined that the requirement of a face-to-face interview of all complainants, whether or not a Complaint Verification had been filed, was being followed by the PSP. Moreover, the Monitor determined that all such interviews were being recorded, both in the form of the investigator's written summary of the interview and by means of an audiotape recording. The Monitor determined that the PSP had complied with the OIG's recommendations on this point.

Current Assessment of Compliance

During its compliance reviews for the fourth quarter, the Monitor determined that the requirement of a face-to-face interview of all complainants in sexual harassment and/or sexual misconduct matters, whether or not a Complaint Verification had been filed, was being followed by the PSP. Moreover, the Monitor determined that all such interviews were being recorded, in the form of the investigator's written summary of the interview and/or by means of an audiotape recording, depending on the complexity of the case. On October 28, 2004 the PSP issued a revised version of AR 4-25, which provides that "All investigative interviews shall be documented and authenticated in writing or by electronic recording." Section 25.09, Note following 11.

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

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

²² See page 14, footnote 19.

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's website also provides a form that can be used to file such a compliment and/or complaint on the Internet.

In its Second Report, the Monitor stated that the PSP had set up, as of April 8, 2004, a toll-free telephone hotline. That Report described the telephone hotline and the Internet website in detail. As stated in its First Report, the Monitor has verified that the online Compliment/Complaint 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 determined that the PSP had 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.

In its Third Report, the Monitor determined that from April 11, 2004 until July 6, 2004 there were 114 "hotline" calls made to the PSP. One call was in the category of sexual misconduct; 62 of these calls requested that Complaint Verification forms be sent out; and the remaining calls consisted of compliments and information requests.

The Monitor determined that, as to the PSP's website, there was the following activity during the third quarter: In May 2004, 212 Complaint Verification forms were downloaded; in June 2004, 308 Complaint Verification forms were downloaded; and in July 2004, 320 Complaint Verification forms were downloaded.²³ Based on information received from the PSP, and the Monitor's own testing, it appeared that both the hotline and the website were functioning smoothly. The Monitor determined that the PSP had complied with the OIG's recommendations on this point.

Current Assessment of Compliance

During the fourth quarter, the Monitor determined that from July 7, 2004 until October 31, 2004 there were 33 "hotline calls made to the PSP. One call was in the category of sexual misconduct; 21 of these calls requested that Complaint Verification Forms be sent out; and the remaining

²³ In June 2004 there were 1,410 hits on the PSP's website for Kroll's Second Report, in July 2004, there were 1,074 hits on the PSP's website for the same Report, and in August 2004 there were 6,662 such hits. In September 2004, there were 13,662 hits on the PSP's website for Kroll's Third Report, and in October 2004 there were 17,881 hits on the PSP's website for the same Report.

calls consisted of compliments and information requests. The Monitor determined that, as to the PSP's website, there was the following activity during the fourth quarter: In August 2004, 250 Complaint Verification Forms were downloaded; in September 2004, 279 Complaint Verification Forms were downloaded; and in October 2004, 256 Complaint Verification Forms were downloaded.

Based on the foregoing, the PSP has complied with the OIG's recommendations on this point.

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 or second quarters.

In its Third Report, the Monitor stated that, in response to this OIG recommendation, and as part of its outreach program, the PSP developed a form in English and Spanish, which was designed to promote feedback from citizens concerning how well the PSP was doing in fulfilling its "core purpose."²⁴ This form serves as an informational fact sheet entitled "Pennsylvania State Police Compliment/Complaint Procedures" that generally describes the procedures. The form provides that compliments and/or complaints concerning PSP service or personnel may be filed at any PSP station, 24 hours a day, seven days a week, either in person, by telephone, or in writing. The form also provides that complaints may be filed directly with the BIPS, through the PSP's toll-free hotline number, and that additional information about the compliment/complaint procedures can be found online at the PSP's website.

The PSP stated that this form and other reference materials would be distributed to Area, Troop and Station Commanders, and Bureau and Office Directors, during the fourth quarter. The form would also be available at all Troop headquarters and their substations, in their reception areas, and in the public areas of all Department facilities,

The Monitor evaluated the form and determined that it sufficiently offers citizens an opportunity to file compliments or complaints, and provides information about the PSP's "core purpose" and information about the agency in general. While the form adequately describes the complaint process, the PSP had not yet distributed the informational materials and complaint forms to its many locations throughout the Commonwealth. The Monitor determined that the PSP had not fully complied with the OIG's recommendations.

²⁴ The PSP has defined its core purpose on the fact sheets as "[t]o seek justice, preserve peace, and improve the quality of life for all."

Current Assessment of Compliance

During the fourth quarter, the Monitor verified that, on or about September 15, 2004, the materials described in the Monitor's Third Report were, in fact, distributed to the various locations listed above.

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

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 compliments and complaints regarding members of the PSP. The PSP did not comply with this recommendation for outreach meetings during the first or second quarters. As the Monitor stated in its First Quarterly 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., of the Second Report.

As noted in our Second Report, 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 Directors to facilitate a Community Outreach Program, would be implemented during the third quarter. Although the PSP was then attending township meetings and conducting Citizen Police Academies throughout the Commonwealth, the PSP did not comply with this OIG recommendation during the second quarter.

During the third quarter, the PSP implemented the Community Outreach Program, as an addition to the Problem Specific Policing Initiative.²⁵ As part of this program, the PSP started to hold meetings at community facilities, such as high schools, in the vicinity of the Troop's headquarters or substation, as applicable, at which members of the public were encouraged to give such compliments, or make such complaints, as they wished. The PSP informed the Monitor that there were four Community Outreach meetings throughout the Commonwealth during the third quarter. For each of the four Community Outreach meetings, the PSP placed ads in newspapers serving the communities where the Troop's headquarters or substation was located, inviting the community and any interested observers to attend the meetings. The Monitor had not yet attended any of the Community Outreach meetings. When fully implemented, the community outreach component of the PSP's Problem Specific Policing

²⁵ This Initiative was implemented pursuant to Operations Manual (OM) 7-6. OM 7-6 was revised during the fourth quarter, on October 27, 2004. The changes to OM 7-6 are intended to bring this provision into conformity with the recommendations of the OIG and of the Monitor.

Initiative²⁶ was expected to satisfy the OIG's recommendations on this point. The Monitor determined that the PSP attempted to achieve and maintain positive and productive police-community relations. The Monitor stated that it appeared that the PSP has complied with the OIG's recommendations on this point; however, until the Monitor attended the outreach meetings, it could not yet say that it had confirmed that the PSP complied here.

Current Assessment of Compliance

During the fourth quarter, the Monitor attended two community outreach meetings. These two meetings, which were advertised in local newspapers, and on the PSP website, included the information set out in the Monitor's two prior Reports. These two meetings also included the PSP's making available the phone numbers for the Troop Commander, the Executive Officer and the Commander's staff. Moreover, those being served by the PSP were advised that there would be no retaliation or other adverse effect as to anyone making a complaint of misconduct. One of the meetings was conducted in a town hall meeting format. The second meeting, held over an eight-hour period, featured periodic presentations by the Troop Commander and/or members of the staff.

The PSP has mandated that each Troop Command, each of which consists of a headquarters and several substations, is to hold a community outreach meeting periodically at the discretion of the Troop Commander at either headquarters or one of the substations, on a rotating basis.

Moreover, if circumstances so require – for example, if there has been a recent increase in reports of crime within the area served by a particular Troop Command – these meetings will be held more frequently. This is an example of the Problem Specific Policing Initiative. (This is just one part of this Initiative, which also requires that the Troop Commanders devote additional Troopers to confront any increase in crime within the Command area.) Another aspect of this Initiative is the PSP would respond to any marked increase in crime reported by the residents in a particular Command area.

On October 27, 2004 the PSP issued the revised version of OM 7-6, which is a section of the Operations Manual. There is at least one, and sometimes as many as three, Community Service liaisons assigned to each Troop. Each one of the liaisons is a Trooper. There are currently 49 Community Service liaisons throughout the Commonwealth. These liaisons, under OM 7-6, are responsible for:

[E]stablishing and maintaining liaison with formal community organizations and other community groups;...publicizing departmental objectives, problems, and successes; conveying information from citizens and citizen's organizations to the department in a timely and accurate manner;...and establishing community groups where they are needed.

²⁶ The PSP's Problem Specific Policing Initiative went into effect on May 1, 2003.

By this regulation, the PSP has implemented the part of the OIG's recommendation concerning Community Outreach.

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

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 OIG Report's other recommendations discussed in Sections I.A. and I.B. in the Second Quarterly Report.

As of the second quarter, the PSP had 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 had further advised that no investigations involving sexual harassment and/or sexual misconduct are being referred out to the Troops. Bureau Special Order 2004-01, issued on March 10, 2004, quoted above in relevant part at page 14, footnote 19, provides that all such investigations shall be assigned to the BIPS. In performing its compliance reviews for the first and second quarters, the Monitor 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 found that the PSP had complied with this recommendation during the first and second quarters, even though the PSP did not "assign" any of these investigations "directly" to the BIPS, for the reasons stated in Section I.A. of the Second Report.

During its compliance reviews during the third quarter, the Monitor found that the PSP had followed the directives set out above on this issue. In addition, the Monitor determined that the BIPS had developed a technique which permits streamlined email communications. Email access was initiated for authorized users only, which permits users to obtain current information from the BIPS's investigative files and records, including records of all discipline and adjudications. The Monitor stated that the PSP had complied with the OIG's recommendations on this point.

Current Assessment of Compliance

During the fourth quarter, seven new sexual harassment and/or sexual misconduct matters were reported directly to the BIPS, with no such matters first going to the Troops or the EEOO. Based on the foregoing, the PSP has complied with the OIG's recommendations.

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 its First Quarterly 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.

During the second quarter, the PSP had supplemented its organizational structure in this area by creating the position of Deputy Commissioner of Professional Responsibility. The Deputy Commissioner of Professional Responsibility has jurisdiction over the BIPS,²⁷ the EIPO, the EEOO, and the DDO. While the OIG did not recommend this change in the PSP's organizational structure, the Monitor recognized that there may well be advantages to this change. The Monitor also recognized that the creation of this new Deputy Commissioner position appeared 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 stated that it planned to further reorganize the BIPS by moving a Lieutenant from the Bureau of Technology Services to be permanently assigned to the BIPS to handle case intake along with two other NCO's from within BIPS.. The PSP also advised that it would be conducting an audit in the third quarter to further evaluate staffing needs, reassignment of personnel and budgetary constraints. The Monitor recommended 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. The Second Report also stated that 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.

During the third quarter, the PSP added to the number of BIPS personnel throughout the Commonwealth. Between the beginning of the first quarter and the end of the third quarter, the PSP realigned two additional investigators to the BIPS complement. To streamline the intake process, the PSP added a lieutenant, and transferred a sergeant and a corporal from another unit. In addition, one investigator has been added to the Western Section of the BIPS and one has been added to the Central Section.

The reorganization of the BIPS, including the new Intake Unit, required a review every 30 days of the sexual harassment and sexual misconduct cases, so as to avoid in the future any of the problems noted by the Monitor in Section I.A. above, concerning the "timeline" of an investigation during the 18 months from the filing of the initial complaint to the issuance of discipline. In addition, this reorganization allows the BIPS to more easily insure that all sexual harassment and sexual misconduct cases are being handled by the BIPS, rather than elsewhere in the PSP, and to better coordinate the sexual harassment cases with the EEOO. The Monitor determined that the BIPS now has a complement of investigators that can adequately handle the

²⁷ Two other divisions come under the BIPS – the Internal Affairs Division (IAD) and the Systems Process and Review Division (SPR).

caseload of approximately 500 investigations each year.²⁸ (The vast majority of these approximately 500 investigations do not involve allegations of sexual harassment and/or sexual misconduct.) In its Third Report, the Monitor stated that PSP complied with the OIG's recommendations on this point. The Monitor recommended that the PSP continue to evaluate staffing needs at the BIPS, in light of caseloads and available resources.

Current Assessment of Compliance

During the fourth quarter, the PSP added an additional investigator to the Eastern section office of the BIPS. The Director of the BIPS now holds periodic meetings concerning the issue of whether there is adequate staffing for the BIPS investigations. In addition, the PSP formalized the organizational structure by which the position of Deputy Commissioner of Professional Responsibility was created, in the revised version of AR 1-1, issued on October 25, 2004.

Also during the fourth quarter, the PSP finalized several organizational improvements, which had been initiated during the third quarter, to remedy some of the problems concerning investigative delays discussed in Section I.A. in the Third Report. Specifically, the BIPS, through its Intake Unit, only assigns high-priority sexual harassment and/or sexual misconduct complaints to investigators whose caseloads permit them to work the new assignments promptly. In addition, the BIPS Intake Unit assigns such cases only to the BIPS investigators who have received the recently revised training regarding investigations of sexual harassment and/or sexual misconduct allegations. See Section I.A.

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

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

²⁸ During the fourth quarter, the caseload had been reduced to approximately 150 cases for all 17 BIPS/IAD investigators. This figure has been substantially reduced from the figure of approximately 500 cases which had been reported to the Monitor during the third quarter. The reason for the change in the number of cases carried by the BIPS investigators is that the BIPS had assigned approximately 350 of its cases to investigative Troopers in the field. These approximately 350 cases were reclassified to other types of infractions, after the definitions of sexual harassment and sexual misconduct, set out at footnote 12, were promulgated by the PSP. Many of these approximately 350 cases were reclassified as so-called Enterprise violations, because they involve improper use of the PSP's intranet system, called the Enterprise Network, where there was some sexual aspect of the use of intranet.

September 26, 2003 oral directive, the PSP had complied with the literal requirements of the OIG's recommendations.

During the second quarter, the PSP issued Bureau Special Order 2004-01 on March 10, 2004, which 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's recommendations. Furthermore, requiring written and/or audiotaped witness statements is consistent with the best policing practices. This directive in the Bureau Special Order will become part of the revised AR 4-25, Internal Investigations. Based on its compliance reviews during the first and second quarters of the 18 open files, the Monitor determined that the PSP complied with the OIG's recommendations on this point.

During the third quarter, the Monitor determined that, of the total of 22 files which were open during at least part of the third quarter, all 22 files included the appropriate documentation of witness interviews. The Monitor stated that the PSP complied with the recommendations contained in the OIG's Report.

Current Assessment of Compliance

During the fourth quarter, the Monitor determined that, of the total of 16 files which were open during at least part of the fourth quarter, all 16 files included the appropriate documentation of witness interviews.

Based on the foregoing, the PSP complied with the OIG's recommendations.

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 PSP adopt a policy requiring the BIPS to continue a domestic violence investigation even if the complaining victim recants or withdraws a PFA Order. The relevant Field Regulation, FR 7-6, which was in effect at the time of the OIG Report, was issued on April 27, 2000. The Monitor reported in its First Quarterly Report 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.

During the second quarter, the Monitor was advised that the PSP was planning to issue a revised FR 7-6. The PSP examined the IACP model, but found the model to be inadequate for the PSP's specific needs. The PSP stated that it was continuing to develop its policy on this issue. The Monitor determined that the PSP had not yet complied with the recommendations in the OIG Report.

During the third quarter, the PSP drafted a regulation on PFA Orders involving PSP personnel. The PSP presented the draft regulation to the Monitor for technical assistance and best practices recommendations. The Monitor, at the end of the third quarter, had not yet responded to the PSP's request for technical assistance and best practices recommendations regarding the proposed revision of FR 7-6.

As of the end of the third quarter, there were three open cases against PSP personnel involving physical abuse, stalking, or harassing behavior against spouses, ex-spouses, or intimate partners, all of which included PFA Orders. (There were 15 domestic violence cases, currently under review by the BIPS, which did not involve PFA Orders.) Regrettably, because the then current version of FR 7-6 did not so require, the three Troopers who were the subjects of the open cases had not been required to surrender their weapons. The Monitor recommended that, when FR 7-6 is revised, it should contain language, similar to that contained in the IACP model policy, which mandates that Troopers who have PFA Orders lodged against them must surrender their weapons. Moreover, the three Troopers who were subjects of PFA Orders had not been placed on restricted duty, which would be required under the proposed revision of FR 7-6, in accordance with the IACP model policy. The Monitor recommended that the proposed revision of FR 7-6 include language placing a Trooper who is the subject of a PFA Order on restricted duty. This proposed revision of FR 7-6 was one of the issues which was supposed to be part of the CBA negotiations between the PSP and the PSTA. The Monitor stated that the PSP had not yet complied with the OIG's recommendations on this point.

Current Assessment of Compliance

During the fourth quarter, the PSP has implemented a new policy, whereby all instances where a PFA Order has been issued against a PSP member are considered serious matters and are investigated by BIPS investigators rather than being assigned to Troopers in the field. The PSP issued a revised version of FR 7-6, on October 29, 2004. The new FR 7-6 provides, among other things, that PSP members against whom a PFA Order has been lodged: (1) will be assigned restricted duty during the pendency of the PFA Order; and (2) will have to surrender their service firearms. The PSP has developed specific procedures that apply to domestic violence and PFA Orders involving department personnel. All PFA Orders filed against PSP personnel will be reviewed and investigated by the BIPS. Members shall enforce PFA Orders filed against PSP personnel in accordance with the language of the PFA Order. Also during the fourth quarter, the PSP issued a revised version of AR 4-25. The revised AR 4-25 repeated much of the language of FR 7-6 concerning the impact of the PFA Orders on PSP members.

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

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.

In its Second Quarterly Report, the Monitor noted that comprehensive definitions of sexual harassment and sexual misconduct were set out in AR 4-25, issued on April 30, 2004. As of the date of the issuance of the Second Report, there had not yet been any training programs where members of the BIPS had been instructed as to the necessity of full investigations in such cases. The Monitor observed that the PSP does require full investigations into all cases; however, the PSP had not conducted any specific training programs where members of the BIPS had been instructed as to the nuances and subtleties of handling sexual harassment and sexual misconduct investigations. The Monitor found that the PSP did not comply with this OIG recommendation during the second quarter.

During the third quarter, the Monitor's compliance reviews of the 22 files open for at least part of the quarter showed that there had been full investigations in all 22 of these files. As set forth below in Section IV.A., Sexual Harassment Training, the PSP held training for nine of the 16 BIPS/IAD investigators on conducting investigations of sexual harassment complaints. The Monitor had not yet evaluated this training provided to the BIPS investigators. The Monitor stated that the PSP had partially complied with these OIG recommendations.

Current Assessment of Compliance

During the fourth quarter, the Director of the EEOO received formalized training as an EEOO specialized trainer. Of the 17 BIPS/IAD investigators, nine had received formalized training in the area of sexual harassment and sexual misconduct investigations.

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

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 reported in its First Quarterly Report 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 had recently included in its transmittals of information to the current and new supervisors, were obtained pursuant to the Early Intervention Program (EIP), discussed at pages 27-28 of our First Quarterly Report.

In its Second Report, the Monitor observed progress during that 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 was implemented as of February 27, 2004, with the first transmittal of information to new supervisors when members were transferred under their command. The Monitor noted that the PSP was then using documentation to furnish the information described above to the new supervisors. The Monitor also reported that the PSP was continuing to try to find appropriate software to improve the reliability of the methods of communication of this information. The PSP advised that it would make policy changes to AR 4-25 to reflect this change during the upcoming quarters. The Monitor found that the PSP had complied with the implementation of this OIG recommendation. The PSP had not complied with the implementation portion of this recommendation to state this new policy in writing.

During the third quarter, the PSP made improvements in tracking member transfers. The new Intake Unit at the BIPS, as more fully described in Section I.J., was required to do a search of the BIPS database, to determine if there are any records of any discipline matters, within two weeks of the BIPS's receiving notice of a member's transfer or promotion. If the BIPS finds any discipline matters, that information would be transmitted to the appropriate Commander.

An Internal Affairs Division Order was issued mandating the Intake Unit to provide detailed BIPS histories to the Commanding Officers of newly transferred members. The PSP intended to incorporate this Order into the revised AR 4-25. The Monitor stated that the PSP had complied with the OIG's recommendation on this point.

Current Assessment of Compliance

During the fourth quarter, the PSP issued a revised version of AR 4-25, which went beyond the requirements of the Internal Affairs Division Order mentioned in the Monitor's Third Report. This revised version of AR 4-25 requires that, "Within two weeks of receipt of a Personnel Order listing promotions or transfers, [the BIPS must] ensure an IAD history of each promoted and/or transferred member is furnished to the Troop and Area Commanders of the location to which the member will be assigned."

In addition, the PSP implemented a new computerized service called the PSPiNET eLibrary. This service permits all PSP personnel, including investigators, to access all PSP Bureau Special Orders, Administrative Regulations, Field Regulations, and any other PSP directives. This new system also permits the PSP to keep a computerized list of all of its personnel who have, or have not, read any emails and any attachments.

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

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 its First Quarterly Report, this recommendation has been

accomplished through Bureau Special Order 2003-39, setting out the PSP's zero tolerance policy. As stated in its Second Report, the Monitor found that the PSP complied with this recommendation. The PSP 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.

During the third quarter, the PSP adopted a revised version of AR 4-6. This regulation, titled Rules of Conduct for Employees, now includes a provision prohibiting discrimination or harassment based on an individual's sexual orientation. Section 6.03, A.6., provides, in part, as follows:

Discrimination or Harassment: Employees shall not discriminate or harass, for or against, any other employee, member or the public, on the basis of race, color, sex, religion, national origin, age, disability, or sexual orientation....

Also during the third quarter, the Monitor, in its compliance reviews of the 22 files which were open for at least a part of the quarter, determined that these matters were being handled by the PSP in accordance with their zero tolerance policy, as well as with the rules and regulations regarding sexual harassment and sexual misconduct. The Monitor stated that the PSP had complied with the OIG's recommendations on this point.

Current Assessment of Compliance

During the fourth quarter, the PSP issued Special Order 2004-97, on October 28, 2004. This special order, which rescinds Special Order 2003-39, contains the Commissioner's "zero tolerance" policy against sexual impropriety.

The PSP also issued, on October 28, 2004, the final version of AR 4-6, including the language quoted above on expanding the definition of discrimination to include any action against an individual because of his or her sexual orientation.

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

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 guidelines 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 apparently agreed with these recommendations and, as of the second quarter, had developed a proposed Discipline Matrix in consultation with the PSTA.

The Monitor's Second Quarterly Report (pp. 16-17) described the procedure by which, 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.

In the context of the inconsistent discipline imposed, concluding with the grievance process, the OIG 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 Discipline Matrix, discussed at length in the Second Report (pp. 17-19), 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 was 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. After the PSP issued a proposed Discipline Matrix, the PSP submitted the proposed Matrix for evaluation by the Monitor. As the Monitor stated in its Second Report, (p. 18), "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." Because the PSP, in consultation with the PSTA, proposed an across-the-board Discipline Matrix, the Monitor believed that the Discipline Matrix had to be considered as a whole.²⁹

²⁹ The OIG Report began its discussion of Discipline (which the Monitor analyzes in Section II, pp. 15-23, of its Second 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.

In the Monitor's Second Report, the Monitor stated that it believed - as did both the PSP and the PSTA - that the proposed Discipline Matrix had serious deficiencies, and needed to be revised. Despite the many years of work and thought which was put into the Matrix by both the PSP and the PSTA, the Monitor found that the proposed Matrix was fundamentally unworkable.

As the Monitor stated in its Second Report (p. 19):

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.

After noting that the prior negotiations for the proposed Matrix had been in good faith, the Monitor urged the parties to continue to negotiate to meet the recommendations in this section of the OIG Report. The Monitor also stated that it would expect that the parties would agree that, going forward, the newly revised Matrix or other guideline system 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.

As stated in its Second Report, the Monitor determined that the PSP had 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.

During the third quarter, the PSP stopped negotiating the Matrix, because the PSP believed that the Matrix was essentially unworkable. The PSP also presented to the PSTA a proposed Memorandum of Understanding (MOU) setting out Discipline Standards for what the PSP viewed as the most significant disciplinary violations. By cover letter dated June 10, 2004, from Commissioner Jeffrey B. Miller to Sgt. Bruce Edwards, President of the PSTA, the PSP forwarded its initial proposed MOU to the PSTA. After a series of meetings with the PSTA, the PSP submitted several revisions of the initial MOU. The last MOU was presented by the PSP on July 28, 2004. This proposal, which was made during CBA negotiations with the PSTA, set out 11 infractions for which the sanction would be automatic dismissal. Of those 11 infractions, one

While the OIG did not make this a formal recommendation, the Monitor maintains that the Deal Commission Report is at least as important now as it was when it was issued in 1986.

applied to sexual harassment and sexual misconduct. As phrased in the July 28, 2004 proposal, this infraction was described as follows:

[7] Engaging in sexual misconduct; or serious sexual harassment as defined in Administrative Regulation 4-26, including use of position, to obtain or attempt to obtain sexual favors; or engaging in further sexually harassing conduct despite prior disciplinary action.

Despite the approximately seven weeks of hard work and diligent effort put forth by both parties, on July 29, 2004, the PSTA told the PSP that the negotiations were “at an impasse,” and announced their withdrawal from the CBA negotiations on the discipline issue. Because the PSTA withdrew from the CBA negotiations on this issue, and decided to proceed with its case on discipline in the Act 111 interest arbitration proceedings, there was no agreement as to any of the PSP’s proposals. As of the date of the issuance of the Third Report, the Monitor had been advised that discipline was currently a subject of the Act 111 interest arbitration proceedings, which were then underway in Harrisburg.

While the Monitor believed that the proposals made by the PSP were a reasonable first step toward compliance with the OIG’s recommendations on this point, the PSP had not, as of the end of the third quarter, complied with the OIG’s recommendations. The Monitor recognized that the PSP could not compel the PSTA to enter into agreements concerning such CBA issues as discipline; moreover, the Monitor recognized that the PSTA had legal rights which they could seek to protect in the CBA negotiations. The Monitor expressed its deep disappointment that the parties had not reached an agreement to reform at least some aspects of what both parties agreed was a mostly ineffective and inconsistent system of discipline.

Since the PSTA willingly agreed to participate in the CBA negotiating sessions, and since the PSP produced several revised MOUs, apparently in response to comments by the PSTA, the withdrawal by the PSTA was puzzling. While it is true that the PSTA was not required to negotiate a new CBA – the PSTA was well within its rights to defer to the Act 111 interest arbitration proceedings – the PSTA’s stance as of the end of third quarter seemed at odds with its prior statements that they wanted to work out a fair system of discipline.

In its Third Report, the Monitor stated that, although the PSP had made progress, on a broad variety of issues, that would help deter any recurrences of the type of conduct engaged in by former Trooper Michael K. Evans and other former and current PSP Troopers, as the Monitor had detailed in its first three Reports, these reforms, no matter how laudable, would fall well short of the mark set by the OIG Report unless the PSP could also achieve the fundamental reforms advocated there in the Discipline section. Ultimately, the issue was not whether the PSTA could have been more agreeable in their negotiations with the PSP; rather, the issue was how and when the PSP could achieve the reforms recommended in the OIG Report.

Also in its Third Report, the Monitor cited (p. iv), the above-quoted language from the Second Report (p. 19), recommending the PSP to first focus “on a core group of the most serious

infractions,” and to later revise the Matrix³⁰ to cover the remainder of the PSP’s less serious infractions. The Monitor gave the following example: Even if the PSP were to define the particular types of sexual harassment and sexual misconduct that would automatically result in dismissal, the PSP would still need to provide appropriate guidelines for infractions that do not result in dismissal. Specifically, there are certain types of sexual harassment which, if presented as a first infraction, would not be expected to result in dismissal, and for which there should be penalties narrowly targeted for specific types of infractions. For example, for a first and less serious infraction such as leering at a woman, or telling sexual jokes/stories, where, in the words AR 4-26, “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 PSP might set a penalty such as a disciplinary transfer and/or suspension without pay, for a pre-set range of days.

Although the Monitor recognized, in its Third Report that its jurisdiction is limited to sexual harassment and sexual misconduct, the Monitor had joined the OIG in suggesting that the PSP give favorable consideration to the recommendations made in 1986 by the Deal Commission. Accordingly, the Monitor recommended that the PSP give serious consideration to establishing a codified system of disciplinary guidelines with a comprehensive set of penalties covering all the infractions in the Field Regulations. The Monitor urged the parties to resume negotiations on the discipline issues to meet the recommendations in the OIG Report. The Monitor stated that the PSP had 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.

Current Assessment of Compliance

During the fourth quarter, the PSP achieved major advances in its efforts to comply with the OIG’s recommendations on this point. Specifically, the PSP prevailed on almost all of its arguments on the discipline issues in the Act 111 interest arbitration proceedings. The arbitration panel’s decision was issued on December 22, 2004.

Before discussing the major effects of the arbitration panel’s Award, the Monitor will provide a brief history of the events between the Monitor’s Third Report, issued on September 27, 2004, and the arbitration panel’s decision on December 22, 2004.

The initial reaction of the PSTA, as stated by the PSTA’s President, Sgt. Bruce Edwards, to the Monitor, was that, despite the Monitor’s request to resume the CBA negotiations on the discipline issues with the PSP, the PSTA would not resume such negotiations due to the pending Act 111 interest arbitration proceedings. But, on or about October 21, 2004, the PSTA stated to the Monitor that it was willing to resume negotiations with the PSP. On November 3, 2004, the PSP and the PSTA resumed negotiations; the parties met on several occasions and made substantial progress in narrowing the issues. However, the negotiations could not be concluded

³⁰ As mentioned above, the Monitor stated in its Second Report that both the PSP and the Monitor had recognized that the Matrix needed to be substantially reworked.

before the deadline of November 15, 2004, set by the PSP, in that the Act 111 arbitration panel was scheduled to begin executive session deliberations on that date.

The arbitration panel determined the terms of the new CBA to replace the one that had expired on July 1, 2004. The panel considered the issues raised in the OIG Report concerning the misconduct of certain members of the PSP. The panel “recognized the need...to provide both [the PSP and the PSTA] with the means to restore the public confidence that the [PSP] is one of the finest law enforcement organizations in the country.” Furthermore, the panel stated that “this Award makes significant changes to disciplinary rules and processes to ensure that individuals who violate the public trust shall not serve among the ranks of the [PSP].”

The panel’s Award set in place fundamental changes in the standards and procedures for discipline for what the PSP had argued were the 12 most serious categories of misconduct.³¹ The system in place under the prior CBAs relied on a neutral arbitrator to decide whether the PSP had made out its case, both in terms of the sufficiency of the evidence and in terms of the appropriate penalty for all infractions. The new system changes the standards and procedures for the 12 enumerated categories of offenses, but for all of the numerous other infractions, the old system is still in effect. The panel’s Award requires that, for a member of the PSP who has been found to have violated any of the 12 new standards, the member is to be dismissed. Under the new system, “notwithstanding any mitigating circumstances,” the individual arbitrators³² who determine that the Commonwealth has met its burden of proof regarding the charged violation(s) cannot reduce the penalty from that of dismissal. Regarding sexual harassment and sexual misconduct, the description of the new standard, or category of infractions, is stated as follows:

[4] Engaging in sexual misconduct, as defined in AR 4-25; or engaging in sexual harassment as defined in AR 4-26 which is of a serious nature, including use of position or attempt to obtain sexual favors; or engaging in conduct which constitutes sexual harassment as defined in AR 4-26, subsequent to disciplinary action for prior serious sexual harassment.

This provision is almost identical to the language contained in paragraph [7] of the last Memorandum of Understanding (MOU) that had been proposed on July 28, 2004 by the PSP, as quoted above (p. 30). This standard is straightforward in its language. The definition of sexual misconduct was revised as part of the 2004 revisions of AR 4-25; similarly, the definition of sexual harassment was revised in the 2004 revisions of AR 4-26. The only substantial question in interpreting standard [4] is the meaning of the word “serious,” which is used to limit the applicability of sexual harassment in two instances. As this standard is worded, it will be up to

³¹ The language of the 12 standards adopted by the panel was very similar to the language of the standards proposed by the PSP.

³² By “individual arbitrators” the Monitor is referring to the neutral arbitrators each of whom is the sole decider of all factual and legal issues whenever a penalty set by the PSP is grieved.

the individual arbitrators to determine what acts of sexual harassment are “of a serious nature” or “serious.”³³

The other 11 standards are the following:

[1] Engaging in any action that constitutes the commission of a felony or a misdemeanor which carries a potential sentence of more than one (1) year, or in any action that constitutes the commission of an equivalent offense in another jurisdiction, state, or territory. Neither a criminal conviction nor the pendency of criminal charges is necessary for disciplinary action in such circumstances. In addition, a declination of prosecution shall not preclude disciplinary action.

[2] Engaging in domestic violence involving physical abuse of any victim; or engaging in activity which would cause a reasonable person to be in fear of bodily injury to the extent the Member’s conduct falls under subsection [1] above.

[3] Any use of a firearm to threaten another except as appropriate in the scope of employment (whether or not a specific, officially assigned, duty) or in the defense of self or others. This includes the use of a loaded or unloaded firearm to threaten another, regardless whether as a joke or in horseplay.

[4]...

[5] The commission of a serious act of deception during a criminal, civil or administrative investigation or proceeding, when under a specific, official obligation to be truthful, involving intentional (1) lying; (2) fabrication; (3) misleading acts or words; (4) civil or criminal fraud; or (5) perjury. Notwithstanding anything to the contrary in this Agreement, no Member may be subject to disciplinary charges for violating this subsection in regard to a statement or statements the Member made in a Departmental disciplinary investigation involving another member before the allegations involving the underlying investigation of that other member have been either dismissed by the Department or sustained or dismissed by an arbitrator as provided herein.

[6] Any activity that constitutes an intentional violation of Chapter 39 of the Crimes Code (relating to Theft and Related Offenses).

[7] Any use of any illegal substances, prohibited under 35 P.S. § 780-101 et seq., (Controlled Substance, Drug, Device and Cosmetic Act), or any substance use that constitutes the commission of an offense under Federal law or in any other jurisdiction, state, or territory, either on or off duty; or any use of controlled substances obtained by illegal means, either on or off duty.

³³ The PSP may want to consider amending the definition of sexual harassment in AR 4-26 to distinguish between those acts of sexual harassment which are “of a serious nature,” and those which are not.

[8] Positive drug test result under FR 3-5.

[9] “Driving under the influence” pleas, convictions or ARD under one of the following circumstances:

- (a) Second or subsequent DUI offense while employed by the Commonwealth (regardless of whether on or off duty); or
- (b) Involving a hit and run of a vehicle or property; or
- (c) While operating a state-owned vehicle.

[10] Loss of Pennsylvania operating privileges for 180 or more days, except for recall or suspension of operating privileges of any person whose incompetency has been established under Title 75 Pa. C.S. § 1519 (Motor Vehicle Code).

[11] Fighting or the use of other physical violence on the job, other than as reasonably necessary in the strict performance of a member’s duties as a law enforcement officer.

[12] Any period of incarceration for a misdemeanor conviction that results in the member being disqualified from accessing information from the CLEAN system in accordance with the FBI Criminal Justice Information Security (CJIS) Policy.

The Award also stipulates that the penalty of dismissal for the infractions stated in the sexual harassment/sexual misconduct standard ([4]), quoted above – as well as the penalty of dismissal for the other 11 enumerated standards – is not to be affected by any prior results in other cases. Rather, there is a “clean slate” clause which governs the punishment for all 12 standards:

[T]hese standards shall constitute a “clean slate” relating to the twelve terminable offenses described below in that they shall supersede and replace all prior standards, agreements, past practices and arbitration awards on the same subjects.

This provision, together with the provision described above which prohibits the individual arbitrators from altering the penalty of dismissal for the 12 enumerated offenses, affectively counters one of the problems identified in the OIG Report (p.42) of there being repeated softening of the penalties set by the arbitrators in sexual harassment and/or sexual misconduct cases.

One of the advantages of the new system of disciplinary standards, which require dismissal for any violations of these standards, is that they apply to all members of the PSP, regardless of rank. The 12 enumerated standards should dispel any possible perception – whether warranted or not – of preferential treatment due to rank, for violations of any of these standards.

In addition, the Award expands the prior practice, as required by the PSP's 2003-04 directives and regulations, of permitting internal investigations to be based on anonymous complaints. Previously, internal investigations could be initiated based on anonymous complaints only in situations where the conduct could give rise to criminal charges, and sexual harassment and/or sexual misconduct cases.

However, as dramatic as are the improvements brought about by the Act 111 arbitration Award, these improvements only concern the 12 enumerated standards, including sexual misconduct and sexual harassment, which are sufficiently serious to merit dismissal. Even with the dismissal penalties for the 12 enumerated standards, the PSP still needs to provide appropriate guidelines for infractions that do not result in dismissal, which would constitute the great majority of the disciplinary actions brought by the PSP. To satisfy the recommendations of the 1986 Deal Commission Report, the suggestions in the OIG Report, and the recommendations of the Monitor's Second and Third Reports, the PSP also needs to undertake the considerable work necessary to provide the consistent and fair penalties, narrowly targeted for specific types of infractions, which would not be expected to result in dismissal. As stated in the Monitor's Second and Third Reports, this might well involve drafting a greatly improved Discipline Matrix, or comprehensive guidelines to be applied to all the infractions in the Field Regulations. One of the many advantages of this approach would be, as with the 12 enumerated standards, that it should dispel any possible perception of preferential treatment due to rank. Because the revised Matrix, or guideline system, would have to be tailored to cover scores of different infractions, the Monitor further recommends that the PSP and the PSTA reconvene their joint Discipline Committee to explore new approaches to achieve this end.

Although the Monitor continues to recognize that its jurisdiction is limited to sexual harassment and sexual misconduct, the Monitor also continues to recommend that the PSP give favorable consideration to the recommendations made in 1986 by the Deal Commission. It is now 19 years since the Deal Commission issued its landmark Report. While the panel's Award accomplishes a major advance in discipline for 12 of the most egregious categories of infractions, this advance leaves the old system in place as to the great majority of infractions. The Monitor has demonstrated in its Second and Third Reports, following the OIG's suggestions, that the old system produces results which are inconsistent, frequently too lenient and involved hearings before arbitrators which are more costly – both to the Commonwealth and to the PSTA – than they would have to be if there were a revised Matrix or guideline system to cover the remainder of the infractions.

Finally, the revised version of FR 1-2, Section 2.31, provides a new, higher standard of conduct for all Commanders and supervisors. This section is an important improvement in the PSP's regulations regarding the responsibilities of high-ranking officials. This provision states, in part, as follows:

Commanders and supervisors are responsible for setting a tone and example of acceptable conduct for subordinate personnel. Acts of misconduct committed by Commanders and supervisors shall generally be viewed as more serious than if subordinate ...personnel

had committed the same misconduct. Commanders and supervisors bear a particular responsibility as it relates to the conduct of subordinate personnel. If a Commander/supervisor has knowledge of misconduct on the part of subordinate personnel and fails to act, that Commander/supervisor shall be held accountable....

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

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 Department Discipline Officer (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.

After setting out, in the Second Quarterly Report (p. 20), the reasons for these two recommendations in the OIG Report, the Monitor then considered the OIG's reasoning. The Monitor concluded (pp. 21-22) that the OIG's analysis was not well-supported but, in any event, even if the Troop Commanders had been responsible, as suggested by the OIG, for "disparate discipline," the Monitor believed "that there are less drastic means to achieve consistency than taking the Troop Commanders entirely out of the discipline process."

Instead, the Monitor recommended 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 Monitor also recommended that 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 Disciplinary Action Report (DAR). The training should also include all the Area Commanders, who must review the DARs issued by the Troop Commanders.

Moreover, because there was 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 saw no reason to substitute DDO personnel as the adjudicators.

For these reasons, the Monitor stated in its Second Report that it believed that the Troop Commanders should retain their functions as making charging decisions in the DARs and as the initial adjudicators, subject to review by the Area Commanders.

The Monitor noted that, 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 believed that this training met its intended goal of providing adjudicators with the tools needed to render fair and informed adjudications. In its Second Report, the Monitor stated that, the PSP had partially complied with the recommendations in the OIG's Report.

During the third quarter, the Monitor reviewed various aspects of the interrelationship between the Troop Commanders, the BIPS and the DDO. The Monitor was advised by the DDO, and its compliance review confirmed, that there were no significant omissions from the DARs. Although the OIG had found that the DARs sometimes "included" inconsistent infractions, the Monitor determined that, during the first, second and third quarters, the DARs conformed to the findings of the BIPS's investigations.³⁴ Finally, the PSP had advised, and the Monitor had confirmed, that the Troop Commanders and Area Commanders received "adjudication" training during the second and third quarters; during this training, these Commanders were advised that they should include all pertinent types of misconduct in the DARs. As of the third quarter, all the Commanders had received adjudication training, at which they were given lesson plans, which included references to the processing of the DARs. Accordingly, the compliance investigation done by the Monitor confirmed its assessment in its Second Report (p. 21) that any inconsistencies in the drafting of the DARs did not require the drastic step of attempting to reconfigure the adjudication process, so as to assign the function of drafting the DARs to the DDO.

Moreover, the Monitor's compliance reviews showed that there were no instances where the Troop Commanders failed to sustain the initial allegations, as long as the BIPS's investigation supported the charges. Accordingly, there was no evidence, during the first three quarters of the Monitors review, to support the implicit assertion in the OIG Report (pp.38-39) that the Troop Commanders should be removed from their role as adjudicators. The Commissioner had made clear that his zero-tolerance policy in sexual harassment and/or sexual misconduct matters must be taken seriously by all members of the PSP. If there were any situations where a Troop or Bureau Commander did not sustain an allegation supported by the BIPS's investigation, that failure would be reviewed by his or her supervisor, an Area Commander or a Lieutenant Colonel. With the Commissioner's newly stated policy, and with the element of review by one of the five Area Commanders or four Lieutenant Colonels, the Monitor could see no reason to restructure

³⁴ The PSP's regulation concerning Discipline, FR 3-3, makes clear that the DDO has the sole and exclusive responsibility of adding the Field Regulations citations to the DARs initially prepared by the Troop Commanders.

The description of the behavior [by the Troop Commanders in the DARs] shall be brief but sufficiently detailed to support the violation. The description should be specific in terms of identifying the member's conduct, attitude or performance. The specific Field Regulation (example: FR 1-1.02) shall not be listed [by the Troop Commanders]. Applicable Field Regulations sections violated shall be determined by the Discipline Officer.

the PSP, especially in light of its record of there being no failures to sustain supported charges in the first three quarters of the Monitor's review.

Finally, Department Special Order 2004-51, Administrative Investigation Adjudication Review Process, issued on June 4, 2004, provides, in part, as follows:

If, after consultation, the reviewing officer and the adjudication officer cannot reach consensus as to the adjudication of an administrative investigation, the appropriate Deputy Commissioner shall be contacted for further guidance/consultation. This Deputy Commissioner may mediate the matter; remand the matter for adjudication by the Troop Commander or Office/Division Director; reassign the adjudication to the appropriate Area Commander/Bureau Director; or request that the Deputy Commissioner of Professional Responsibility reassign the adjudication.

By articulating a comprehensive process by which an adjudication is to be reviewed, the PSP had acted to insure that adjudications are consistent. The PSP intended to place the language from this Order into the next revision of AR 4-25. The Monitor stated that the PSP had partially complied with the OIG's recommendations.

Current Assessment of Compliance

During the fourth quarter, the PSP issued a revised version of AR 4-25, which contained new directives on how adjudications shall be conducted. An "adjudicating officer" is defined as the "Troop Commander/Division Director or other individual such as the Commanding Officer of the subject(s) of the investigation." The revised version of AR 4-25 also provides that the adjudicating officer "prior to notifying the subject(s) of the investigation of their adjudication, [shall] consult with the appropriate reviewing officer for concurrence." This revision also provided that, if the adjudicating officer and the reviewing officer cannot agree as to an adjudication, "the appropriate Deputy Commissioner shall mediate the matter," using any of several different methods. Section 25.08 D.2. The revised version of AR 4-25 also defines the role of the "reviewing officer." Section 25.08 E.

Also during the fourth quarter, the Monitor was advised by the DDO, and the Monitor's compliance reviews confirmed, that there were no significant omissions from the DARs during the fourth quarter. The Monitor also confirmed its previous finding, made during the third quarter – but in fact covering the first three quarters – that the DARs conformed to the findings of the BIPS investigators. Moreover, again as in the third quarter, the Monitor's compliance reviews showed that there were no instances when the Troop Commanders failed to sustain the charges, as long as the BIPS investigations supported the charges.

In light of the results of these compliance reviews, some made over all four quarters and some made over the last two quarters; in light of the in-depth analysis of the issues, summarized above; and in light of the final revisions of AR 4-25, summarized above, the Monitor finds that the PSP has complied with some of the OIG's recommendations, and finds further that the reforms the PSP has made are, with all due respect to the generally superb analysis of the OIG

Report, an improvement over the recommendations of the OIG. Accordingly, the Monitor finds that the PSP should not be held to the letter of the OIG's recommendations.

Based on the foregoing, the Monitor has determined that, while the PSP has not complied with certain of the recommendations of the OIG referred to above, the PSP has complied with the Monitor's recommendations concerning this section of the OIG 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.

In its Second Report, the Monitor stated that, 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. The Monitor withheld a determination of compliance with this recommendation.

During the third quarter, the Monitor determined that because the PSP had been engaged in CBA negotiations with the PSTA concerning discipline issues, and because these discipline issues are a part of the Act 111 interest arbitration proceedings, the PSP had not yet been able to do an assessment of future personnel needs at the DDO. This is because, depending on the results of the CBA negotiations and of the arbitration proceedings, the possible need for additional DDO staffing could not yet be determined. Once the CBA negotiations and the arbitration proceedings were concluded, presumably during the fourth quarter, the PSP would then be in a position to do an audit of the DDO to determine what, if any, additional staffing is necessary. The Monitor stated that it would defer its determination of whether or not the PSP had complied with the OIG's recommendations on this point.

Current Assessment of Compliance

During the fourth quarter, the PSP determined that, because the DDO was not assuming any expanded responsibilities, there would be no need for any additional staffing of the DDO. This is consistent with the Monitor's recommendations that the Troop Commanders, Area Commanders, and Bureau Directors retain their established roles as the adjudicators for various members of the PSP under their supervision.

Based on the foregoing, the Monitor has determined that, while the PSP has not complied with certain of the recommendations of the OIG referred to above, the PSP has complied with the Monitor's recommendations concerning this section of the OIG Report.

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 its Second Quarterly 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.

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

Current Assessment of Compliance

Based on the foregoing, the Monitor has already determined that the PSP has complied with the OIG's recommendation on this point.

H. SUMMARY OF THE MONITOR'S RECOMMENDATIONS

1. Establish Definitive Guidelines (Section II.C.). While the arbitrators' Award is a dramatic improvement in the area of discipline, the Monitor recommends that the PSP work with the PSTA to devise a revised Matrix, or a codified system of disciplinary guidelines, with a comprehensive set of penalties, to cover the remainder of the infractions in the Field Regulations.

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 its 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 its First Report.

During the second quarter, the Monitor assessed the PSP's current pre-employment background investigation process. The Monitor found that the PSP was continuing to use Troopers to

conduct pre-employment background investigations.³⁵ One issue that was identified by the Monitor is that Troopers have busy caseloads which impact on the amount of time available to conduct these investigations. Although the PSP directed that all background investigations shall be completed by Troopers, the PSP did not limit the number of investigators who are performing background investigations. The PSP stated that limiting the number of investigators would limit its flexibility in conducting background investigations. The PSP encouraged 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.

The Monitor also found that the PSP had 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 (BHR) immediately.

The Monitor determined that the Deputy Commissioner of Administration, through the BHR, had directed that all Cadet applicants must complete a pre-employment polygraph examination. The Polygraph Review Committee (PRC) makes pass/fail decisions. An issue that has been identified by the Monitor is whether polygraph examiners should be permitted to conduct post-test interrogations of applicants. A second issue that has arisen is whether to place a polygraph examiner on the PRC. On a third issue, the PSP has prohibited polygraph examiners and background investigators from conducting an examination or background investigation on an applicant they know either personally or professionally.

During the third quarter, the PSP, in an effort to promote greater consistency in all background investigations, drafted a training manual for investigators doing background checks on applicants for positions as Troopers. This manual, expected to receive final approval during the fourth quarter, was designed not only for use in training the investigators, but also to assist the investigators when they are conducting background investigations. Among other things, this manual would permit investigators and their supervisors to include their subjective opinions as to the suitability or unsuitability of applicants for positions as Troopers. However, although the manual requires investigators to make derogatory comments when appropriate, it does not explicitly require investigators and/or reviewing officers to express their opinions specifically regarding the suitability or unsuitability of an applicant for a position as a Trooper.³⁶ The Monitor recommended that the PSP consider amending the manual to require background investigators and reviewing officers to express such opinions directly.

³⁵ The CBA currently prohibits the PSP from using any outside party, including retirees, from conducting pre-employment background investigations.

³⁶ The manual requires that all derogatory information, regardless of the source, shall be included in the background investigation. It further provides, at Section I., Investigator's/Reviewing Officers' Comments, that "[i]nvestigators may also make any comments that they would like to include in the investigation Investigators shall make comments regarding the applicant's demeanor, timeliness in attending the interview or submitting documents, etc., when the comments may be derogatory in nature."

Also during the third quarter, the PSP maintained its prior practice of having investigations of applicants performed by personnel of the Troop in the area where the applicant resides. The PSP initiated a new policy that, even if the investigator conducting the background check believed that information had been uncovered which should disqualify the applicant, the investigator is not permitted to offer the applicant a voluntary withdrawal form. Moreover, if an applicant wishes to withdraw, he or she must now obtain the appropriate form from the BHR, rather than from the background investigator. If the investigator determines that there has been evidence of an automatic disqualification factor, the investigator should immediately contact the BHR. An investigation can be terminated only at the direction of the BHR.

In addition, during the third quarter the PSP adopted a new policy of not permitting a polygraph examiner to offer a voluntary withdrawal form to an applicant who the examiner feels has lied during the polygraph interview. The PSP has determined that a polygraph examiner may conduct a second, follow-up polygraph if the polygraph examiner believes that such a follow-up polygraph is warranted; however, if the examiner makes his or her determination that a follow-up is appropriate during normal business hours, he or she must contact the BHR so that the BHR could be consulted on this matter.

The Monitor stated that the PSP had prepared a draft memo which, when finalized, would be forwarded to all of the PSP's polygraph examiners. This memo would cover the various situations that may arise during the course of the examiner's interactions with the applicants. Moreover, the PSP had established a new policy by which polygraph examiners are prohibited from advising the applicant whether he or she had passed or failed the polygraph examination; rather, the applicant would only be so informed by the BHR, and then only after the PRC had analyzed the information received from the polygraph examiner. If the applicant disputed the accuracy of this determination, then he or she could appeal to the Polygraph Review Panel. The Monitor stated that, the PSP had partially complied with the OIG's recommendations on this point.

At the end of the third quarter, the Monitor first became aware, through a periodic review of PSP files, of a matter involving an applicant who, during the PSP background investigation, admitted to having a sexual relationship many years earlier, when he was 19, with a 15-year old girl.³⁷ The applicant was approved, after the initial background investigation and review process, and was admitted to the State Police Academy as a Cadet. While he was at the Academy, the PSP received information which led to a re-examination of the applicant's eligibility to become a Cadet, and the Cadet was thereafter dismissed from the Academy.

³⁷ The Monitor has clarified this summary, initially taken from the Third Quarter Report, in light of information the Monitor obtained during the fourth quarter.

Current Assessment of Compliance

During the fourth quarter,³⁸ the PSP conducted six hours of training for criminal investigators and their supervisors, as well as for members of the PRC panels and the BISP panels.³⁹ Part of the training included background investigations. This training covered, among other things, Cadet selection procedures, automatic disqualification factors (as set by the BHR), and polygraph examination procedures. The PSP issued a training manual covering all of these topics.⁴⁰

The Monitor attended three of the six hours of this new training, on October 27, 2004. Based on the Monitor's attendance at this training session, and the Monitor's review of the manual, the Monitor has determined that the training and the manual expand on and/or revise a number of areas covered in previous training sessions and training manuals. The manual incorporates a new provision requiring all background investigators, reviewing officers, and Criminal Investigation Section Commanders⁴¹ to express their opinions regarding each applicant. Now, these individuals "shall make comments regarding the applicant's suitability or non-suitability for employment as a State Police Cadet...." The manual also discusses the use of the enumerated automatic disqualification factors.

The manual also provides that neither the background investigator nor the reviewing officer shall "conduct or review a background investigation on an applicant known personally or professionally to either." In addition, the manual provides that the only members who are permitted to conduct background investigations are those who have received Background

³⁸ As mentioned above in the discussion in this section of the developments during the third quarter, the Monitor had learned, at the end of that quarter, of possible issues concerning the background investigation of an applicant who had admitted to a particular sexual relationship when he was 19. The Monitor has done additional investigation of this matter. However, the Monitor cannot comment on the facts, because this matter is now in litigation in federal court. The Monitor cannot comment on its analysis of this matter because the focus of this analysis was the conduct of the background investigation and subsequent reviews; similarly, the subject of the federal litigation is the appropriateness of background investigation and subsequent reviews. The Monitor cannot properly comment on matters which are at issue in litigation. By contrast, in the matter of the PSP member who alleged that her superior had groped her and otherwise engaged in unwanted sexual touching, as described above at pages 7-8, the conduct of the investigation – in terms of its timing and thoroughness – were not an issue in the federal litigation. Accordingly, it was proper for the Monitor to comment on both aspects of that PSP investigation.

³⁹ Because of the volume of applications which must be reviewed, both the PRC and the BISP are composed of different panel members.

⁴⁰ The training and the training manual are both broad in scope, covering many topics other than the ones mentioned here, which are relevant to background investigations of applicants. The training manual, which is based on other law enforcement background investigation training practices, is comprehensive in scope and is, accordingly, much broader in scope than the issues discussed here.

⁴¹ The Criminal Investigation Section Commanders are Lieutenants, who supervise criminal investigators under their command. Specifically, they supervise members of the PSP who are Sergeants or Corporals, who act as reviewing officers, who, in turn, supervise Troopers, who act as criminal investigators and who, in turn, sometimes function as background investigators. The Criminal Investigation Section Commanders, for all matters dealing with criminal investigations, report to their Troop Commanders.

Investigation Training. In those instances where the PSP has learned that the applicant has applied to other law enforcement agencies for employment, the background investigator is required to contact each such law enforcement agency to ascertain the status of the application, any reasons for the disqualification, such as a failed written examination, a failed physical fitness test, a failed polygraph, and/or a failed background investigation.

On October 28, 2004 the PSP issued new and revised procedures for Cadet selection procedures, as set out in the revised, final version of AR 4-34. The final version of AR 4-34 made changes in the composition and training of the PRC.⁴² In response to suggestions made by the PSTA, various members of the PSP, and representatives of the BHR, the PSP also amended AR 4-34 so that it provides that the PSP's Polygraph Coordinator or his designee shall be present at all the meetings of the PRC.

The final revised version of AR 4-34 also requires that all members of a PRC (there are different members of a PRC) and all members of a BISP, (there are different members of a BISP) be trained pursuant to the new PRC/BISP manual. No one can be selected as a member of either a PRC panel or a BISP panel unless that person has previously received training pursuant to the new manual. In addition, the new version of AR 4-34 requires that a PRC be composed of three Lieutenants. Previously, a PRC sometimes included one or more Captains or higher ranking officers; this practice was found to be inefficient because the Captains or higher ranking officers were often too busy to devote the necessary time to prepare for the meetings of the PRC to which they were assigned.

The new version of AR 4-34 also contained several provisions regarding the use of polygraph examinations in the application for employment process. One new provision requires that no polygraph examiner examine an applicant whom he or she knows personally or professionally. This provision was included because the PSP believed that familiarity between the examiner and the applicant could skew the results.

In addition, the new version of AR 4-34 provides that, while an applicant may still initiate the process by which he or she will sign a form to withdraw from the application process, the polygraph examiner is prohibited from suggesting to the applicant that he or she sign a withdrawal form.

Finally, the new version of AR 4-34 adds a provision regarding the situation in which the polygraph examiner wishes to immediately conduct a second, follow-up polygraph examination to clarify certain issues from the first polygraph examination. This provision requires the

⁴² The Monitor recommends that the PSP consider whether to adopt a new policy, when the PRC decides to refer a file to the background investigator for further investigation, to require the PRC to keep its file on the matter open until the background investigator has completed the supplemental investigation. While there may be valid administrative reasons for the current arrangement, the Monitor believes that its recommendation could streamline the review process.

polygraph examiner to notify the BHR, during normal business hours, of his or her intention to perform a second, follow-up examination. If the polygraph examiner cannot contact the BHR during normal business hours, the examiner should proceed with the second examination and then contact the BHR during the next business day with the results.

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

B. STANDARDS AND TRAINING OF THE APPEAL PANEL

The OIG Report (p. 57) recommended that the PSP take steps to guide the Background Investigation Appeal Panel (BIAP) and to assist the Panel in making more considered decisions. Specifically, the Report recommended that the PSP provide the BIAP 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 "[BIAP] should exercise great caution in reversing a disqualification of a candidate" by the PSP following its investigation. In its First Quarterly Report, the Monitor found that the PSP had not yet complied with the OIG Report's recommendations. As of the Second Quarterly Report, standards had not yet been developed for the BIAP, nor had training been provided.

During the third quarter, the PSP did not provide training to the BIAP, nor had specific standards been articulated or burdens of proof established for the BIAP to consider prior to rendering a decision on an applicant. The PSP stated that, during the fourth quarter, it would provide training to members of the PRC, the BISP and the BIAP. The Monitor stated that the PSP had not complied with the OIG's recommendations to address deficiencies in the appeal process.

Current Assessment of Compliance

During the fourth quarter, the Monitor attended one training session for the various members of a PRC, and another training session for the various members of a BISP. The Monitor considers both of these training sessions to have been effective. The Monitor notes that, as stated in its Third Report, there has been no specific training of the members of the BIAP. However, as noted above, since the members of the BIAP are drawn from the members of the PRC and the BISP, the members of the BIAP have, in effect, already received much of the appropriate training. The Monitor notes that an examination of the training manual referred to above in Section III.A. contains provisions for the role of the members of the BIAP.

The Monitor also notes that the PSP adopted a new policy, which requires that the individual members of the PRC, the BISP and the BIAP be screened to determine if there were ever any allegations of sexual harassment and/or sexual misconduct, or if there were any filing of a PFA Order, against such individual, so that there would be no possible conflict of interest on the part of any member of any of these panels.

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

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 OIG Report recommended that the PSP should take steps to extend the probationary period until the matter under investigation is resolved. In its First Quarterly 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.

During the second quarter, the Monitor assessed whether the PSP was taking steps to coordinate the probationary review with the BIPS and the EEOO before a member passed his or her probationary period, and whether the PSP was extending the probationary period whenever a BIPS investigation was pending. According to the PSP, the PSTA, when requested, allowed the probationary periods to be extended under these circumstances.

In its Second Report, the Monitor stated that the PSP had taken steps to coordinate the probationary review of Troopers with the BIPS/IAD and the BHR before the Troopers completed their 18 month probationary period. The Monitor recommended that the PSP take additional steps to establish a written policy to include the EEOO in the coordination of the background investigations, as recommended by the OIG. The PSP had stated that revised AR 4-25 would 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 had been one Trooper who had his/her probationary period extended as a result of a pending BIPS investigation. This Trooper was the only one who had a pending BIPS investigation during his/her probationary period during these quarters.

During the third quarter, there had been one Trooper who had his/her probationary period extended as a result of a pending BIPS investigation. This pending BIPS investigation did not involve sexual harassment or sexual misconduct. The PSP had drafted a revision to AR 5-2, section 2.09, requiring that the probationary period of PSP members be extended pending the completion of an investigation by the BIPS. The PSP expected to issue the final version of AR 5-2 during the fourth quarter. The Monitor stated that the PSP had partially complied with the OIG's recommendations by implementing extensions of the probationary periods. The PSP had not complied with the written policy and procedure recommendations. The Monitor repeated its recommendation that coordination of the probationary review between the BIPS and the EEOO, and the need for extensions of the probationary period, where appropriate, should be reflected in written policy.

Current Assessment of Compliance

During the fourth quarter the PSP issued, on October 28, 2004, the final version of the revised AR 5-2, Section 2.09. The final version of AR 5-2 incorporated the same language as was contained in the draft of this AR, as described in the Monitor's Third Report, summarized above. Moreover, the final version of AR 5-2 also contained provisions concerning the Probationary Trooper Review Panel (PTRP), the Probationary Trooper Administrative Review Panel (PTARP), and the coordination between these two Panels, the BIPS and the EEOO. The PTRP, which consists of three PSP officers, holding the rank of Lieutenant or Captain, receives information about the probationary Trooper, from the BIPS, from the EEOO, from the BHR, and from the training Academy concerning his conduct, deportment, and competency. This coordination permits the newly-created PTRP to move quickly, based on the information it has received, to recommend the extension of the probationary term of a probationary Trooper or disqualification of a probationary Trooper, if misconduct has been alleged or uncovered by the BIPS, the EEOO, and/or the BHR. If the PTRP recommends a probationary Trooper's term be extended, or that such a Trooper be disqualified, this recommendation would then be forwarded to the PTARP, which would review the recommendation and either confirm or disagree with the PTRP's recommendation.⁴³ If the PTARP confirms or denies PTRP's recommendation, then the matter would be forwarded to the Commissioner for final action. Moreover, if a probationary Trooper has not completed the full term of 18 months of his probationary period due to a call-up of the Trooper's Reserve or National Guard unit, illness, a BIPS investigation, or some other reason, then a Troop or Area Commander, or Director of the BHR, could request the PTRP and the PTARP to seek an extension from the BHR.

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

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. In its First Quarterly Report, the Monitor stated that this recommendation required better coordination and had raised the awareness of the PSP. The Monitor also stated that this recommendation appeared to have created a climate for more information sharing.

In its Second Report, the Monitor stated that the required coordination with the BIPS, the EEOO, and the assigned member, before the end of the probationary period, was not taking place. The Monitor recommended that the PSP consider developing standards to require coordination among relevant Bureaus, Offices, and personnel. The Monitor stated that the PSP had not complied with this OIG recommendation.

⁴³ In determining its recommendation, the PTARP will be furnished a copy of the Cadet background investigation of the probationary Trooper.

During the third quarter, the PSP had not fully coordinated with the BIPS, the EEOO, and the assigned member, before the end of the probationary period. The BHR does, as part of the review process, provide a list of names of probationary Troopers to the BIPS and request all disciplinary records from the BIPS; if any records exist, they are included in the probationary Trooper's file for review. The PSP had drafted a revision to AR 5-2, Section 2.09, to require the BHR, the BIPS, and the EEOO to determine if a probationary Trooper is the subject of any completed, open, or pending investigation or inquiry. The draft policy also included consideration of a probationary Trooper's Cadet background investigation and disciplinary history while at the State Police Academy. The Monitor stated that the PSP had partially complied with this OIG recommendation.

Current Assessment of Compliance

During the fourth quarter, the PSP adopted a finalized version of the revision to AR 5-2, Section 2.09, which incorporated the changes discussed above, in the paragraph concerning the Monitor's Third Report. Also, the PSP developed a computerized "red flag system" by which to provide the BIPS and the BHR with up-to-date information concerning probationary Troopers who are the subjects of current BIPS investigations.

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

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 its First Quarterly 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.

In its Second Report, the Monitor assessed whether the PSP was re-examining pre-employment background investigations when a complaint was made against a probationary member. According to the PSP, the Department was committed to carrying out this recommendation. However, relevant personnel were unaware of an order or other instruction that had been issued directing that a re-examination of the background investigation take place when a complaint was filed against a probationary member.

During the third quarter, the PSP and the PSTA made (as yet unsuccessful) efforts to resolve the issue of how to treat a probationary Trooper if there has been a "break" in his or her probationary term due to an injury, an illness, military service or a discipline matter. However, because the PSP and the PSTA were then engaged in the Act 111 interest arbitration proceedings, resolution of this issue was pending the completion of the arbitration proceedings. The Monitor stated that it had not fully evaluated the implementation aspect of the OIG's

recommendation. The PSP had not complied with the policy requirements of this OIG recommendation.

Current Assessment of Compliance

During the fourth quarter, the PSP issued the final version of AR 5-2. As is set out in section III.C., AR 5-2 provides that if there has been a “break” in the probationary term of a probationary Trooper due to a call-up of the Trooper’s reserve or National Guard unit, an illness, a BIPS investigation, or some other matter, the probationary Trooper can seek, through the BHR, to have his or her probationary term extended to cover the time lost. Such a probationary Trooper would apply to the PTRP and the PTARP to resolve such a matter.

Based on the foregoing, the PSP has complied with the OIG’s recommendations.

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

During the second quarter, the Monitor assessed whether the PSP was 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 were using greater caution, although the PSP had not issued any instructions to the personnel who conduct the investigations or the panels that review them. The Monitor stated that it was evaluating the OIG’s recommendation and assessing whether it would make 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 Monitor recommended that the PSP should identify a mechanism for insuring that such an order would be implemented. For these reasons, in its Second Quarterly Report, the Monitor withheld a determination of compliance.

During the third quarter, the PSP planned training on the necessity for the use of greater caution by supervisors, by reviewers, and by members of the PTRP when filing periodic reports concerning the acceptability of retention of probationary Troopers. The PSP stated that it would provide such training during the fourth quarter, including additional training to members of the PTRP, so that there would be more consistency in the treatment of probationary Troopers. The PSP stated that it also planned, during the fourth quarter, to issue a revised version of AR 5-2, covering all aspects of the probationary Trooper program. The Monitor stated that the PSP had partially complied with the OIG’s recommendations.

Current Assessment of Compliance

During the fourth quarter, the PSP stated that the training of members of the PTRP would be provided prior to the time the PTRP next meets to evaluate the retention of probationary Troopers. That meeting, and the training associated with it, will be held on a date to be specified during 2005, within a specific period close to the end of the Trooper's probationary period. The PSP has prepared the training manual for this training.

The PSP issued the final version of AR 5-2, on October 28, 2004, which included the same provisions as the draft version referred to in the Monitor's Third Report, as summarized above.

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

G. SUMMARY OF THE MONITOR'S RECOMMENDATIONS

1. Inconsistencies in Background Investigations (Section III.A.). The Monitor recommends that the PSP consider whether to adopt a new policy, when the PRC decides to refer a file to the background investigator for further investigation, to require the PRC to keep its file on the matter open until the background investigator has completed the supplemental investigation.

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.

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 later 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. The PSP stated that this Special Order would be incorporated into the revisions of AR 4-25, Internal Investigations. In the Second Quarterly Report, the Monitor recommended that the PSP also incorporate the language of Bureau Special Order 2004-01 into AR 4-26, Sexual Harassment Policy, to incorporate the important policy requirement that BIPS investigators handle sexual harassment and sexual misconduct cases.

The Monitor tracked all new sexual harassment and sexual misconduct complaints during the second quarter and confirmed that the BIPS had been assigned to investigate all allegations of sexual harassment, as recommended by the OIG. The Second Report stated that the PSP had

complied with the implementation portion of the OIG's recommendations, but that the Monitor would defer evaluating the policy portion of the recommendations until the proposed changes in the regulation had become finalized.

During the third quarter, Bureau Special Order 2004-01 was incorporated into the revisions that had been made to AR 4-25, Internal Investigations. In addition, the PSP issued a draft revision to AR 4-26, Sexual Harassment Policy. The Monitor reviewed the draft revisions to AR 4-26 and confirmed that the language of Bureau Special Order 2004-01 had been included. According to the PSP, the revised AR 4-26 would be issued in the fourth quarter. The Monitor also continued to track all new sexual harassment and sexual misconduct complaints and confirmed that the BIPS is in fact assigned to investigate all allegations of sexual harassment and sexual misconduct, as recommended by the OIG Report. The Monitor stated that the PSP had complied with the implementation requirements of the OIG's recommendation. The policy requirements will be assessed when the draft regulations are issued.

Current Assessment of Compliance

During the fourth quarter, the PSP issued the final versions of AR 4-25 and AR 4-26. The final version of AR 4-26 satisfied the OIG's recommendations that the regulation be amended to include provisions that (1) the BIPS will investigate all allegations of sexual harassment and/or sexual misconduct, and (2) that the PSP should not require that a complaint of sexual harassment or sexual misconduct be in writing or that it be supported by a Complaint Verification Form.

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

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.

During the second quarter, the Monitor evaluated AR 4-25 and AR 4-26. According to the PSP, AR 4-26 was written to be consistent with the applicable Commonwealth Executive Orders and Management Directives. However, according to the PSP, the current CBA imposes certain constraints. 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 reported to the Monitor that it was negotiating this and other related issues for the next CBA.

The Second Quarterly Report stated that the PSP had not yet complied with the OIG's recommendation because of constraints imposed by the CBA.

During the third quarter, the Monitor continued to evaluate the PSP's draft changes to AR 4-25 and AR 4-26. The PSP contended that these regulations were written to comply with applicable Commonwealth Executive Orders and Management Directives. The PSP previously represented that the CBA imposed certain restraints on the PSP, such as only allowing anonymous complaints to be investigated if the allegations could result in criminal charges. The PSP then contended that it had used language in the regulations indicating that "all complaints" will be investigated, which includes anonymous complaints. One anonymous complaint alleging sexual misconduct was received in the third quarter; this complaint was being investigated by the BIPS. Furthermore, the EEOO had been given more significant responsibility with regard to sexual harassment complaints (see Section IV. I., EEOO Involvement). The Monitor stated that the PSP had complied with the implementation requirements of the OIG's recommendation. The Monitor also stated that the policy requirements would be assessed when the draft regulations were issued.

Current Assessment of Compliance

During the fourth quarter, the PSP issued the final versions of AR 4-25 and AR 4-26. As noted above in the discussion of the events of the third quarter, the main concern as to the Commonwealth Executive Orders and Management Directives was that anonymous complaints be investigated in matters where sexual harassment and/or sexual misconduct have been alleged. Also as noted above, the draft version of AR 4-25 included language which required that anonymous complaints be investigated in such situations. The final versions of AR 4-25 and AR 4-26 include language sufficient to satisfy the OIG's recommendations on this point. In addition, the final versions of the two regulations give the EEOO significantly greater responsibilities with regards to sexual harassment complaints. The Monitor has reviewed the relevant provisions in the final versions of these two regulations and has determined that they satisfy the concerns in the OIG Report.

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

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.

The PSP responded that specific training in this area was to begin for all enlisted personnel in November 2003. In its 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/IAD investigators.

In the second quarter, after attending sexual harassment training courses, the Monitor 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. The Monitor requested that, in any event, the PSP provide the Monitor with the full lesson plan prior to delivering this training to the BIPS investigators. The Monitor found that the PSP had partially complied with the OIG's recommendation to provide specific training on sexual harassment and sexual misconduct investigations to the BIPS investigators.

During the third quarter, the PSP held training for nine of the 16 BIPS investigators on conducting investigations of sexual harassment complaints. According to the PSP, the remaining investigators were to receive the training as their schedules permitted. In the interim, all sexual harassment and sexual misconduct complaints were to be assigned to investigators who have already received the training. Although the Monitor had requested, in its Second Report, that the PSP provide the Monitor with a full lesson plan prior to delivering the training to the BIPS investigators, the PSP did not comply with this request. Therefore, the Monitor had not evaluated the lesson plan or the training course. The Monitor stated that the PSP had partially complied with the OIG's recommendation to provide training to the BIPS investigators. The Monitor had not yet evaluated the training provided to the BIPS investigators. The PSP had not complied with the OIG's recommendation to provide investigative training to the EEOO liaisons.⁴⁴

Current Assessment of Compliance

During the fourth quarter, the PSP issued, on October 28, 2004, a revised version of AR 4-25, which requires that only BIPS investigators shall investigate any complaint alleging sexual impropriety, as noted above, at Section I.A. The revised version of AR 4-25 also provides, "[T]he assigned investigator shall have completed training, unique to conducting such investigations and approved by the Director [of the BIPS]." Several BIPS investigators attended such training in September 2004. New training classes will be held, as necessary. This training is described in Section III. A.

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

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. In the First Quarterly Report, the Monitor stated that it had determined that this is an ongoing priority within the Bureau of Training and Education (BTE).

⁴⁴ The reference, in the Monitor's Third Report, to the EEOO liaisons as being part of the OIG's recommendations, was in error.

In its Second Report, the Monitor confirmed that Cadets receive “Core Values and Core Purpose” training, which covers sexual harassment and sexual misconduct. The Monitor’s assessment also stated that, prior to the OIG’s Report, Cadets were given two hours of training on sexual harassment. As of the second quarter, Cadets were 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 had been changed to use the lesson plan of the Office of Administration (OA) (described below in Sections E and F). However, the OA training did not include specific law enforcement examples. The Cadet training was consistent with the training the rest of the Department would be receiving. Further recommendations with regard to this training were outlined in the Monitor’s Second Report. In its Second Report, the Monitor withheld a determination of compliance concerning the OIG’s recommendation to make sexual harassment and sexual misconduct a more significant part of Cadet training.

During the third quarter, the Monitor stated that, since the PSP had represented that the lesson plan for Cadets would mirror the OA sexual harassment training for all PSP members, the Monitor’s assessment is articulated below in Section IV. F.

Current Assessment of Compliance

During the fourth quarter, the EEOO issued a Compact Disc (CD) for use by all Cadets, members of the PSP, and all civilian employees of the PSP. This CD concerns sexual harassment training and includes, among other things, a definition of sexual harassment. The CD also includes training as to how an individual should respond to situations where he or she feels victimized by sexual harassment. The CD also includes directions to supervisors as to how to handle claims of sexual harassment which have been referred to them. The EEOO plans to update this CD on an annual basis. (This paragraph also applies to Sections IV.E, IV.F. and IV.G.)

The PSP issued Special Order 2004-05, on November 9, 2004. This Special Order required that all future Cadet training classes receive sexual harassment training.

Based on the foregoing, the PSP has complied with the OIG’s recommendations.

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 its First Quarterly Report, the Monitor stated that in November 2003 the PSP began offering mandatory training entitled “Honor of the Force.” The PSP represented that this training was developed to deal with the impact of the sexual misconduct reported in the media and with the

subsequent OIG investigation. According to the PSP, input was sought from several community organizations, including the Pennsylvania Coalition Against Rape, the Pennsylvania Coalition Against Domestic Violence, and the Victims Advocate. The PSP 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.

Since the PSP was not offering separate sexual harassment and sexual misconduct training for supervisors, but instead offered the same training to all members, the Monitor incorporated its compliance assessment and recommendations in Section IV.F. of the Second Report.

During the third quarter, the PSP held its annual training on sexual harassment and sexual misconduct which was delivered by the OA and the PSP. This training was designed for supervisors. The OA and the PSP added some examples in their oral presentation to make the training more applicable to law enforcement. The PSP also provides basic supervision classes for all members who become new supervisors. This training covers sexual harassment. The Monitor recommended that the PSP also include sexual misconduct training as part of the basic supervision classes.

Also during the third quarter, the PSP issued Department Special Order 2004-49, which provided that all PSP employees, including civilians, should receive sexual harassment awareness and prevention training by no later than July 23, 2004. This training, was conducted and specifically covered sexual harassment and sexual misconduct. The Monitor stated that, the PSP had complied with the OIG's recommendations.

Current Assessment of Compliance

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

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.

The Second Quarterly Report stated that, during that quarter, the PSP had made progress in its in-service sexual harassment training. The BTE instituted specific training on sexual harassment in November 2003. Sexual harassment training had been included in the PSP's "Honor of the Force" training, and sexual harassment and sexual misconduct issues are included in the PSP's "Core Values and Core Purpose" training. The Monitor recommended that the PSP continue to develop more comprehensive training to include specific PSP examples.

During the second quarter, the PSP reported that it 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 OA, the Bureau of Equal Employment Opportunity and the Office of General Counsel. This training covers the law on sexual harassment. The 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 directed that this training for all personnel be completed during the third quarter. The EEOO liaisons were responsible for conducting the training. After attending a portion of the "Train-the-Trainer" training held on April 26, 2004, and reviewing all of the course materials, the Monitor made several recommendations regarding the training in the Second Report.

During the third quarter, an audit of the EEOO was conducted. The PSP named a new Director of the EEOO, effective July 17, 2004. The PSP had represented that, after the audit, a determination was made that the sexual harassment training, which had been given by the EEOO in conjunction with the state's Equal Employment Opportunity Office (state EEOO), should be made a part of the Cadet training. The Monitor attended a training session for Cadets which was taught jointly by the PSP EEOO and the state EEOO, and found that the training was consistent with the OA sexual harassment training that is offered to all PSP members.

The EEOO liaisons delivered the OA sexual harassment training to the great majority of PSP personnel during this quarter. A member of the monitoring team attended two separate two-hour training sessions.

However, the PSP had not incorporated the Monitor's recommendations outlined in the Second Report. The PSP had indicated that it intended to expand the "Train-the-Trainer" training in response to the Monitor's recommendations that the OA Power Point presentation and notes for the trainers should include written examples specific to law enforcement and that more time should be provided for the substantive course portion of the "Train-the-Trainer" training. According to the PSP, the "Train-the-Trainer" training that will take place in 2005 will be provided over three days instead of one. The first part will include an instructor development course, the second part will be the substantive training, and the third part will cover investigations, to include going through specific law enforcement scenarios. The EEOO was also developing information to provide to the liaisons which would include information on how to conduct investigations including the types of questions to ask.

With regard to the Monitor's recommendation that the PSP should develop video vignettes, the PSP advised the Monitor that it was developing video vignettes containing examples specific to law enforcement for use during the next annual in-service training on sexual harassment. Specifically, the PSP had developed 21 sexual harassment training scenarios that cover different types of harassment situations. Four of the scenarios have been chosen for production into video

vignettes: two of the scenarios involve Troopers; and two involves civilians. According to the PSP, production of the video scenarios would begin in August 2004. The remaining video scenarios would be used in later years.

The PSP had not reported to the Monitor as to whether they had conducted an evaluation of the effectiveness and overall quality of the training as provided by the EEOO liaisons (along with a state EEOO representative, at times).

The Monitor noted that the PSP provided a pre-training questionnaire to the participants. The Monitor recommended that the PSP engage in comprehension testing of participants at the end of the training course. A comprehension test would allow the PSP to determine whether the participants have comprehended the information in the course and assist in making changes to future lesson plans and instruction techniques. The Monitor had been informed that the PSP would develop a comprehension test, along with computer-based training, which is expected to be implemented in approximately one year. The Monitor observed that the PSP had embraced the recommendations and was working toward their implementation. The Monitor stated that the PSP had complied with the OIG's recommendation, but had not yet complied with the recommendations in the Monitor's Second Report.

Current Assessment of Compliance

During the fourth quarter, the EEOO produced four video vignettes for sexual harassment training for all PSP members and civilian employees. These video vignettes cover situations which would pertain to those which could be expected to be faced by PSP members and civilians. These video vignettes used volunteer PSP members and civilians as the actors. The Monitor has reviewed the four video vignettes and has determined that they conform to federal and state equal employment opportunity guidelines. In addition, during this quarter the Director of the EEOO received specialized training in sexual harassment, and Train-the-Trainer in the area of sexual harassment.

Based on the foregoing, the PSP has complied with the OIG's recommendations, and the recommendations of the Monitor in its Second Report.

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.

In its First Report, the Monitor found that the EEOO was in the process of developing a database that would track notifications to the victims and the BIPS, as well as investigations and training needs.

During the second quarter, the Monitor found that the EEOO was working with the BTE to develop a computer based training module. The Second Report stated that the PSP had not complied with the OIG's recommendation.

During the third quarter, the Monitor stated that the PSP was still in the process of developing a computer-based training module. According to the PSP, this training should be developed in a year. The Monitor stated that the PSP had not complied with the OIG's recommendation.

Current Assessment of Compliance

During the fourth quarter, the PSP put the EEOO training on sexual harassment on the PSP's intranet, referred to as the Enterprise Network. The PSP also issued Bureau Special Order 2004-95 on October 27, 2004, which set out the requirement that all members of the PSP, including civilians, log on to the PSP's intranet by no later than December 31, 2004, to complete this training.

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

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 Quarterly Report, the Monitor stated that it would continue to evaluate the need for increased staffing and support for the EEOO.

During the second quarter, the Monitor's assessment found that the EEOO had 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. The Monitor recommended 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 EEOO to determine specific staffing levels and resources needed based on the PSP's full response to the OIG's recommendations and concerns. The Second Report stated that the Monitor was withholding a determination of compliance with the OIG's recommendation.

During the third quarter, as mentioned above, the PSP named a new Director of the EEOO. As discussed in Section IV.F., after naming the new Director, the PSP conducted an audit of the EEOO to be able to evaluate the office's operations in light of the recommendations in the OIG's

Report and in the Monitor's first two reports. The PSP, based on the audit, had made a recommendation for reconfigured staffing of the EEOO. In June 2004, prior to the appointment of the new EEOO Director, the PSP issued a position vacancy announcement for an Equal Employment Opportunity Specialist. The Monitor observed that the PSP had moved forward on providing improved staffing for the EEOO. The Monitor had not yet had an opportunity to review the audit, and could not yet evaluate the sufficiency of the audit. The Monitor looked forward to receiving additional information regarding the audit of the EEOO. The Monitor stated that it would defer a determination of compliance with the OIG's recommendations.

Current Assessment of Compliance

During the fourth quarter, the PSP made available to the Monitor a copy of the audit of the EEOO's operations. This audit determined that there were serious deficiencies in a number of aspects of the EEOO's operations, including: (1) complaint processing procedures, including reporting and tracking the complaints; (2) record retention and filing; (3) database tracking of EEOO complaints; and (4) record management systems. The audit also determined that the EEOO was not sufficiently vigilant as to matters of contract compliance. Compliance reviews are necessary to insure that the PSP conducts business with contractors and/or vendors, where the amount of the contract exceeds \$50,000 and do not engage in discriminatory employment practices.

Since the audit was completed, the EEOO has been working to implement the various deficiencies found by the audit. Moreover, the EEOO has begun reviewing procedures and standards by which to bring the EEOO into conformity with state and federal regulations concerning contract compliance.

It is the judgment of the PSP senior management that the new Director is fulfilling all of the duties identified in the audit as not having been fully satisfied. The EEOO hired a civilian EEOO Specialist, to assume certain administrative responsibilities and act as a conduit for the civilian personnel of the PSP who wish to make complaints to the EEOO. The Monitor concurs in the assessment of the PSP's senior management that it is not necessary, at this time, to make any other additions to the staff at the EEOO. It is reasonable to believe that the work of the EEOO can be accomplished even more efficiently by increased reliance on the 39 liaisons.

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

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 advised that the BIPS notifies the EEOO when an allegation potentially constitutes sexual harassment. During the second quarter, according to the PSP, the BIPS and the EEOO were working closely on sexual harassment investigations. In practice, the BIPS notified the EEOO of any complaints of sexual

harassment and sexual misconduct, and vice versa. The dialogue appeared to primarily end there. The Second Quarterly Report stated that the PSP had not yet complied with the OIG's recommendation for more EEOO involvement.

During the third quarter, the Monitor assessed whether the EEOO's involvement in investigating allegations of sexual harassment/misconduct had increased. It appeared that the EEOO's involvement had improved in several ways, and there were plans in the works to continue to increase the dialogue between the EEOO and the BIPS. First, there was increased dialogue between the EEOO and the BIPS regarding investigations. Second, the EEOO's development of an incident tracking system, which the BIPS would be able to access, would increase the EEOO's involvement. Third, the PSP was developing a webpage to provide additional information specifically about the EEO Office, including a mission statement, a list of EEOO liaisons, information on how to file a complaint, and other relevant information. The EEOO expected that the website would be up and running by September 2004. Furthermore, the EEOO Director had been requested to participate in the development of all training, bureau-wide, covering sexual harassment and sexual misconduct issues. The Monitor stated that the PSP had complied with the OIG's recommendation.

Current Assessment of Compliance

During the fourth quarter, the EEOO created a new Complaint Worksheet, so that there would be a tracking system between the EEOO and the BIPS of sexual harassment complaints that first came to the EEOO. Moreover, the EEOO went through its pre-existing files, and assigned each file a tracking number, consistent with the system inaugurated for the new complaints. The new system also includes a feature of automatic reminders as to the age of each investigation, so that the EEOO will receive a printout of any case(s) which have taken longer than expected for the investigation to be completed. By assigning tracking numbers to pre-existing EEOO files, the office will now be able to more easily research prior EEOO complaints. In addition, by using the new tracking system, access to EEOO complaints can now be obtained by means of the PSP's intranet. Because this tracking system includes a number of cross-references, users of the intranet system will now be able to determine if a victim has made any previous complaints within the past five years. Also, the new tracking system of complaints permits easy access to the complaint, as well as a log of the complaints, which is useful for a permanent record of the complaint, should the alleged victim or the subject(s) ever be involved in another claim of sexual harassment. Finally, the new tracking system permits the EEOO to determine whether the PSP has properly followed-up with the alleged victim of the claimed sexual harassment.

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

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 EEOO can measure and monitor sexual harassment and sexual misconduct complaints.

In its First Quarterly Report, the Monitor recommended that the PSP explore developing a risk management function to assist the identification of negative trends. During the second quarter, although the PSP had stated that it was developing an IAD tracking system, it had not yet established a method by which the BIPS and the EEOO could measure and monitor sexual harassment and sexual misconduct complaints. The Monitor also recommended that all relevant personnel take part in the development of the tracking system. During the second quarter, the PSP continued to evaluate methods to measure and monitor complaints.

During the third quarter, the EEOO's incident tracking system, as discussed in Section IV.I. above, was being developed. According to the PSP, this system is designed to measure and monitor sexual harassment and sexual misconduct complaints. The Monitor reviewed printed copies of several of the screens from the system. The system will contain fields with information about each complaint, including the type of complaint, the complainant's name, where, when and how the complaint was filed, a narrative, the assigned BIPS case number and investigator, EEOO liaison, the disposition, and other relevant information. The system will allow the user to query any of the fields to run reports. The EEOO, the DDO and all BIPS investigators will have access to the system. The Monitor will continue to evaluate the system once it is up and running. According to the PSP, the system is expected to become operational in September 2004. The Monitor stated that the PSP was not in compliance with this OIG recommendation.

Current Assessment of Compliance

During the fourth quarter, the computer system described in the prior paragraph did, in fact, become operational in September 2004. The Monitor witnessed this system in use in October 2004. For other details concerning this system, see the discussion at Section IV. I., under Current Assessment of Compliance.

Based on the foregoing, the PSP has complied with the OIG's recommendation.

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 First Quarterly Report, the Monitor stated that the PSP had provided 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.

During the second quarter, the Monitor continued to receive regular status reports from the PSP; however, the PSP had not provided the Monitor with any statistical data regarding complaints or statistical evaluations for trends and for comparisons to other comparable organizations.

In its Third Report, the Monitor stated that, although the PSP continued to provide the Monitor with status reports and documents, the Monitor had not received relevant statistical data or evaluations. The Monitor stated that the PSP had partially complied with this OIG recommendation.

Current Assessment of Compliance

During the fourth quarter, the Monitor received the 2003 BIPS Annual Report, which contained statistics on all the internal investigations conducted during that year by the BIPS. At the Monitor's suggestion, the PSP began keeping separate statistics on sexual harassment and sexual misconduct, starting in April 2004, after the PSP had issued draft regulations with revised definitions of these two kinds of sexual improprieties. This statistical summary is not made available to the public.

As noted above, the OIG recommended that the PSP's statistics regarding sexual harassment and sexual misconduct be compared to those of other comparable organizations. However, because different law enforcement agencies utilize different definitions of sexual harassment and sexual misconduct, the PSP maintains that it is not possible to draw meaningful comparisons among agencies. While the Monitor has not surveyed other law enforcement agencies, it is likely that the PSP is correct in terms of the diversity of definitions used by different organizations. In this sense, statistics on sexual harassment and sexual misconduct cannot be easily compared. Accordingly, the Monitor agrees that it would require disproportionate investments of the PSP's administrative resources to find other law enforcement agencies which use the same definitions, so that there could be a meaningful statistical comparison.

Accordingly, the Monitor believes that the PSP is correct in stating that it does not believe that it would be feasible, or even helpful, to compare its statistics on these internal investigations.

The OIG also recommended that the PSP regularly examine its statistics for any trends in the areas of sexual harassment and sexual misconduct. The PSP, beginning in the Monitor's third reporting quarter, has compiled data on sexual harassment allegations and on sexual misconduct allegations, which is reviewed on a monthly basis by PSP senior personnel.

The Monitor has collected and compiled statistics concerning the number of “open files,” or ongoing investigations,⁴⁵ of sexual harassment and sexual misconduct within the BIPS/IAD during the four quarterly reporting periods.

During the first quarter, the BIPS/IAD opened 24 files; during the second quarter, the BIPS/IAD opened eight files; during the third quarter, the BIPS/IAD opened six files; and, during the fourth quarter, the BIPS/IAD opened seven files. The Monitor’s analysis of these statistics shows that the number of files or ongoing investigations opened from the first to the fourth quarterly reporting periods decreased dramatically, by 70.8%. This reduction in the number of open files shows that, over the past year, the number of complaints of sexual harassment and sexual misconduct has decreased markedly.

From prior to the beginning of the first quarter to the first quarter, the BIPS/IAD carried over 22 files; from the end of the first quarter to the second quarter, the BIPS/IAD carried over 23 files; from the end of the second quarter to the third quarter, the BIPS/IAD carried over 16 files; and, from the end of the third quarter to the fourth quarter,⁴⁶ the BIPS/IAD carried over three files. The Monitor’s analysis of these statistics shows that the number of files or ongoing investigations carried over from the first to the fourth quarterly reporting periods decreased dramatically, by 86.4%. This reduction in the number of carried over files shows that, over the past year, the BIPS/IAD has been more efficient in investigating complaints of sexual harassment and sexual misconduct.

At the end of the first quarter, the BIPS/IAD had 46 open files; at the end of the second quarter, the BIPS/IAD had 22 open files; at the end of the third quarter, the BIPS/IAD had 16 open files; and, at the end of the fourth quarter, the BIPS/IAD had 10 open files. The Monitor’s analysis of these statistics shows that the total number of open files or ongoing investigations from the first to the fourth quarterly reporting periods decreased dramatically, by 78.3%. This reduction in the total number of open cases shows that, over the past year, both the number of complaints of sexual harassment and sexual misconduct has decreased markedly, and the BIPS/IAD has been more efficient in investigating complaints of sexual harassment and sexual misconduct.

These statistics are set out in the chart below:

⁴⁵ The Monitor has defined “open files,” or ongoing investigations, as investigations of sexual harassment and sexual misconduct, opened by the BIPS/IAD, and not yet adjudicated. In addition, open files or ongoing investigations only include those cases which meet the definitions of sexual harassment and sexual misconduct as set forth in AR 4 – 25 and AR 4 – 26. As set out in the Monitor’s Second Quarterly Report (p. 16, n. 22), once the PSP issued new definitions of sexual harassment and sexual misconduct, a number of cases which consisted of the use of the PSP’s intranet system, referred to as the Enterprise Network, were reclassified from sexual harassment/sexual misconduct infractions to infractions charging misuse of the Enterprise Network.

⁴⁶ Although this fourth quarterly report covers a five month period, from August 1, 2004 through December 31, 2004, compliance reviews of files were conducted only for the three months ending October 31, 2004. This is so because the fourth quarter was extended only for the Monitor to evaluate the impact of the Act 111 Interest Arbitration Award, which Award was issued on December 22, 2004.

“Open Cases” at the End of Each Quarterly Reporting Period

<u>Quarter</u>	<u>Opened In Current Quarter</u>	<u>Carried Over from Prior Quarter</u>	<u>Total</u>
First	24	22	46
Second	8	23	31
Third	6	16	22
Fourth	7	3	10
Overall Reduction	70.8%	86.4%	78.3%

This overall reduction in the number of open files, carried over files and total investigations involving sexual harassment and sexual misconduct is evidence of an apparent shift in attitudes and culture within the PSP. These statistics demonstrate that there has been measurable progress from the filing of the lawsuits against former PSP Trooper Michael K. Evans and others, through the publicity these lawsuits generated in the media, the Governor’s directing of the OIG to conduct an investigation and issue a report, the Governor’s appointment of the Independent Monitor, and the PSP’s actions in response to the OIG Report and the Monitor’s Reports.

Based on the foregoing, although the PSP has not fully complied with the OIG’s recommendations, the Monitor agrees that it would not be feasible, or even helpful, to compare statistics on sexual harassment and sexual misconduct with those of other law enforcement agencies. Because the PSP has been compiling statistics on sexual harassment and sexual misconduct for the years 2003 and 2004 for its internal use, the Monitor has determined that the PSP has complied with the spirit, if not the letter, of the OIG’s recommendations.

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.

During the second quarter, the Monitor’s assessment found that the PSP had 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 gave the Director of the BIPS the authority to report directly to the Commissioner 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 procedure 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.

In its Second Quarterly Report, the Monitor stated that, except under the circumstances outlined above, the PSP did not intend to comply with this OIG recommendation. Since the PSP articulated sound reasoning for its failure to comply with the recommendation, the Monitor stated that it would not evaluate this recommendation unless circumstances require.

In its Third Report, the Monitor made a determination that the PSP's failure to comply with this OIG recommendation had not had an adverse effect on the agency. The Monitor stated that it would continue to evaluate its determination in the fourth quarter. It should be noted that, the Deputy Commissioner of Professional Responsibility (who oversees the BIPS), reports directly to the Commissioner on matters related to BIPS investigations. This new position will not compromise prior rulings in this area, but will allow the Deputy Commissioner flexibility in discussing matters related to IAD investigations directly with the Commissioner. The Monitor stated that it was withholding its determination of the PSP's compliance with the OIG's recommendation.

Current Assessment of Compliance

During the fourth quarter, the Monitor further evaluated the PSP's position concerning this recommendation. The Monitor has determined that the structure set up by the PSP is appropriate even though it does not directly comply with the OIG's recommendation. The PSP has determined that, with two exceptions, the Deputy Commissioner of Professional Responsibility, reports directly to the Commissioner on discipline cases. The two exceptions are: (1) relatively unimportant cases, as to which the cases are simply not sufficiently important to bring to the Commissioner's attention; and (2) cases which are likely to be brought as court martial. If there were a case where the subject decided, for whatever reason(s), to proceed by court martial, the Commissioner directed that the Deputy Commissioner should not make any report to him concerning the case, so as not to possibly prejudice the Commissioner, who would later act as the deciding official in the court martial.

The Monitor agrees with the PSP that it is impractical for the Deputy Commissioner, of Professional Responsibility to report to the Commissioner on the unimportant discipline cases. (The Deputy Commissioner, of course, retains the power to report to the Commissioner on the unimportant discipline cases, but, as a matter of his discretion, chooses not to report the unimportant cases.) The Monitor also agrees with the PSP that, in the unlikely event that the subject of a discipline case would choose to proceed by court martial, it would be inappropriate for the Deputy Commissioner to brief the Commissioner in what would necessarily be an incomplete manner. Since the Commissioner will act as the deciding official, the Commissioner has determined that he would prefer that he would hear the facts in the comprehensive manner found in court martial proceedings.

Currently, the Commissioner is now notified of a "sanitized" brief summary of each new opened BIPS investigation, on a weekly basis. It should be noted that members assigned to IAD have the line authority of the Commissioner when in the performance of their duties. The name of the individual PSP member who is the subject of the complaint, as well as the name of the

complainant, is omitted from this report so as to give the Commissioner only the minimum amount of information necessary for him to make a judgment as to whether this is the kind of case as to which he should get involved at an early stage.

Based on the foregoing, the PSP has partially complied with the OIG's recommendation; however, the Monitor agrees there is no persuasive reason for the PSP to be held to the letter of the OIG's recommendation, since they have fully complied with the spirit of the recommendation, as set out above.

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 the Office of 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 EEEO coordinate the development of relevant databases to facilitate notifications and other requirements applicable to such investigations.

In the second quarter, the Monitor continued to review all new and pending non-adjudicated investigations involving sexual harassment and sexual misconduct.⁴⁷ The PSP 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 stated that it would not make a determination of compliance at

⁴⁷ The Monitor 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 did not constitute sexual harassment and/or sexual misconduct, the Monitor 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.

that time regarding the PSP's handling of these active cases. The Monitor also stated that it would identify any observed deficiencies in handling these investigations in future Reports.

In its Second Quarterly Report, the Monitor stated that the BIPS had complied with the Monitor's recommendation to modify its database and had defined specific categories of offenses as sexual harassment and sexual misconduct. The Monitor recommended 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 would continue to evaluate the level of coordination necessary among the various bureaus and the EEOO.

During the third quarter, the Monitor reviewed all new and pending non-adjudicated investigations involving sexual harassment and sexual misconduct. At the end of the third quarter, the Monitor was actively reviewing nine open files. Thirteen files were closed during the third quarter. The Monitor was not aware of any deficiencies in the handling of the nine open files, nor in the handling of any of the 13 files closed during the third quarter.

Current Assessment of Compliance

During the fourth quarter, the Monitor reviewed all new and pending investigations involving sexual harassment and sexual misconduct. Sixteen files which were open at least a part of the fourth quarter, including seven files that were newly opened during the fourth quarter, six files which were carried over from the third quarter, and three files which were closed during the fourth quarter. The Monitor was not aware of any deficiencies in the handling of any of these files.

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

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. The OIG encouraged the PSP to proceed with its EIP program. The Monitor stated in its First Report that the EIP was officially established on November 24, 2003 with the issuance of AR 4-36. The PSP appointed a Director of the EIP and had created an electronic database.

In its Second Quarterly Report, the Monitor stated that the PSTA had filed a charge of unfair labor practices (ULP) against the PSP alleging violations of the Pennsylvania Labor Relations Act and Act 111 of 1968. The PSTA alleged, among other things, that the implementation of AR 4-36 revised the reasons a member might be disciplined and the manner in which disciplinary records might be utilized. The PSTA further alleged that the PSP unilaterally modified existing terms of employment without fulfilling its mandatory bargaining obligations. The Monitor had

met with the leadership of the PSTA and its counsel regarding the EIP and the filing of the ULP. The PSTA stated that it was not against the concept of the EIP; however, it had concerns with the current implementation and design of the program, including issues of equal treatment and maintenance of strict confidentiality. The Monitor expressed its disappointment that the PSTA had not met with the PSP regarding its concerns about the implementation of AR 4-36 and the EIP. The Monitor believed that the EIP benefits both the PSP and its bargaining members, and encouraged the parties to meet to resolve any outstanding issues.

In the Third Report, the Monitor stated that since the program's inception, through the date of the Third Report, 18 candidates had been identified for potential inclusion in the EIP. These candidates were identified both by review of the EIP database (11 members) and by recommendation from Troop Commanders (seven members). Pursuant to AR 4-36, Troop Commanders have reviewed (or are currently reviewing) these candidates' records of conduct, with the following results: eight members were included in the EIP; two members were not included in the EIP; three members were dismissed from the PSP or suspended with intent to dismiss; and five members were being reviewed. The Director of the EIP concurred with the Troop Commanders' recommendations not to include the two members mentioned above. One of the 18 candidates identified for possible inclusion in the EIP was involved in an alleged incident of sexual harassment or sexual misconduct, and the incident is currently under investigation.

The Monitor recommended that the PSP consider revising AR 4-36, at section 36.04, A. 2., to include the following additional information to be contained in the EIP database: cases involving sexual harassment and sexual misconduct, and cases involving domestic violence and protection from abuse orders. Moreover, AR 4-36 does not impose time limitations within which Troop Commanders and Bureau/Office Directors shall make a determination as to whether a member/enforcement officer should be included in the EIP. The Monitor recommended that the PSP consider further revisions to AR 4-36 to impose appropriate time limitations for determinations of EIP inclusion. At the end of the third quarter, the determinations of the Troop Commanders and Bureau/Office Directors as to whether members and/or enforcement officers should be included in the EIP were outstanding between one and 52 days. The PSP stated that the PSTA's filing of the ULP had prevented the PSP from making any further changes to the operation of the EIP at this time. The Monitor stated that, the PSP had complied with the OIG's recommendation/encouragement to proceed with the EIP program.

Current Assessment of Compliance

During the fourth quarter, the PSP issued a revised version of AR 1-1, which formally added the EIP program to the PSP's organizational structure. Also during the fourth quarter, the Monitor stated that four candidates had been identified for potential inclusion in the EIP. These candidates were identified both by review of the EIP database (two members) and by recommendation.



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

CONCLUSION

With the filing of this Fourth Quarterly Report, the Monitor concludes its evaluation of the PSP's compliance with the 40 recommendations of the OIG. The PSP's record of having complied or substantially complied with all 40 of these recommendations is a commendable one. The Monitor trusts that the PSP will be able, in the future, to build upon its record of progress.

The Monitor again expresses its appreciation for the PSP's having fully cooperated with the Monitor's investigation of this matter, by providing all the information necessary for the Monitor to complete this assignment. The Monitor also appreciates the valuable insight it has received from the PSTA. Finally, the Monitor appreciates the assistance of numerous individuals in helping the Monitor to carry out its duties.

Kroll Associates, Inc.
Independent Monitor

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