



## CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 13, 2018

CASE NUMBER: 2017OPA-0868

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication	Not Sustained (Inconclusive)
# 2	5.190 - Court Appearances and Legal Proceedings IV. Overtime Pay for Court Appearances	Sustained
# 3	5.001 - Standards and Duties 14. Employees Obey any Lawful Order Issued by a Superior Officer	Not Sustained (Inconclusive)

**Imposed Discipline**

7 Day Suspension
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***This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.***

### EXECUTIVE SUMMARY:

The Complainant, an SPD sergeant, alleged that the Named Employee incorrectly completed a Court Overtime Slip for his attendance at a court hearing for an incident for which he was subpoenaed as a citizen, not in the role of an SPD Officer. During their discussion about the issue, the Complainant alleged that the Named Employee tried to pull the overtime paperwork out of the Complainant's hand.

### ANALYSIS AND CONCLUSIONS:

**Named Employee #1 - Allegation #1**

***5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication***

Named Employee #1 (NE#1) submitted an overtime request for time spent testifying in King County Superior Court pursuant to a subpoena. The overtime was submitted to NE#1’s supervisor – the Complainant. In the overtime request, NE#1 indicated that he was being subpoenaed in his official capacity by checking the box “only officer” under the field titled “subpoenaed as.” Based on a conversation he had with another Sergeant (SGT#1), NE#1 attached a copy of the first page of the subpoena to the overtime request. The subpoena, which NE#1 later claimed was mailed to him at the precinct, contained NE#1’s personal address not his work address. NE#1 only included the first page of the subpoena with the form and not that portion of the subpoena that would ordinarily set forth the anticipated areas of testimony.

When he reviewed the subpoena, the Complainant noted that it was not signed by either the bailiff or assistant city attorney as required by SPD Policy 5.140(IV)(B). NE#1 indicated that he had no signature on the form because the court did not have a city overtime form.



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The Complainant signed the form but on a second review noticed some issues with its content. The Complainant brought the form to the Watch Lieutenant (LT#1) who also had questions concerning the form. Specifically, LT#1 noted that the form was addressed to NE#1's personal residence, not his work address. LT#1 also requested that the Complainant look up the CAD for the incident number that was listed on the form (2016-280952) to determine what officers responded to this call and to verify if NE#1 was the only involved officer, as he indicated in the form. The Complainant did so and determined that NE#1 was not listed as either the primary or secondary officer and was not listed on the CAD at all as responding to the call.

Based on the above, the Complainant spoke with NE#1 about the form several days later in the sergeants' office. The Complainant reported that a second Sergeant (SGT#2) was also present in the office at that time and was on the computer. The Complainant asked NE#1 if he had been subpoenaed as the primary officer and NE#1 said that he was subpoenaed as the "only" officer. The Complainant asked him whether he responded to the call and NE#1 reported that he did not. The Complainant stated that NE#1 told him that they should forget about it and just rip up the form. When he was told by the Complainant that he could not do so, the Complainant recalled that NE#1 then began to get agitated and tried to grab the form from his hand. The Complainant stated that NE#1 continued to try to do so even though he told him to stop. As discussed more fully below, NE#1 denied trying to physically pull the form from the Complainant.

The Complainant decided that it was appropriate to initiate this complaint with OPA and discussed the issue with his supervisor. His supervisor supported that decision.

During its investigation, OPA interviewed NE#1 twice, as well as interviewed the Complainant, LT#1, a second Lieutenant (LT#2), SGT#1, and SGT#2.

At his first OPA interview, NE#1 stated that he received a subpoena at the precinct and, in accordance with that subpoena, went to court to testify in a civil matter between two civilians. (NE#1 First OPA Interview, at p. 5.) NE#1 was asked whether he spoke to the attorneys who subpoenaed him prior to him testifying and indicated he did. (*Id.* at pp. 5-7.) However, based on the convoluted nature of NE#1's answer, the substance of that conversation (or conversations) is unclear to me. Later in his first interview, NE#1, in response to the assertion that the civil attorneys had indicated to OPA that they made it clear that he was being subpoenaed in his personal capacity, first stated that this was absolutely not that case and then stated that he did not remember such a conversation. (*Id.* at p. 14.) In conversations with OPA, however, the civil attorneys were clear that the testimony sought had nothing to do with NE#1's work as a police officer and were related to his personal life. They were further clear that this information was relayed to NE#1.

The subpoena, itself, was addressed to NE#1 at his personal residence. However, NE#1 claimed to have received the subpoena at his work. (*Id.* at pp. 7-9.) NE#1 stated that because he received the subpoena at the precinct, he believed that he was going to be questioned concerning an incident where the defendant in the civil lawsuit had kicked a door while on a motorcycle. (*Id.* at pp. 5, 10.) This was something he said he discussed with the civil attorneys during a phone call with them. (*Id.*) However, NE#1 had not had any involvement in this incident as a police officer. (*Id.* at p. 11.) At his second OPA interview, NE#1 further expounded on this issue and his belief that he was going to be questioned concerning a police matter. (See NE#2 Second OPA Interview, at pp. 4-7.) NE#1 also asserted at his second interview that none of the attorneys he spoke to told him why he was needed in court. (*Id.* at



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pp. 7-8.) Again, this is unsupported by the evidence as established by the information provided to OPA by the civil attorneys.

NE#1 indicated that, after testifying at the court proceeding, he was aware that his testimony was unrelated to his official duties. (NE#1 First OPA Interview, at p. 22.) NE#1 told OPA that the attorneys never asked him about the individual who had kicked a door while on a motorcycle. (*Id.* at pp. 14-15.) However, NE#1 still submitted an overtime request for the hours he spent at court. (*See Overtime Request.*) NE#1 indicated that he asked or tried to ask a sergeant for clarification of whether and how he should submit his overtime form, but it is unclear from his interview which sergeant he sought advice from. (NE#1 First OPA Interview at pp. 12, 24-25.) The OPA investigator indicated to NE#1 the belief that the sergeant he spoke to was SGT#1 and NE#1 agreed with that. (*Id.* at pp. 12-13.) Notably, SGT#1 only reported that NE#1 asked him how to submit an overtime form that did not have the signature of a bailiff or an assistant city attorney, not whether he should submit a form for testimony that was unrelated to his police duties.

As discussed more fully below, NE#1 met with the Complainant concerning the overtime form. Both agree that NE#1 asked the Complainant to forget about it and for the form back and that the Complainant told him no. The Complainant alleged that NE#1 then tried to grab the form from him, which NE#1 denied.

SPD Policy 5.001-POL-10 requires that officers be truthful and complete in all communications. Here, it is alleged that by submitting an overtime form for hours for which he knew he was not permitted compensation, he was not truthful or complete.

NE#1 claimed that he was confused concerning why he was being asked to testify and stated that it could have been tangentially related to a police matter – albeit one that he admittedly had no involvement with. I find this unlikely, based both on the conversations OPA had with the civil attorneys as well as on the fact that NE#1 executed a detailed declaration in the civil lawsuit that clearly set forth that his involvement in the case was purely personal and unrelated to his police duties. (*See NE#1 Declaration.*) Even if NE#1 was legitimately confused concerning the substance of his testimony, he knew after he testified that the testimony was personal. NE#1 indicated that it was his belief that because the subpoena was allegedly mailed to him at the precinct, he was entitled to seek overtime pay for his time testifying at court and that he was confused. (NE#1 First OPA Interview, at p. 26.) This is simply unsupported by the evidence. Moreover, based on information provided to OPA from the civil attorneys, it appears that the subpoena was initially mailed to NE#1's home address but was later faxed to the precinct upon NE#1's request. This further undercuts NE#1's contention that he believed that he was entitled to seek overtime for his testimony.

Ultimately, NE#1 submitted an overtime slip and sought compensation to which he was not entitled. He did so knowing full well that the testimony he gave was absolutely unrelated to his function or employment as a police officer and was entirely personal in nature. On the overtime form he explicitly indicated that he was involved in this case as an officer, which would have indicated to his supervisors that overtime was appropriate. I further note that his supervisors almost did, in fact, approve the form prior to engaging in additional scrutiny.

NE#1, who has been a police officer for over 30 years, should know better. He should also be ashamed of the unenviable place in which he placed his supervisors and his command staff. To be abundantly clear, there is not a doubt in my mind that the form NE#1 submitted was neither truthful nor complete and that his actions were



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dishonest. This is the case even in light of NE#1's unconvincing protestations to the contrary and his defense, which is frankly one of admitted ignorance and stupidity. Ultimately, however, I am prevented from sustaining this allegation, even against my best judgment, based on the quantum of evidence required. This should be in no way interpreted as an exoneration of NE#1 or a recognition that his conduct was anything other than deliberately misleading and unethical.

Accordingly, I recommend that this allegation be Not Sustained - Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**

**Named Employee #1 - Allegation #2**

***5.190 - Court Appearances and Legal Proceedings IV. Overtime Pay for Court Appearances***

SPD Policy 5.190 generally concerns SPD employees' appearances in court and at other legal proceedings. SPD 5.190(IV) specifically deals with overtime pay for court appearances. Within this section, SPD Policy 5,190(IV)(F) states that: SPD "[e]mployees shall not be allowed overtime compensation by the Department for appearances in any court or hearing not directly related to their official duties as police officers or City employees."

At the outset, I note that this policy instructs that: "Officers shall obtain approval of their sergeant prior to testifying in any court or hearing not directly related to their duties as police officers or City employees, except in those cases when it is clear that the officer is acting as a private citizen and party in a non-police court action." (SPD Policy 5.190(I)(A)(8).) Here, NE#1 did not seek the approval of any supervisor prior to testifying, which is further evidence that he was aware that he was "acting as a private citizen and party in a non-police court action" when he did so.

Even though this was the case, NE#1 intentionally submitted a request for overtime pay based on a court appearance that he knew was unrelated to his official duties. As discussed above, even if he was confused as to why he was being subpoenaed – which I find incredible based on the declaration he completed, his personal knowledge of the situation, his receipt of a subpoena that would have detailed his expected areas of testimony, and his discussions with the civil defense attorneys – he knew as soon as his testimony was finished that it was entirely personal in nature. Regardless, he still submitted an overtime form seeking compensation for such testimony and, as such, he sought compensation to which he was not entitled. By doing so, he deliberately violated this section of the policy and I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #1 - Allegation #3**

***5.001 - Standards and Duties 14. Employees Obey any Lawful Order Issued by a Superior Officer***

The Complainant alleged that when he confronted NE#1 about the issues with his overtime form, NE#1 tried to pull the form out of the Complainant's hand. He did so repeatedly even though the Complainant kept holding onto the form. Ultimately, the Complainant had to tell NE#1 to stop trying to take the form from him.

NE#1 stated that, while speaking with the Complainant in the sergeants' office, he told the Complainant concerning the overtime slip: "look, it's not worth it, I'll just rip it up." He recounted that, at that time, the Complainant was



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holding the slip in his hand and NE#1 reached out to grab it. He reported that the Complainant then pulled the form back. NE#1 stated that he never actively tried to pull the form from the Complainant's hand and that there was no struggle between them. NE#1 indicated that the Complainant might have told him to stop, but, if he did, it was meant to stop NE#1 from further talking not because of any physical behavior on his part.

Both the Complainant and NE#1 identified SGT#2 as being in the sergeants' office at the time this occurred. SGT#2 recalled hearing NE#1 state that he would take the overtime slip back and the Complainant telling him that he could not do so. SGT#2 did not remember hearing the Complainant tell NE#1 to stop. SGT#2 further did not recall hearing any struggle between NE#1 and the Complainant.

SGT#1 reported that he had a discussion with the Complainant during which the Complainant reported that NE#1 tried to pull the form from his hand. However, SGT#1 did not witness their interaction.

Both LT#1 and LT#2 recounted to OPA that the Complainant reported to them that NE#1 tried to "snatch" the form out of his hand. However, neither individual witnessed their interaction.

SPD Policy 5.001-POL-14 requires that employees obey any lawful order by a superior officer. The failure to do so constitutes insubordination. (SPD Policy 5.001-POL-14.)

Here, the allegation is that by trying to take the form away from the Complainant, even after being told to stop, NE#1 did not comply with a lawful order by his supervisor and may have engaged in insubordination. Based on my review of the record, there is a dispute of fact as to whether this occurred. As such, I recommend that this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**