



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 28, 2019

CASE NUMBER: 2019OPA-0377

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)

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 alleged that the Named Employees acted unprofessionally towards her during an interaction outside of a coffee house.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

The Named Employees were getting coffee at a coffee shop when they were approached by the Complainant. At the time of the contact, Named Employee #1 (NE#1) had walked out of the coffee shop and was preparing to sit down at an outside table. The Complainant walked towards NE#1, followed by her husband. She then engaged in a conversation with NE#1.

NE#1 activated his Body Worn Video (BWV) and recorded his interaction with the Complainant and her husband. The inception of the contact was captured by video because of the buffering function of the BWV; however, there was no audio for that portion of the interaction. Based on a review of that video, the Complainant appeared animated and she pointed her fingers at the street and at NE#1 while standing directly in front of him. When the audio of the BWV began, NE#1 could be heard telling the Complainant that he was audio and video recording. She responded: “I’m not going to hit you, but don’t be jerks to people, don’t joke about giving them tickets.” NE#1 responded that they were not being jerks to people and were not writing tickets. The Complainant retorted: “We just don’t want you here. No one wants you here.” The Complainant then turned to walk away. NE#1 then said: “you need to go away.” He further stated, directed to the male with the Complainant: “Sir, I suggest you just take her away.” The Complainant immediately reacted to that statement and re-engaged with NE#1. The negative interaction between NE#1 and the Complainant continued, with NE#1 telling her several times to “go away” and to leave him



alone. In response, the Complainant again accused NE#1 of being a jerk to people and of joking about giving them tickets. In response to NE#1's request that she leave, the Complainant asked him why she should do so. NE#1 responded that it was because the Complainant was "doing nothing but harassing [him] right now."

At that point, Named Employee #2 (NE#2), who was assigned as an Acting Sergeant at the time, walked out of the coffee shop. NE#1 told the Complainant that NE#2 was his Sergeant and that she could speak with him. The Complainant stated: "Can you guys be more respectful of people in the neighborhood" and "not joke about giving disabled people tickets." NE#1 denied that they were doing so and the Complainant responded that they were "joking about it" and said that she saw the officers riding up the sidewalk and that they were "fucking jerks." NE#1 again said that the Complainant should go away and NE#2 agreed. NE#2 told the Complainant that they did not have to talk to her. The Complainant questioned that assertion and said that she did not have to go away. The Complainant's husband approached her side and she told him to "please don't."

NE#2 told the Complainant: "I could lecture you on a bunch of crap that I have no idea about you." The Complainant directed him to stop and asked if he knew "what it feels like to be disabled." NE#2 responded that the Complainant was "self-conscious" and said: "You don't need to broadcast your insecurities on us." The Complainant stated: "You're walking around with guns and making jokes about people in the neighborhood." NE#2 asked her if she was "hearing thing." NE#2 further stated: "are you need of mental health?" and "we could call you an ambulance if you'd like." The Complainant said: "that is so fucked up." She further accused NE#2 of making jokes about mental health. NE#1 said that this was not what NE#2 was doing and told the Complainant that she was "making stuff up."

The Complainant and the Named Employees continued to go back and forth. She called both of the Named Employees jerks. NE#1 suggested that they "just end this, civilly." The officers again told her to leave and the Complainant refused to do so. NE#2 said to her: "it's like talking to a child, unbelievable." NE#1 stated: "oh my god." NE#2 further remarked: "I can't even get a cup of coffee." The Complainant asked the Named Employees how hard it was to say sorry, and both Named Employees responded that they did not know what they were apologizing for. She stated that they officers had been rude, and they responded by asking if she understood how rude she was being to them. She referenced the officers riding on the sidewalk and said that this was rude. The Named Employees again asked the Complainant to leave them alone. After short further discussion, the Complainant walked away. Her husband turned and followed behind her.

The husband later returned and re-engaged the Named Employees. The husband told the officers that the Complainant was upset by police enforcement in homeless encampments, including the identification of individuals who resided in those encampments. The husband discussed the Complainant's "philosophical view" about police and those armed with firearms. They discussed police response to encampments and NE#2 offered that they were willing to engage in a civil conversation with her. NE#1 gave the husband and business card and he left the scene.

The Complainant later initiated this matter with OPA. She stated, in a voicemail, that the Named Employee stopped "uncomfortably close" to her car on their bikes and were making inappropriate jokes. She stated that the Named Employees rode their bikes on the street, moving around people, including old women. The Complainant asserted that this made her upset and, while she did not have to confront the Named Employees, she felt that they were "so ready to bully" people. She asserted that the Named Employees were an "abusive presence" in the neighborhood and that she has a problem with bullies who carry guns. She characterized their later interaction as "destructive." The Complainant left a second voicemail. She stated that there was a "mental health component" to this case. She



said that she experienced a very traumatic accident and had been in the hospital for a long time and that “figures of authority bullying” made her upset. The Complainant said that she did not think it was unreasonable to ask the officers to be respectful. She said that, while their defensiveness was probably not unwarranted, the officers should have been better at de-escalating the incident.

As a result of the Complainant’s voicemails, OPA initiated this investigation. OPA tried to contact the Complainant in order to interview her. However, she did not respond to multiple phone calls, voicemails, emails, and a letter. OPA interviewed both of the Named Employees.

NE#1 said that the conversation was negative at the outset and that the Complainant was hostile towards him. He stated that he asked the Complainant to leave to end the conversation. He denied that his statement to the husband that he should remove the Complainant from the area was sexist in nature. NE#1 said that he was “taken aback” and “at a loss” as to why the Complainant was so aggressive towards them. NE#1 told OPA that the Complainant’s statements did not seem specifically directed towards him and were, instead, general criticisms regarding police. NE#1 said that the Complainant’s statements did not have a basis in reality. NE#1 did not believe that his statements and conduct towards the Complainant were unprofessional.

NE#2 recalled that he and NE#1 parked their bikes near the Complainant’s car; however, he said that they did not park unreasonably close to her. NE#2 said that he remarked that he could lecture the Complainant on a “bunch of crap” because he wanted to have her understand what it felt like for them having to listen to her allegations. He was trying to explain that he and NE#1 were human beings and not just people to yell at. NE#2 was also asked about his comment to the Complainant about not having to “broadcast” her “insecurities” on them and his reference to mental illness. NE#2 stated that he believed that she could have been in crisis or on the verge of crisis. NE#2 denied that he was being facetious at that time. NE#2 said that, when he indicated that it was like talking to a child, he actually felt that this was the case at the time. When asked whether his statements were professional, NE#2 said that it was unreasonable to expect that officers would just run away any time community members berated them in public. He told OPA that, while every interaction with the public could be better, he did not feel that he did anything wrong here.

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (SPD Policy 5.001-POL-10.) The policy further states the following: “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*) Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)

This was a difficult case for OPA to reach a decision on. On one hand, OPA recognized how frustrating it must have been for the Named Employees to have been approached by the Complainant while trying to get coffee and to have been criticized when they felt that they did not do anything wrong. While the Complainant asserted her belief that the Named Employees, themselves had been rude, it appears that she held larger concerns with the police and took out her anger on them. The seems unfair to the Named Employees and it is understandable that they were exasperated by the interaction. On the other hand, the Named Employees did not have to continue to engage with the Complainant and could have simply ended the interaction and left. While OPA is sympathetic to NE#2’s assertion



that officers can't simply "run away" every time they are accosted by a community member, it does more damage to repeatedly go back and forth with the Complainant, even if they felt she was being unreasonable, in full view of the public.

With regard to NE#1, there were several occasions that he could have stopped the interaction with the Complainant. For example, at around 1:12 into their interaction, the Complainant turned around and began to walk away; however, NE#1 made further statements concerning her husband taking her from the scene, and the Complainant re-engaged even more upset. Had he not done so, the interaction likely would have ended.

With regard to NE#2, his statements were more concerning than those made by NE#1. Specifically, OPA believed that NE#2's comments regarding the Complainant broadcasting her insecurities to others, her possible mental illness and whether she needed an ambulance, and saying that speaking to the Complainant was like talking to a child were all particularly problematic. OPA finds that this was especially the case given that NE#2 was assigned as an Acting Sergeant during this incident. As such, he had even more of a responsibility to mitigate the negative interaction and to prevent it from getting worse. However, NE#2 did not do so here and worsened rather than improved the situation.

Ultimately, while OPA felt that the interaction was negative and that both the Complainant and the Named Employees were responsible for this, OPA does not believe that a Sustained finding is warranted for either officer. In reaching this conclusion, OPA notes that the Complainant, aside from leaving OPA two voicemails, did not participate in this investigation and OPA was unable to interview her to question her as to her actions and to more fully understand her perspective. OPA further concludes that this was a very difficult situation for the Named Employees to be placed in and that, while they could have handled it better, their conduct and statements were not so egregious as to warrant a finding of unprofessionalism. Instead, OPA recommends that both Named Employees receive Training Referrals.

- **Training Referral:** NE#1 should receive counseling concerning this incident. NE#1 should be specifically counseled concerning his failure to end the interaction and walk away, rather than continuing to go back and forth with the Complainant. While NE#1 was placed in a difficult situation, as a police officer, higher expectations of conduct are placed on him than on those he interacts with. This counseling and any associated retraining should be documented, and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #2 - Allegations #1

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

For the same reasons as stated above, I also recommend that NE#2 receive a Training Referral for this incident. In doing so, OPA wants to be clear that NE#2, who is now a supervisor, will be held to a higher standard than the officers he supervises. OPA does not issue a Sustained finding against him here because, based on OPA's discussions with his chain of command, it is clear that NE#2 has been doing a very good job in his new role. Moreover, in OPA's experience, NE#2 has significant potential to be a strong supervisor and leader. However, if this conduct occurs again, a Sustained finding and potential discipline will result.



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- **Training Referral:** NE#2 should receiving counseling concerning this incident. NE#2's chain of command should discuss the comments he made to the Complainant, including those concerning her mental health, and assess whether they were appropriate. NE#2's chain of command should discuss how it would have been more appropriate to end the interaction instead of continuing to engage with the Complainant and discuss ways that this could have been done. Lastly, NE#2 should be reminded that, as a supervisor, the Department expects that he will not repeat this conduct and that he will, instead, resolve such incidents professionally and appropriately. This counseling and any associated retraining should be documented, and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**