



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 18, 2018

CASE NUMBER: 2018OPA-0554

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)
# 2	6.150 - Advising Persons of Right to Counsel and Miranda 3. Officers Must Include All Elements of Miranda and Establish Understanding	Not Sustained (Unfounded)
# 3	6.150 - Advising Persons of Right to Counsel and Miranda 8. Officers Shall Stop Questioning Once an Arrestee has Invoked the Right to a Lawyer	Not Sustained (Unfounded)

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 Employee was unprofessional to the Subject. It was further alleged that the Named Employee may have violated the Department’s policies concerning the provision of *Miranda* warnings and ceasing questioning after a request for an attorney.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Complainant works at a hospital. She was treating a patient when she heard Named Employee #1 (NE#1) interacting with another patient – the Subject. She stated that, during this interaction, NE#1 was profane, spoke with a raised voice, was threatening towards the Subject, and appeared to be trying to coerce the Subject into making a statement. She recalled that, at one point, the Subject requested a lawyer and NE#1 was dismissive of that request. She told OPA that NE#1 said to the Subject that he would tell the lawyer to “fuck off.” She recounted that NE#1 said the following to the Subject: “I am going to tell them it’s self-defense but you have to give me the truth.” She also recalled that NE#1 told the Subject that he was “being a dick.” Lastly, the Complainant alleged that NE#1, through his conduct, disrupted both the Subject and the patient she was treating.

NE#1 stated that his conversation with the Subject lasted approximately five minutes. He denied ever threatening the Subject or attempting to coerce his statement. He stated that he told the Subject that he was not a suspect of the investigation and was, instead, a victim who had apparently acted in self-defense. NE#1 did not recall ever



calling the Subject a “dick.” NE#1 recalled that the Subject asked for an attorney multiple times. On one of those occasions, the Subject told NE#1 that he could speak with the Subject’s attorney. NE#1 responded:

hey, I can tell your attorney to fuck off, but I’m not going to, I’m going to tell your attorney the exact same thing I’m telling you, I’m not interested in charging you, this is self-defense. I just—you just can’t lie about what you’re telling me to—so, we got some problems with evidence not lining up with what you’re telling me.

NE#1 explained that the purpose of this profanity was to convey to the Subject that he was not a suspect. Shortly thereafter the Subject stated that he did not want to talk with NE#1 anymore and the conversation ended. NE#1 denied that he was unprofessional during this incident. He stated that he was simply trying to convince the Subject to talk with him so that he could gather information to solve an open shooting.

SPD Policy 5.001-POL-9 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-9.) The policy further states the following: “Any time employees represent 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.*)

There are a number of disputes of fact between the accounts provided by the Complainant and NE#1. Under the Complainant’s account, NE#1 threatened and tried to coerce a statement from the Subject. While, according to NE#1, he used forceful language but did not threaten or coerce. If the Complainant’s account accurately described NE#1’s behavior, I believe that NE#1 would have acted contrary to the Department’s expectations and would have violated the professionalism policy. However, in NE#1’s version of the events, his conduct was purposed to solve a violent crime and, while perhaps not polite at all times, it was not unprofessional under the circumstances. These differences between the parties’ versions of events makes it difficult to reach a conclusive determination as to NE#1’s professionalism or lack thereof.

Both the Complainant and NE#1 agreed that NE#1 said that he would tell the Subject’s attorney to “fuck off,” but, based on NE#1’s explanation, I do not believe that this statement, in and of itself, constitutes unprofessionalism. Police work is not always pretty and sometimes officers have to have harsh and impolite conversations to further investigations and solve crimes. That being said, NE#1 was not out in the field when he made these statements, he was in a hospital with medical professionals, patients, and other community members throughout. He should have been more mindful of what he was saying and how he was saying it, as well as of the impact his statements may have had on those who overheard them. In this respect, he should have more fully considered the impact that such statements – including an officer saying that he would tell an attorney to fuck off – could have on community members and how those statements could possibly serve to undermine public trust and confidence in the Department.

For these reasons, I issue NE#1 the following Training Referral.

- **Training Referral:** NE#1’s chain of command should discuss this incident with him. He should be counseled that, even though he may have had good intentions, his statements to the Subject could have been



misconstrued and misinterpreted by community members. He should further understand the impact his statements could have – particularly the statement concerning the attorney – on the community’s trust and confidence in the Department and its officers. This counseling should be documented and this documentation should be maintained in an appropriate database.

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

Named Employee #1 - Allegation #2

6.150 - Advising Persons of Right to Counsel and Miranda 3. Officers Must Include All Elements of Miranda and Establish Understanding

SPD Policy 6.150-POL-3 sets forth the elements of *Miranda* warnings and requires that officers establish that subjects understand the warnings once read.

NE#1 acknowledged that he did not read *Miranda* warnings to the Subject. He explained that this was the case because, at the time of the interview, the Subject was not in custody and, thus, was not being subjected to a custodial interview. NE#1 further asserted that the Subject was not the suspect in any crime and, at least at that moment, was a victim. Accordingly, *Miranda* was inapplicable and NE#1 did not violate policy but not providing the warnings.

For these reasons, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #3

6.150 - Advising Persons of Right to Counsel and Miranda 8. Officers Shall Stop Questioning Once an Arrestee has Invoked the Right to a Lawyer

SPD Policy 6.150-POL-8 states that “officers shall stop questioning once an arrestee has invoked the right to a lawyer.”

As with Allegation #2, this allegation is inapplicable to this case. The Subject was not under arrest at the time of the interview. As such, even though the Subject requested a lawyer, NE#1 was not required to stop questioning him at that time.

Accordingly, I recommend that this allegation be Not Sustained – Unfounded.

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