



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 1, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2017OPA-0639

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 3. Employees Shall Not Discourage, Interfere With, Hinder, or Obstruct Any Person from Filing a Complaint or [...]	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication	Not Sustained (Unfounded)
# 3	5.001 - Standards and Duties 14. Employees Obey any Lawful Order Issued by a Superior Officer	Allegation Removed
# 4	4.010 - Employee Time Off 4. Authorized Employees Record Time Using the Electronic Timesheet	Not Sustained (Lawful and Proper)
# 5	5.001 - Standards and Duties 18. Employees Must Avoid Conflicts of Interest	Allegation Removed
# 6	4.010 - Employee Time Off 2. Employees Schedule Time Off With Their Sergeant/Supervisor	Allegation Removed

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:

During his OPA interview for 2017OPA-0089, the Named Employee revealed that he contacted a witness to discuss the allegations against him. In addition, the OPA investigator identified conflicting statements between the Named Employee's first and second interview which appeared to suggest that he may have been dishonest. Finally, the Named Employee's statements created a question as to whether he was on or off duty during his court appearance.

SUMMARY OF INVESTIGATION

OPA initiated this investigation as a result of statements by the Named Employee (NE#1) stating that he contacted a witness in a prior OPA investigation (see Director's Certification Memo, 2017OPA-0089). This investigation summary incorporates the facts of that investigation by reference. To summarize OPA's findings, NE#1—a community liaison to the East African community—attended a bail hearing for a defendant accused of domestic violence assault. NE#1 did not identify himself as an SPD employee, but spoke in support of the defendant's character and on behalf of members of the East African community. The defense attorney subsequently identified NE#1 by his title and suggested that the court should give special weight to NE#1's statements as a result of his employment with SPD. OPA's investigation



determined that NE#1 did not notify any other SPD employees that he planned to attend the hearing. It further determined that NE#1's conduct risked creating a conflict of interest. However, because OPA did not find that NE#1 willfully intended to create a conflict, OPA recommended that NE#1 be assigned training and counseling to ensure that he understood and would comply with the Department's conflict of interest policies.

A. Interference in OPA Investigation

During his initial interview, NE#1 indicated that subsequent to receiving a notice of complaint from OPA regarding his appearance at the court hearing, he called the defense attorney. He stated that he confirmed with the defense attorney that she remembered he did not attend the court hearing in his capacity as an SPD employee. NE#1 stated that the defense attorney confirmed with him that this was her understanding. In NE#1's second interview, he explained that he contacted the defense attorney in order to confirm that the defense attorney, not NE#1, told the court that NE#1 worked for SPD. NE#1 stated that he was aware of the policy prohibiting him from interfering with an OPA investigation, and that his intent was not to interfere, but to clear up any misunderstandings and to obtain a recording of the bail hearing at which he gave his statement. He stated that he did not further discuss the investigation with the defense attorney.

In her interview with OPA, the defense attorney was unable to recall the specifics of her conversation with NE#1. However, she stated that she recalled receiving a phone call from him and said that during the call, NE#1 made reference to an OPA investigation that had to do with the statement he gave in court. According to the defense attorney, NE#1 informed her during this conversation that he no longer felt comfortable assisting her due to the OPA complaint.

B. Discrepancies in Named Employee Interviews

During OPA's investigation of these cases, NE#1 participated in two interviews. Several the statements he gave proved to contain discrepancies. Generally, these discrepancies fell into three main areas: whether NE#1 considered himself to be acting as a private citizen or as a Department employee; whether NE#1 was asked to participate by the DV Advocates assigned to the case; and whether NE#1 has continued to advocate for the defendant after his appearance at the bail hearing on January 24.

1. Conflicting Statements Regarding Professional or Private Capacity

As discussed more fully in 2017OPA-0086, NE#1 stated multiple times that he attended the bail hearing on January 24th in his capacity as a private citizen. However, shortly after NE#1 received the notification of a complaint from OPA for the first OPA investigation, NE#1 sent emails to his chain of command, SPD HR Director Mike Fields, and OPA. These emails differed slightly, but all referenced NE#1's job description and stated that "*As a liaison*, I was asked by members of the community to come and assist with [the defendant's] hearing." (Emphasis added). During NE#1's first interview, NE#1 again stated that his presence at the hearing was in line with his job description. Simultaneously, NE#1 stated that he attended the hearing in his personal capacity.

2. Conflicting Statements Regarding Invitation to Attend Court

In his first interview, NE#1 provided a printout of an email from a DV Advocate assigned to the case, dated January 24. He stated that he received the email "the day before this hearing" and that he had been "invited for the very same



case.” He also stated that he had worked with the DV Advocate unit on multiple prior cases. OPA examined the email from the DV Advocate and determined that it was sent after the hearing NE#1 attended. Rather than constituting an invitation to work with the DV Advocate on the case, the email appeared to be an attempt by the assigned DV Advocate to “follow up” about the hearing and ascertain why an SPD employee was advocating on behalf of a defendant accused of serious DV crimes. In his second interview, NE#1 stated that he had been confused regarding the sequence of events. He clarified that the DV Advocate wanted to follow up regarding the case. He stated that because he had worked with this advocate before, he believed that the advocate was interested in collaborating toward a settlement between the parties. NE#1 further clarified that he had been invited to court by members of the East African community, not SPD DV Advocates.

3. Continued Involvement in the Case

In his initial interview, NE#1 said that he ceased his involvement in the defendant’s case after the judge denied bail on January 24. NE#1 said that he did so because he understood the charges against the defendant to be serious in nature. He said that after the hearing, he ceased working with the community “group” of approximately 20-25 individuals which supported the defendant.

In his second interview, NE#1 stated that he may have had “minor communications” with the defense attorney in the days subsequent to the court hearing. He also stated that he had seen documents related to the case which were printed off by another attorney who assisted in the case on a *pro bono* basis and who briefly represented the defendant. NE#1 explained that after receiving notice of the OPA complaint against him, he did not again contact the defense attorney nor did he continue working with the community group that assisted the defendant.

OPA interviewed the defense attorney. She stated that NE#1 had worked with her after the hearing to connect her to other individuals in the community who knew the defendant. She also stated that she recalled NE#1 attending a community meeting at a restaurant on or about April 20, 2017. She did not recall NE#1 speaking at the meeting.

C. Timesheet Discrepancies

The court hearing which NE#1 attended occurred on Tuesday, January 24, a time when NE#1 would ordinarily be working as an SPD employee. NE#1 explained that he was able to attend the hearing off-duty because he had worked over the prior weekend at a cultural event, and that he informed his supervisors that he would flex his time to take off Monday, January 23 and Tuesday, January 24. NE#1 was a salaried employee and was permitted to flex time with approval from his supervisors. However, when OPA examined NE#1’s timesheet for the relevant pay period, the timesheet reflected that NE#1 was logged as working two 8-hour days on Monday and Tuesday, and was not logged as working over the weekend. NE#1’s supervisor submitted the relevant timesheet.

OPA interviewed NE#1’s supervisor. The supervisor confirmed that NE#1 was permitted to flex his time with approval. He stated that NE#1 was allowed to fill out his own timesheets, but that it was standard practice for NE#1 to report his time and make requests for flex time to the supervisor by text message. The supervisor stated that he was aware NE#1 worked the weekend before the court hearing, and that he believed NE#1’s statements to be true and accurate. The supervisor said he printed out a copy of NE#1’s text message requesting flex time in order to ensure accurate timekeeping.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 3. Employees Shall Not Discourage, Interfere With, Hinder, or Obstruct Any Person from Filing a Complaint or [...]

During his OPA interview, NE#1 stated that after receiving the notice of complaint from OPA, he contacted the defense attorney. In that conversation, NE#1 stated that he asked the defense attorney whether she recalled that he gave his in-court statement as a private citizen. SPD Policy 5.002-POL-3 precludes Department employees from discouraging, interfering with, hindering, or obstructing any person from filing a complaint.

OPA is unable to establish that NE#1 contacted the defense attorney with the specific intent to interfere with OPA's investigation into his conduct. NE#1's statements did not appear calculated to change the defense attorney's recollection of events, or to suggest how the defense attorney should answer any investigative questions if posed by OPA. Rather, NE#1 said that he wanted to confirm for himself that he did not violate Department policy. In arriving at its conclusion, OPA is mindful of the fact that the defense attorney did not appear to remember her conversation with NE#1 in detail or state that she found it unusual. As a member of the bar and criminal practitioner, the defense attorney would be familiar with conflict of interest rules and could be expected to report unethical conduct she became aware of. Though OPA does not base its conclusion on the defense attorney's statement alone, it in conjunction with NE#1's description of the conversation persuades OPA that while NE#1's conduct was unwise, he lacked the necessary intent to interfere with OPA's investigation. For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

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

During its investigation, OPA identified numerous inconsistencies between NE#1's statements made over the course of two interviews. In general, these related to whether NE#1 attended the court hearing in his professional capacity, whether he was invited by SPD DV Advocates, and whether he had any continued involvement after the hearing. SPD Policy 5.001-POL-11 requires Department employees to be truthful and complete in all communications.

While OPA is concerned about the discrepancies in NE#1's statements, there is insufficient evidence to determine that NE#1 was intentionally dishonest, rather than confused. As this allegation relates to whether NE#1 acted in his professional capacity, OPA noted that NE#1 made statements that were internally contradictory. For instance, he repeatedly stated that he attended the hearing as a "private citizen" but that doing so was part of his "job description" and therefore within the scope of his duties as a community liaison. As discussed in its prior investigation (see 2017OPA-0089), both statements cannot be simultaneously true. However, because NE#1 made them in the same interview and, indeed, as part of an answer to the same question posed by an OPA investigator, OPA finds it unlikely that NE#1 was attempting to mislead the investigator as to whether he purported to represent SPD at the court hearing.

Similarly, OPA noted discrepancies regarding how NE#1 described being invited to the hearing but is unable to conclusively state that NE#1 intended to mislead OPA as a result. In discussing the DV Advocate's January 24 email, NE#1 appeared to be attempting to explain why he did not believe his conduct constituted a conflict of interest. The



appearance of dishonesty stemmed in part from NE#1's confusion as to the sequence of events, and NE#1 attempted to clarify his statements in the second interview. While OPA is concerned that NE#1 was not able to speak with precision as to the core issue in this case, his failure to do so does not violate the policy against dishonesty. This is particularly true because NE#1 did, ultimately, provide a substantially accurate account of his communication with the DV Advocate in the subsequent interview.

OPA also found insufficient evidence to show that NE#1 willfully omitted information about subsequent involvement in the case. Apart from his conversation with the defense attorney which formed the basis of Allegation #1 (see above), OPA did not identify any material involvement in the case subsequent to NE#1's receipt of the notice of complaint. While NE#1 did attend the April community meeting, the evidence suggests that he did so in a strictly private capacity and did not address the community or otherwise represent SPD. NE#1 did admit to "minor" communications with the defense attorney in the days following the hearing, and OPA believes that the communication he did have could be plausibly so described.

Ultimately, while NE#1 appears to have engaged in poor judgment throughout the course of these two investigations, OPA finds insufficient evidence that he was intentionally dishonest. OPA notes that during the long pendency of this case, NE#1 has remained a community liaison with SPD. Moreover, he has been assigned additional training in conflicts of interest as a result of 2017OPA-0089 which will hopefully address the issues identified in these investigations. However, OPA notes that should NE#1 continue to engage in conduct and make statements which appear to confuse his role as an SPD employee with his private, community-based activities, OPA will sustain findings and recommend appropriate discipline. For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #3

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

OPA has determined that this allegation is subsumed within the above allegation regarding attempted interference in its investigation (see Named Employee #1 – Allegation #1). For this reason, OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #1 - Allegation #4

4.010 - Employee Time Off 4. Authorized Employees Record Time Using the Electronic Timesheet

OPA's investigation showed that NE#1's timesheet reflected that he was working on the date of the court hearing, which NE#1 stated he attended while off duty in his personal capacity. SPD Policy 4.010-POL-4 permits authorized employees to record their time using the electronic timesheet. If an employee requests time off, the employee must "request sergeant/supervisor approval for scheduled and unscheduled time off (see SPD Policy 4.010-POL-2).

OPA's interview with NE#1's supervisor shows that there was no basis for OPA to determine that NE#1 was working when he attended the court hearing. Moreover, the interview demonstrated that NE#1 had supervisory approval to work over the weekend and flex his time on Monday and Tuesday in the manner he described. Though it appears



that NE#1's supervisor made errors in completing NE#1's timesheet, these errors appeared inadvertent and, more pertinently, were not the fault of NE#1. For this reason, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #1 - Allegation #5

5.001 - Standards and Duties 18. Employees Must Avoid Conflicts of Interest

OPA has determined that this allegation is subsumed within its initial investigation regarding NE#1's conduct (see 2017OPA-0089). For this reason, OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #1 - Allegation #6

4.010 - Employee Time Off 2. Employees Schedule Time Off With Their Sergeant/Supervisor

OPA has determined that this allegation is subsumed within the above allegation regarding whether NE#1 properly recorded his time (see Named Employee #1 – Allegation #4). For this reason, OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**