



## ***CLOSED CASE SUMMARY***

ISSUED DATE: JUNE 7, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0712

### **Allegations of Misconduct & Director's Findings**

#### **Named Employee #1**

| Allegation(s): |  | Director's Findings          |
|----------------|--|------------------------------|
| # 1            | 5.001 – Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy | Sustained                    |
| # 2            | 5.001 – Standards and Duties. 10. Employees Will Strive to be Professional                       | Not Sustained - Inconclusive |

#### **Imposed Discipline**

Suspension Without Pay

***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:**

It was alleged that Named Employee #1 (NE#1) trespassed in violation of law and acted unprofessionally towards his neighbors.

### **SUPPLEMENTAL INVESTIGATION:**

#### **A. Factual and Procedural Background**

The underlying facts of this case are set forth fully in the original DCM, dated December 2, 2021 and appended hereto, and OPA case file.

In summary, NE#1 and his neighbors have been engaged in a contentious property dispute since about 2016. At the center of the property dispute is an easement that NE#1 uses to access his own property. The easement crosses property belonging to two of NE#1's neighbors. A driveway runs along the length of the easement to NE#1's property. NE#1 would like to widen the driveway; his neighbors are opposed to this plan. The dispute has resulted in numerous responses from the Kittitas County Sheriff's Office (KCSO), court actions, complaints, orders of protection, and property surveys.

In September 2020, neighbors of NE#1 reported that NE#1 had trespassed onto their property. KCSO investigated and forwarded the case to the Kittitas County Prosecuting Attorney's Office (KCPAO) for a charging decision. The KCPAO reviewed the investigation and charged NE#1 with criminal trespass in the second degree. NE#1 entered a "stay of proceedings" and the case was ultimately dismissed.



NE#1 self-reported the criminal charges. OPA commenced an investigation, which was paused during the criminal proceedings. For the reasons set forth in the December 2, 2021 DCM, OPA found by a preponderance of the evidence that NE#1 did trespass on his neighbor's property. OPA recommended that the allegation that NE#1 violated SPD Policy 5.001-POL-2 ("Employees Must Adhere to Laws, City Policy and Department Policy") be sustained.<sup>1</sup>

A *Loudermill* hearing was held. Following the hearing, OPA reopened this investigation at the request of the Chief of Police to consider information presented at the hearing pursuant to the Seattle Police Officers' Guild Collective Bargaining Agreement (SPOG CBA) section 3.5(F). This memorandum documents OPA's findings after considering this information.

## **B. Additional Information Submitted by Named Employee**

Following his *Loudermill* hearing, NE#1 emailed OPA. The email contained five attachments: (1) the Order of Dismissal with Prejudice for the underlying criminal case; (2) a one-page document titled "Dismissal" that appears to show a version of Washington State Superior Court Criminal Rule 8.3 with subsection b, "On Motion of Court," highlighted; (3) Notes used by NE#1 during his *Loudermill* hearing; (4) two separate five-year orders of protection in favor of NE#1 and against his neighbors, executed by the Court on March 29, 2022.

## **C. Analysis – 5.001 – Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy**

OPA has reviewed and considered the materials submitted by NE#1. They are not persuasive.

As an initial matter, NE#1 has not presented any "new material facts." SPOG CBA, section 3.5(F). Instead, NE#1 set forth reasons that he disagrees with OPA's original findings. NE#1's reasons were either known and considered by OPA in reaching its original findings, incomplete, or immaterial to the only issue before the Chief—whether it is more likely than not that NE#1 trespassed on his neighbor's property.

NE#1 suggested in his Notes, as well as through the orders of protection, that his neighbors are not trustworthy. This is not relevant. Video evidence depicted the underlying trespassing event and NE#1 admitted that the video depicted him in his bobcat. Moreover, the trespassing incident was investigated by the KCSO and charged by the KCPAO. The KCSO investigator was familiar with the property and the easement, had been to the location and observed survey stakes, and conducted his own measurements. After reviewing the video, the KCSO investigator noted in his supplement "Based on the video it appears that the bobcat crosses the easement line a few times." This information was then reviewed by the KCPAO, which filed charges against NE#1.

Similarly, the details of the ongoing dispute between NE#1 and his neighbors—and who may, or may not, have been in the right overall or in other specific instances—is not relevant. The issue is whether or not NE#1 trespassed on his neighbor's property during this specific instance and, by doing so, violated the law. The evidence showed that, more likely than not, he did.

NE#1 wrote at length in his Notes that he did not "knowingly" trespass on his neighbor's property. OPA disagrees. First, given the length and intensity of the ongoing property dispute, it stretches common sense that NE#1 was not

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<sup>1</sup> OPA recommended that a separate allegation that NE#1 violated SPD Policy 5.001-POL-10 ("Employees Will Strive to be Professional") be Not Sustained (Inconclusive). As that allegation was not sustained, it was not the basis of any recommended discipline for NE#1 and is not at issue here.



aware of the property lines. Moreover, NE#1 admitted to OPA that he knew he was pushing stumps that his neighbor intentionally placed in a “run-out area” along the side of the driveway. To the extent that NE#1 was moving these stumps as part of a back-and-forth with his neighbor, NE#1 bore the risks of “stepping over the line” in a dispute he knew to be acrimonious. Second, the definition of “knowing” conduct includes circumstances where an actor “is aware of a fact, facts, or circumstance or result” or “has information which would lead a reasonable person in the same situation to believe that facts exists.” RCW 9A.08.010. No reasonable person in NE#1’s position would have been unaware that they may be trespassing.

NE#1 specifically disputed that he “admitted to pulling a survey marke[r] and throwing it.” However, this information was recorded by the KCSO investigator in his sworn report (“I then asked [NE#1] why he pulled out the wooden survey marker and he stated that it was also in the easement and served no purpose.”). On this evidence, OPA credits the statement of the KCSO investigator.

NE#1 also suggested that the KCPAO prosecutor who filed this case did so in “retaliation” because a prior civil building code violation filed by the same prosecutor was determined to lack probable cause. NE#1 further stated that the judge in that earlier case determined that the “code enforcement office violated my fourth amendment rights and illegally entered and searched my property.” NE#1’s allegation that an otherwise disinterested prosecutor committed serious prosecutorial misconduct because of animus motivated by the dismissal of a civil building code violation also stretches common sense. Moreover, OPA’s interview of this prosecutor suggested that she viewed NE#1’s trespass as a non-serious misdemeanor and worked to resolve it informally on terms favorable to NE#1 so as to minimize the impact on NE#1’s job. OPA finds that explanation credible and, as discussed below, corroborated by the resolution of NE#1’s criminal charges. Moreover, NE#1’s alternate explanation—that the prosecutor resolved the case because she was “desperate to get out of this case and avoid trial”—is internally inconsistent. OPA does not credit the explanation that an otherwise disinterested prosecutor would attempt to retaliate against NE#1, who she had already litigated against and lost, by filing a frivolous misdemeanor charge against NE#1 that she was then “desperate to get out of.”

Finally, NE#1 went to great lengths to characterize and downplay the nature of the dismissal of his criminal trespassing charge and the stay of proceedings that he entered. Despite NE#1’s characterizations, the fact remains that he agreed to a disposition of his charge as part of a stay of proceedings—not through trial or by motion to dismiss based on insufficient evidence. NE#1 emphasized that his dismissal was “in the interest of justice.” This is incomplete. The Order of Dismissal stated that the dismissal was “based on ***the agreement of the Parties*** and in the Interest of Justice.” (emphasis added). Moreover, NE#1 provided two quotes that are not controlling. The first is a definition of “interest of justice” that NE#1 uses to suggest that his prosecution was “unjust or unjustifiable.” As noted, the Order Dismissing NE#1’s charge was done on agreement. That aside, the definition provided by NE#1 appears to be a quote from an abstract of a law review article, not Washington State law.<sup>2</sup> Instead, NE#1’s criminal charges were disposed of through a stay of proceedings, in which NE#1 agreed, even if “informally,” to fulfill certain conditions in exchange for the dismissal of his charge. This is corroborated by the dismissal itself, which plainly stated it was made on defendant’s motion—as opposed to on the Court’s motion as it would have been under Superior Court Criminal Rule 8.3(b). Instead, the dismissal appears to have more likely been made pursuant to Upper Kittitas County District Court Local Rule 4.5(E), even if done “informally.” NE#1 himself noted that the “only thing I agreed to (which was an informal agreement, nothing signed) was the court agreed to count six hours of me volunteer time . . . and they would dismiss the case.” This corroborates the nature of his agreement with the prosecutor’s office. An agreement—whether oral or written—is still an agreement. This informal agreement also aligns with the prosecutor’s statement regarding the

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<sup>2</sup> Valena E. Beety, Judicial Dismissal in the Interest of Justice, 80 Mo. L. Rev. (2015), available at <https://scholarship.law.missouri.edu/mlr/vol80/iss3/5>.



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terms of the stay of proceedings. Finally, the Order of Dismissal was signed by both NE#1's attorney and the KCPAO prosecutor.

Following OPA's review of the information provided by NE#1, OPA has greater, not fewer, concerns regarding NE#1's refusal to acknowledge his misconduct. OPA continues to believe that NE#1 knowingly trespassed on his neighbor's property during an ongoing feud. NE#1 was then subsequently investigated by the KCSO and prosecuted by the KCPAO for this crime. NE#1's sole misdemeanor count then resulted in a dismissal based on an agreement NE#1 knowingly, voluntarily, and intelligently entered into with the KCPAO.

Accordingly, OPA maintains its conclusion that this allegation should be Sustained.