



CLOSED CASE SUMMARY

ISSUED DATE: JULY 4, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0017

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	Not Sustained (Inconclusive)
# 2	5.001 – Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Inconclusive)

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 the Named Employee may have violated the law and acted unprofessionally during potential domestic violence incidents towards his ex-wife and that this conduct resulted in him being subject to a temporary domestic violence protection order.

SUMMARY OF INVESTIGATION:

OPA received a referral from the chain of command concerning Named Employee #1 (NE#1). The chain of command reported that NE#1 was the subject of a temporary domestic violence (DV) order of protection with his ex-wife being the protected party. The DV order required NE#1 to surrender his firearms. In the DV order, NE#1's ex-wife asserted that he threatened her on multiple occasions and that he told her that he "hated" her. She further alleged that, on January 2, 2021, he pushed her out of a room when she tried to speak with him. She alleged that she was in fear of NE#1 and that his threatening conduct was escalating. The incidents described by the ex-wife occurred in Renton.

After reviewing the complaint from the chain of command and the DV order, OPA commenced this investigation. OPA located two police reports generated by the Renton Police Department (RPD). In the first, which concerned an incident on November 15, 2020, RPD officers were dispatched to a burglary reported by the ex-wife. When they arrived, they were informed that there was no burglary but that the ex-wife wanted to report a DV incident involving NE#1. She told the RPD officers that NE#1 had been "checked out" for the past several days and had made concerning comments such as: "If I lose my job, I am going to jail." She stated that, the prior evening, NE#1 told her: "I'm gonna fuck up your life because I hate you." She said that she had tried to leave NE#1 in the past but that he told her that, if she did, he would file a missing person report on her. She stated that she was afraid. An RPD Sergeant responded to the scene and spoke with the ex-wife and informed her of available resources. The RPD officers determined that no crime had occurred. In that report, the RPD officers noted that the ex-wife also disclosed a potential DV incident that occurred in Edmonds at some point in the past. The ex-wife recounted that NE#1 grabbed a remote control out of her hand and that this caused her to slide in chair she was sitting in at the time. She said that she did not suffer any injury.



The second report, which was dated January 5, 2021, concerned the service of the DV order on NE#1 and the seizure of his firearms pursuant to the order. The report set forth the hearing dates for the DV order.

OPA requested incident reports from the Edmonds Police Department (EPD) concerning the incident that the ex-wife relayed to the RPD officers. EPD informed OPA that there were no records associated with either the ex-wife or NE#1. In addition, there was no RPD report relating to the allegation of the push on January 2 that was set forth in the DV order.

OPA attempted to interview the ex-wife, contacting her on two occasions. OPA's phone call to the ex-wife went unanswered and she did not have a voicemail mailbox set up. A letter subsequently sent by OPA to the ex-wife was returned to OPA as undeliverable. As such, OPA was unable to interview the ex-wife.

OPA did interview NE#1. He acknowledged that he was involved in a number of verbal disputes with his ex-wife in 2020. NE#1 said that, when these disputes occurred, he would try to leave the room or to get space from his ex-wife to end the arguments and to prevent his child from seeing what was happening. However, she would corner him at times, preventing him from walking away. He told OPA that he used SPD resources for marital counseling, but it was unsuccessful, and they later got divorced. He said that she moved back to Georgia.

NE#1 described his ex-wife as "vindictive" and "violent at times." He said that she made statements to him including: "if you divorce me, your son will be calling someone else dad"; and "if you divorce me, I'll have your job. They're going to believe me over you." He explained that she scratched him and subjected him to other violence, causing him to suffer scars. He noted that, at times when he tried to leave the home, she would take his keys away. She would also start yelling "help" to stop him from leaving to which he responded that he was not touching her. However, this would prevent him from leaving the home because, if he did, he was concerned that she would fabricate DV allegations against him. He said that she also threw objects at him. He told OPA that he did not report any of these incidents to law enforcement because he loved his wife at the time, and he did not want to tear his family apart.

NE#1 told OPA that he and his ex-wife would get in repeated arguments. He described situations where he offered to help around the house and with their child but that his ex-wife refused the help and got upset by the offers, citing her role as a stay-at-home spouse. However, when he would go to sleep early because of his First Watch schedule, she would criticize him for not helping and engage in activities to wake him up. He said that she began to sleep in the other room and that he would, at times, need to hold the door closed to prevent her from coming in his room.

NE#1 said that, with regard to the incident that occurred on January 2, he was sleeping when his ex-wife came into the room and started spraying Lysol. She also turned the power off to the room, hit him with pillows, and started going through the closets in an apparent attempt to wake him up. Their son had a tube attached to his nose and she told him that the tube had come out. She then asked him for help reattaching it. NE#1 was aware that, if the tube came out of their son's nose, nurses at the hospital had to reattach it. He told his ex-wife that. He then determined that the tube was still attached but the tape had come off. He informed his ex-wife of this. She asked him for help putting the tape back on and then began criticizing him as he did that. She continued to yell at him. After he put on the tape, he tried to go back to bed. His ex-wife came into the bedroom and sprayed Lysol again, causing it to go in his eyes. His eyes began burning. He got out of bed and told his wife: "If I could hit you, I would, but I can't." He asserted, however, that he did not physically touch her or hit her. He then washed his eyes out. He said that, at



around this time, he noticed a phone that he did not recognize propped up on the table. He asked his ex-wife whether she was recording him, and she smiled at him.

NE#1 stated that January 2 was the last straw in their relationship and that they both knew this. He noted that, on the prior occasions where his ex-wife prevented him from leaving the home and used violence towards him, he told her that he might need to involve his employer and intimated that he could divorce her. He believed that his ex-wife made the allegation of an assault on January 2 and sought the DV order to preempt NE#1's actions and to get back at him for exploring seeking a divorce.

Ultimately, NE#1 denied ever physically assaulting his ex-wife. He apologized for the statement he made to his ex-wife on January 2. However, he noted that she provoked him and that he did not actually make a threat because he said that he could not hit her.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. If NE#1 assaulted his ex-wife, he would have acted contrary to this policy.

OPA identified three potential DV incidents alleged by the ex-wife. The first occurred in Edmonds some time in the past. The second occurred on November 15. The third occurred on January 2. With regard to the Edmonds incident, the ex-wife described a remote being pulled from her hand which caused her to slide on a chair. She acknowledged suffering no injury. Accordingly, this incident, even if true, does not constitute a DV assault. With regard to the November 15 incident, the RPD officers verified that no actual crime, including a DV assault, occurred.

The January 2 incident is the only one where DV assault could have occurred. With regard to this incident, the ex-wife alleged in the DV order that she was pushed by NE#1. For his part, NE#1 denied to OPA that he ever used any physical force on his ex-wife and, instead, that she deliberately provoked him through multiple actions, including spraying Lysol in his eyes. As discussed above, OPA was unable to obtain the ex-wife's account of this incident. OPA further notes that there is no police report concerning this incident.

Ultimately, given the disputes of fact between the parties and the lack of other dispositive evidence establishing that one is more credible than the other, OPA cannot determine what occurred on January 2. Specifically, OPA cannot definitively prove whether or not NE#1 engaged in a DV assault. Given this, OPA recommends that this allegation be Not Sustained – Inconclusive.

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

Named Employee #1 - Allegation #2

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



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.)

NE#1 denied making any of the statements attributed to him by his ex-wife and asserted that, to the contrary, she made these same statements and many others to him. NE#1 acknowledged saying to his wife on January 2: “If I could hit you, I would, but I can't.” NE#1 was apologetic about this statement but stated that he only made it because he had been provoked by his ex-wife both based on her conduct that night – which included spraying him in the eyes with Lysol – and based on the totality of her prior actions towards him. NE#1 did not believe that his statement constituted a violation of SPD’s professionalism policy.

With regard to the statement that NE#1 admits making, based on NE#1’s account concerning the circumstances surrounding the statement, OPA does not find that it rises to the level of a violation of policy. Specifically, under NE#1’s account – which has not been contradicted by his wife, the statement was made after dealing with continuous verbal and physical abuse from his ex-wife and after he was sprayed in the eyes with Lysol. He explained that he was extremely frustrated at the time and his eyes were burning. He asserted that his ex-wife was trying to provoke him and that she succeeded in doing so.

OPA finds this statement to be concerning. This is the case even though NE#1 ended it by saying that he could not actually hit his ex-wife. However, OPA believes that finding that this statement violates Department policy is not appropriate. In reaching this conclusion, OPA notes that the statement was made off-duty and in reactive anger after being repeatedly yelled at and while NE#1’s eyes were burning from being sprayed by Lysol. This does not excuse what was said, but it provides context for why it was said. To find that this comment violated SPD policy would open the door to concluding that any inadvisable or inappropriate statement made by any Department employees, even when off-duty, warrants discipline. In OPA’s opinion, this would stretch its jurisdiction too far and wade too deeply into the personal lives of SPD personnel. This does not mean that OPA abdicates jurisdiction over conduct or statements made while off-duty. It expressly does not and there may be cases in which such conduct or statements are of a nature and extent where discipline is warranted. Indeed, if OPA could establish that the other threatening statements attributed to NE#1 were actually made by him, OPA would likely conclude that this violated policy due to the scope of the statements made, the impact those statements allegedly had on his ex-wife, and the fact that they were made not in situations where NE#1 was actively being provoked. Ultimately, this finding focuses solely on the statement admittedly made by NE#1 in this case and the context in which it occurred as relayed by NE#1. Weighing all of the evidence, OPA does not believe that it constituted a violation of policy.

As discussed above, if the multiple threatening statements attributed to NE#1 in the DV order were shown to be true, this would violate SPD’s professionalism policy. However, as with Allegation #1, OPA concludes that the parties provide disparate accounts of each other’s conduct and of the statements made by NE#1. As such, whether NE#1 made the multitude of statements attributed to him by his ex-wife is inconclusive.

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