



October 20, 2016

Chief Kathleen M. O'Toole
Seattle Police Department
PO Box 34986
Seattle, WA 98124-4986

RE: MANAGEMENT ACTION RECOMMENDATION (2016OPA-0303)

Dear Chief O'Toole:

The Office of Professional Accountability (OPA) recently completed an investigation into an allegation that a Parking Enforcement Officer (PEO) failed to appear in Municipal Court in response to a valid subpoena served on that PEO. This mandatory court appearance was for a hearing on a vehicle impound the PEO had made. As you may know, impounded vehicles accumulate tow and storage fees that sometimes exceed the value of the vehicle. In order to prevent excessive charges to either the vehicle owner or the City, the Municipal Court schedules hearings within a day or two of receiving notice from the vehicle owner of his or her desire to contest the impound. In this case, the PEO received a subpoena to attend a hearing the next day but chose, instead, to attend a previously-scheduled, non-mandatory seminar sponsored by the Department. The Court did not excuse the PEO from its order to appear. As a result of the PEO's non-appearance, the vehicle was released from impound and the City was ordered to cover the accumulated tow and storage fees.

Even though the OPA investigation found the PEO violated SPD Policy Section 5.190.I.A by failing to appear in court as ordered, a sustained finding could not be recommended and discipline not imposed because SPD does not have a system in place to receive, track and document failures to appear in court as required by SPD Policy 5.190. Section I of that policy obligates both police officers and PEOs to comply with subpoenas, but the series of steps described for resolving a scheduling conflict only applies to police officers. Section II describes a structure and series of steps for handling failures to appear by police officers and PEOs. However, this structure and process are predicated on the existence of a SPD Court Coordinator, a position which has not existed in SPD for over four years. To the best of my knowledge no one in SPD is assigned the Court Coordinator duties. As a result, the Municipal and Superior Courts have no one at SPD to notify when a police officer or PEO fails to appear in response to a subpoena. In addition, there is no one at SPD to keep track of the number of times each police officer or PEO fails to appear and notify the officer's or PEO's Bureau Chief of this failure as described in the policy. This is important because SPD Policy Section 5.190.II.B describes a process of progressive discipline by which multiple failures to appear by a police officer or PEO are supposed to result in a series of defined responses by the Department, ultimately reaching a disciplinary level. It was this lack of a tracking system and record of possible past failures to appear that prevented OPA from recommending to the Department that it treat this specific failure to appear as anything other than a first time violation by this particular PEO.

SPD Policy 5.190 went into effect on April 1, 2009. It is my understanding that a Court Coordinator position existed at the time but was subsequently eliminated as the City reduced spending in the wake of the so called "Great Recession." When the position was eliminated, no one was assigned to perform the duties described in the policy. In both of her 2012 semi-annual reports, the OPA Auditor highlighted the absence of a Court Coordinator in SPD or anyone to handle the various duties assigned by policy to that position. The OPA Auditor recommended that SPD update its policy to address the gap created when the position was eliminated. Following a 2013 OPA investigation into a missed court appearance by a SPD police officer, I repeated the OPA Auditor's recommendation to SPD.

In light of the history of this problem and the barrier to accountability it creates, I make the following recommendation:

Recommendation: I recommend SPD commit to work with court and prosecutorial staff to adopt by a date certain a revised Policy 5.190 that effectively addresses the problems inherent in the existing policy, as noted above, to better serve the public and hold police officers and PEOs accountable to appear in court when ordered to do so.

Thank you very much for your prompt attention to this matter of public trust and confidence in the professional conduct of the SPD and its employees. Please inform me of your response to this recommendation and, should you decide to take action as a result, the progress of this action.

Sincerely,

A handwritten signature in blue ink that reads "Pierce Murphy". The signature is written in a cursive style with a large initial "P" and "M".

Pierce Murphy
Director, Office of Professional Accountability