



## **CLOSED CASE SUMMARY**

ISSUED DATE:      OCTOBER 26, 2019

CASE NUMBER:      2019OPA-0281

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

**Named Employee #1**

<b>Allegation(s):</b>		<b>Director’s Findings</b>
# 1	5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication	Not Sustained (Inconclusive)
# 2	5.001 - Standards and Duties 13. Employees Shall Not Use Their Position or Authority for Personal Gain	Not Sustained (Inconclusive)
# 3	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Inconclusive)
# 4	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	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 violated multiple policies, including those concerning professionalism, dishonesty, and the use of her position for personal gain stemming from an incident involving their respective minor children.

#### **SUMMARY OF INVESTIGATION:**

This case is the most recent of series of complaints involving Named Employee #1 (NE#1), the Complainant, and another officer (referred to here as Officer #1). NE#1 and Officer #1 were in a relationship together and have children in common. That relationship concluded and Officer #1 began a relationship with the Complainant. NE#1 and the Complainant reside together with the Complainant’s children. Officer #1 has visitation rights with his children in common with NE#1. During these visits, their children stay at his and the Complainant’s residence. It was alleged that, on two occasions, there was inappropriate sexual contact between the Complainant’s son and NE#1 and Officer #1’s daughter. This sexual contact resulted in two CPS investigations, litigation between the parties, and multiple OPA complaints and counter-claims alleging malfeasance on the parts of NE#1, the Complainant, and Officer #1.

This case was brought by the Complainant concerning statements made by NE#1 in a declaration filed in litigation concerning this matter, as well as in a report made by NE#1 to the Snohomish County Sheriff’s Department. The Complainant also claimed that NE#1 made inaccurate statements in an email sent to the Department’s Deputy Chief of Operations. The Complainant further alleged that NE#1 engaged in unprofessional and harassing behavior towards her. Lastly, the Complainant stated that NE#1 used her position for personal gain, including to improperly influence the application for the protective order.



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As part of its investigation, OPA reviewed documents relating to the CPS and criminal investigations, as well as documents concerning the litigation. OPA further interviewed NE#1 and the Complainant.

**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegations #1**

***5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication***

As discussed above, the Complainant alleged that NE#1 made multiple inaccurate statements in documents relating to this matter and that this established dishonesty on NE#1's part. The Complainant alleged that the following specific statements were inaccurate:

- NE#1's characterization that the Complainant's son was the primary aggressor;
- The facts and circumstances of the second alleged sexual assault of NE#1's daughter;
- The statement that the Complainant's son's grandfather reported the second alleged sexual assault because he was concerned for NE#1's daughter's safety; and
- A description of the purported concerns relayed by CPS concerning Officer #1's failure to ensure that his children were properly supervised and protected while in his home.

In response to these allegations, NE#1 stated that the information she provided in her declaration and in the documents submitted to the Snohomish County Sheriff's Department, were accurate to the best of her knowledge at the time. She told OPA that, prior to the hearing on the protective order application, she did not have the underlying documents and had relied solely on what was conveyed to her by her daughter, as well as on a phone call she had with CPS. She acknowledged that she learned that some of her prior statement were not accurate only when she received full documentation at the hearing. As such, she denied that she engaged in dishonesty.

The Complainant also contended that NE#1 was dishonest when she told the Deputy Chief in an email that the Complainant was required to be personally served at her place of employment. The Complainant asserted that NE#1 could have also served her son's father or any other member or her son's family.

In response to the claims concerning her statement regarding service in the email, NE#1 indicated that she believed that it was necessary to serve the Complainant because the conduct had occurred in her residence. NE#1 stated that she did not believe it appropriate to instead serve the Complainant's son's grandfather or another family member.

SPD Policy 5.001-POL-11 requires Department employees to be truthful and complete in all communications. If it could be proved that NE#1 intentionally fabricated information or included knowingly false information in her declaration or in her reporting of the alleged sexual assault to the Snohomish County Sheriff's Department, this would constitute dishonesty in violation of policy. Ultimately, however, there is insufficient evidence in the record to prove or disprove NE#1's assertion that the information she provided was accurate based on what she knew at the time. While the declaration provided by NE#1 was consistent with the statement provided by her daughter to CPS and while NE#1's accounts provided to the Snohomish County Sheriff's Department and in her declaration were consistent with each other, there is no evidence conclusively establishing what NE#1 knew at the time or that NE#1 did not have additional information suggesting that her statements were no longer accurate. While NE#1 stated that she only determined that some of her statements were inaccurate at the hearing, the Complainant asserted that this



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was untrue and that NE#1 knew of this information prior to that time. Again, OPA does not have enough evidence to determine which one is right.

Given these disputes of facts, the lack of evidence, and the elevated burden of proof required to establish a dishonesty violation, I recommend that this allegation be Not Sustained – Inconclusive.

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

**Named Employee #1 - Allegation #2**

***5.001 - Standards and Duties 13. Employees Shall Not Use Their Position or Authority for Personal Gain***

SPD employees are prohibited from using their position or authority for personal gain. (SPD Policy 5.001-POL-13.)

The Complainant alleged that NE#1 abused her position for personal gain in three respects. First, the Complainant asserted that NE#1 accessed South Precinct records to determine when the Complainant was or was not working. Second, the Complainant claimed that NE#1 applied for a protective order to gain an advantage in custody proceedings against Officer #1. The Complainant opined that this was established by the fact that NE#1, who was an experienced detective and should have known better, sought a protective order against a minor when this was not permitted as a legal matter. Third, the Complainant stated that it was improper for NE#1 to describe her SPD training and experience in the declaration she submitted and the Complainant opined that NE#1 did so in an attempt to improperly influence the case.

NE#1 told OPA that she believed that the Complainant was not working at the precinct because a process server tried to serve the Complainant at work on several occasions but was unsuccessful. She stated that she did not improperly use Department records to track the Complainant. In addition, NE#1 continually asserted that she sought the protective order and filed a report with the Snohomish County Sheriff's Office in order to protect her children. Lastly, NE#1 stated that she included her training and experience in the declaration because this is what she normally did in declarations.

OPA's investigation did not conclusively establish that NE#1 used South Precinct records to try to narrow down when to serve the Complainant. However, it is unclear where she got the information that she included in her email to the Deputy Chief that the Complainant was not working for the rest of the month. Moreover, while perhaps NE#1 should have known given her experience that she could not seek a protective order against a minor, OPA cannot definitively determine that she sought the order for an improper motive. Lastly, while OPA does not believe that NE#1 should have included her training and experience in the declaration as it was irrelevant to the protective order application, OPA cannot establish that she did so with the purpose of improperly influencing the proceeding.

Given the above, there is insufficient evidence to prove whether or not NE#1 acted contrary to this policy. As such, I recommend that this allegation be Not Sustained – Inconclusive.

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



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**Named Employee #1 - Allegation #3**

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

The Complainant further alleged that NE#1's conduct towards her and her overall behavior in this case was unprofessional. In making this allegation, the Complainant specifically pointed to NE#1's alleged dishonesty, her alleged harassment of the Complainant and her family, and NE#1's overall demeanor and statements towards the Complainant.

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.)

If these claims were true, it would establish unprofessional behavior on the part of NE#1. However, NE#1 denied being unprofessional towards the Complainant. NE#1 stated that she sought a protective order because she was concerned about and wanted to protect her children. She further denied abusing legal process to harass the Complainant. She stated that her conduct was not unprofessional and that this was a civil matter that was unrelated to her work as a police officer.

As discussed in the context of Allegation #1 and Allegation #2, there is insufficient evidence to prove that NE#1 improperly pursued a protective order against the Complainant's minor child. Further, there is insufficient evidence to prove that NE#1 engaged in a pattern of harassment against the Complainant. This is the case even though there appeared to be significant animus between the Complainant and NE#1 based on the content of texts sent by NE#1.

As OPA has discussed in previous cases, this is a personal matter that needs to be worked out by the parties in this incident. While OPA has jurisdiction over the conduct of SPD officers whether on or off-duty, OPA believes that this matter is better resolved in civil proceedings and through mediation and/or counseling. Ultimately, and as discussed herein, OPA finds that there is insufficient evidence to prove or disprove that NE#1 engaged in unprofessional conduct. Accordingly, OPA recommends that this allegation be Not Sustained – Inconclusive.

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

**Named Employee #1 - Allegations #4**

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

Lastly, the Complainant alleged that the totality of the NE#1's actions established potential illegal conduct on her behalf. Even if OPA were to determine that NE#1 acted contrary to the other policies discussed in this case, that would have construed administrative not criminal misconduct. There is no indication from OPA's review of the record that NE#1 engaged in criminal activity. As such, OPA recommends that this allegation be Not Sustained – Unfounded.

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