



OFFICE OF POLICE ACCOUNTABILITY

Closed Case Summary

Complaint Number 2017OPA-0727

Issued Date: 03/09/2018

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> 5.001 (9) Standards and Duties: Employees Shall Strive to be Professional at all Times (Policy that was issued April 1, 2015)
OPA Finding	Not Sustained (Inconclusive)
Final Discipline	N/A

INCIDENT SYNOPSIS

The Named Employee interacted with the complainant while off-duty.

COMPLAINT

The complainant alleged that the Named Employee was engaging in continuing unprofessional behavior with him and his family.

INVESTIGATION

The OPA investigation included the following actions:

1. Review of the complaint
2. Search for and review of all relevant records and other evidence
3. Interview of the SPD employee

ANALYSIS AND CONCLUSION

This complainant alleged that Named Employee #1 made insulting comments towards the complainant's wife. The complainant's wife had filed a previous OPA complaint against Named Employee #1 contending that he acted like he was "on duty," while in the neighborhood. That complaint was handled as a Supervisor Action [meaning that it was referred to and handled by NE#1's chain of command and did not result in a sustained finding or discipline].

The sum and substance of the complaint in this case was that, on the date in question, the complainant and his son were talking with Named Employee #1 and another neighbor, when Named Employee #1 told the complainant that his wife "looked like Kermit the Frog and she needed to get her teeth fixed." The complainant stated that he did not understand the comment and asked Named Employee #1 to repeat it, which Named Employee #1 did. The complainant asked Named Employee #1 if he would repeat the comment on camera and Named Employee #1 said he would. However, when the complainant returned with his phone to record the comment, Named Employee #1 had already returned to his residence. The complainant stated that he then spoke with the neighbor, who indicated that the comment was about the complainant's wife not the complainant, in an apparent attempt to de-escalate the situation. None of the above was captured on video. The complainant's wife also told OPA that Named Employee #1 had been saying negative things behind her back.

The neighbor, as well as two other civilian witnesses all indicated that the complainant was the genesis of much of the conflict in the neighborhood. All three indicated that the complainant initiated negative interactions with neighbors, including Named Employee #1. The other two witnesses did not hear the Kermit the Frog comment. The neighbor denied hearing the Kermit the Frog comment, which, as explained below, was inconsistent with Named Employee #1's recollection of the incident. This discrepancy raised question as to the credibility of the neighbor's account.

These witnesses stated that, unlike the complainant, Named Employee #1 did not initiate any of their conflicts. The neighbor stated that Named Employee #1 was helpful to others in the neighborhood, had never threatened or harassed anyone, and was not the cause of the problems with the complainant's family. One of the witnesses said that Named Employee #1 was nice and professional and did not start any disputes with the complainant's family. The other witness also described Named Employee #1 as well behaved in the neighborhood.

Named Employee #1 told OPA that he had long standing issues with the complainant's family. Named Employee #1 indicated that these issues were largely initiated by the complainant. Named Employee #1 said that the complainant also had a negative relationship with the neighbor and, because he viewed Named Employee #1 as being friends with the neighbor, the complainant also did not like Named Employee #1. The problem between the complainant and the neighbor stemmed from the complainant's wife's dislike of the neighbor's cat. Named Employee #1 further explained that, at one point, he called 911 on the complainant and his wife because he believed that they may have been involved in a domestic incident. Named

Employee #1 stated that he did not call 911 due to his negative relationship with the complainant, but because he was a mandatory reporter. Named Employee #1 believed that this worsened the relationship between him and the complainant's family.

On the date in question, Named Employee #1 stated that the complainant was acting confrontationally towards him and the neighbor. Named Employee #1 contended that he asked the complainant to tell his wife to stop calling Named Employee #1's work. OPA asked Named Employee #1 whether this was meant to dissuade a civilian from filing OPA complaints against him and Named Employee #1 said no. He indicated that he was simply frustrated about negative things being said and reported about him.

Named Employee #1 asserted that he called the complainant Kermit the Frog because of the complainant's deep voice, but indicated that he may have referred to the complainant's wife as Kermit the Frog. Named Employee #1 stated that he was mad about the interaction. Named Employee #1 admitted that this statement was "probably not" appropriate.

SPD Policy 5.001-POL-9 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-9.)

At his OPA interview, Named Employee #1's Guild representative objected to this investigation on several bases, including that Named Employee #1 was off-duty and not holding himself out as a police officer when he allegedly made the statements at issue. To be clear, that fact was immaterial and was not a bar to OPA's investigation or, for that matter, the imposition of discipline if warranted. Named Employee #1 is a police officer 24 hours and day and seven days a week. He is held to a higher standard due to his employment and is responsible for conducting himself accordingly even when off duty.

Ultimately, the exact nature of what Named Employee #1 said to the complainant was unclear, as was who was at fault for their negative interaction on that date. The OPA Director agreed with Named Employee #1 that his statement to the complainant regarding Kermit the Frog was inappropriate. Moreover, with regard to Named Employee #1's statement regarding telling the complainant's wife to stop calling his work, while the OPA Director took Named Employee #1's explanation at face value, it would be impermissible for a sworn employee to try to dissuade a civilian from filing an OPA complaint. However, given the lack of definitive information in the record, the limited knowledge and recollections of the witnesses, and the disputes of fact between the parties, the OPA Director was unsure that Named Employee #1's conduct rose to the level of a violation of SPD's professionalism policy.

The OPA Director noted that Named Employee #1 indicated that he intended to stay away from the complainant's family in the future. The Director would counsel him to do so. It was frustrating for OPA to be required to expend its limited resources on such matters, which seemed to be unnecessary and avoidable.

FINDINGS

Named Employee #1

Allegation #1

There was not a preponderance of the evidence either supporting or refuting the allegation. Therefore a finding of **Not Sustained** (Inconclusive) was issued for *Standards and Duties: Employees Shall Strive to be Professional at all Times.*

NOTE: The Seattle Police Department Manual policies cited for the allegation(s) made for this OPA Investigation are policies that were in effect during the time of the incident. The issued date of the policy is listed.