



## ***CLOSED CASE SUMMARY***

ISSUED DATE: APRIL 14, 2020

CASE NUMBER: 2017OPA-0089

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

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 21. Employees Shall Not Recommend Case Dispositions to Courts	Not Sustained (Management Action)
# 2	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Training Referral)
# 3	5.001 - Standards and Duties 18. Employees Must Disclose Conflicts	Not Sustained (Training Referral)

***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 SPD policy when he appeared in court and identified himself as an SPD Employee without proper authorization. The Complainant further alleged that, by doing so, the Named Employee engaged in unprofessional behavior and gave the appearance of a possible conflict of interest.

### **ADMINISTRATIVE NOTE:**

The Named Employee is not a member of one of the two police unions. As such, the 180-day timeline set forth in the collective bargaining units and the City is inapplicable to him. Given this and for administrative purposes, OPA set the date of this DCM as the 180-day deadline.

### **STATEMENT OF FACTS:**

Named Employee #1 (NE#1) is employed by the Department as a community liaison to Seattle's East African community. His specific job title is "Immigrant and Refugee Coordinator." The responsibilities of that role are clearly set forth in SPD job listing 2014-00908, which is included in OPA's case file. There is no reference to NE#1 being expected or permitted to represent, support, or vouch for community members in court proceedings.

NE#1 appeared at a bail/arraignment hearing in King County Superior Court. At that hearing, he spoke for the "East African community" on behalf of the criminal defendant. The criminal defendant was charged with domestic violence (DV) offenses, including: assault by strangulation in the presence of a child; felony harassment in the form of threats to kill; and witness intimidation. This was a matter investigated and referred for prosecution by SPD. As later reported by a Department Lieutenant – the Complainant in this case, NE#1 accompanied between 20 to 25 community members who came to the hearing.

During the hearing, NE#1's title and SPD employment was mentioned. As a result, the prosecutor assigned to the case later emailed the Complainant and informed him of NE#1's actions. The prosecutor wrote that NE#1:



Addressed the court to vouch for the defendant on behalf of his community. Notably, he first introduced himself to the Judge as a 'Seattle Police Department Community Liaison'. That is an impressive sounding title to present to the court on behalf of SPD before urging the release of a defendant who is pending serious charges that SPD referred in the first place at the same time that SPD is also providing professional DV Victim Advocacy.

After receiving and reviewing this email, the Complainant referred this matter to OPA. In the OPA complaint, the Complainant stated that NE#1's actions: "are directly in opposition to the interests of the Seattle Police Department and create a significant risk to the victim in this case." The Complainant specifically identified that NE#1's conduct was in potential violation of SPD Policies 5.001-POL-9, 5.001-POL-14, 5.001-POL-18, and 5.001-POL-21. OPA then commenced this investigation.

As part of its investigation, OPA obtained the audio recording of the hearing. Based on a review of that recording, it was clear that, prior to NE#1 addressing the court, neither NE#1 nor the defense attorney introduced NE#1 as an SPD employee and/or provided his title. NE#1 then addressed the court and vouched for the character of the defendant, including telling the court that the defendant was supported by the East African community, that "these allegations are not really who [the defendant] is," and that the defendant "is a caring, very dedicated, hardworking father contrary to what he is being accused of" and deserves a "second chance." However, the defense attorney later told the court that NE#1 was the "East African Liaison to the Seattle Police Department" and that his opinion "should be taken into consideration." Notably, NE#1 did not correct the defense attorney at that time or tell the judge that he was at the hearing in his personal rather than professional capacity.

The SPD DV Advocate assigned to that case was not at the hearing. However, a colleague later informed her that NE#1 had spoken on behalf of the defendant. The colleague also emailed the Captain in charge of the DV Unit. In that email, she noted her concerns with NE#1's statement at the hearing and alleged that NE#1 was biased toward the defendant. The DV Advocate assigned to the case emailed NE#1 and asked him to contact her. In response, NE#1 contacted the DV Advocate by phone and email. Noting the sensitivity of issues related to this case, the DV Advocate ultimately did not reply to NE#1.

As part of its investigation, OPA interviewed NE#1. NE#1 told OPA that he went to the January 24 bail hearing as a community member and while off duty. He explained that he worked over the weekend at a cultural event and had informed his superiors that he would be taking flex time on that Monday and Tuesday. He also said that he learned about the hearing after members of the community contacted him. At his interview, NE#1 exhibited a lack of clarity as to whether the DV Advocates assigned to the case had requested his presence. Initially, NE#1 claimed that he was attending at the request of the DV Advocates. However, during the interview, NE#1 indicated that he had misstated the timeline of events and that he learned of the defendant's arrest from members of the community. He did not speak to the DV Advocates or other SPD personnel until after the hearing.

In addition, NE#1 claimed that, when he arrived at court, he did not know the nature of the specific allegations against the defendant and only learned of them during or immediately prior to the hearing. He stated that, when he arrived, he assumed that the charges were minor, and he simply wanted to assist the family in resolving any disputes. When he learned that the judge denied bail after he spoke, he said it indicated that the charges were "something very, very serious." He informed OPA that, thereafter, he ceased any advocacy for the defendant. When OPA asked NE#1 if he felt his advocacy at a bail hearing on the defendant's behalf created a conflict of interest, NE#1



said that he felt it did not. He stated that he was “doing what [his] job description says” by speaking on the community’s behalf, but that he did so “in [his] capacity as a private citizen.” He explained that members of the East African community knew he was employed by SPD and that it was not uncommon for them to reach out to him about matters concerning SPD and the East African community. NE#1 also stated that, prior to stepping inside of the courtroom, he spoke with the defense attorney and informed her of his work with SPD. He claimed that he did so to prevent a conflict of interest. He further claimed that he had left the room when the defense attorney informed the court of his position with SPD and did not hear her do so.

OPA also interviewed the defense attorney in this case. The defense attorney stated that before trial, she spoke to a group of community members, which included NE#1. She recalled that, when she spoke to the community members, she would have related the charges against the defendant so that they would be aware of what he was accused of. She said that she mainly conversed with NE#1, because, of those present, he spoke the best English. She said that NE#1 told her his work title but she did not recall the exact substance of that conversation. She stated that she would not have used his title in court against his wishes, and she gathered that NE#1 was friends with the defendant. The defense attorney also indicated that NE#1 connected her with a member of the East African community who has since advocated on behalf of the defendant, but that she was unable to recall if he did so around the time of the bail hearing, or later.

#### **ANALYSIS AND CONCLUSIONS:**

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

##### ***5.001 - Standards and Duties 21. Employees Shall Not Recommend Case Dispositions to Courts***

When NE#1 addressed the court at the bail hearing, he testified to the defendant’s character and hard work, and said that he deserved a “second chance” so that he could “be with his family.”

SPD Policy 5.001-POL-21 (now 5.001-POL-22) states that “Employees shall not recommend case dispositions to courts.” The policy further instructs that: “No employee below Assistant Chief shall make any recommendations to any court or other judicial agency regarding the disposition of any pending court case investigated by the Department.” (SPD Policy 5.001-POL-21.)

OPA finds insufficient evidence to determine that NE#1 intended to recommend a disposition in the case at which he spoke. OPA notes that NE#1 did not directly request that the court release the defendant or reduce his bail, nor did he recommend any final criminal disposition in the case. Moreover, NE#1 claimed in his subsequent interview that he did not intend to take the defendant’s side or otherwise secure his release by making the statements he did, and OPA cannot refute that claim based on the evidence in the record.

In addition, OPA notes that the policy is unclear as to what it prohibits and what it permits when it uses the term “disposition.” Black’s Law Dictionary defines “disposition” as “(2) A final settlement or determination”; e.g., “the court’s disposition of the case.” *Disposition*, BLACK’S LAW DICTIONARY (11<sup>th</sup> ed. 2019). As drafted, OPA therefore interprets this policy to prohibit SPD employees from recommending only those case dispositions that conclusively determine the legal rights and duties of the parties before the court (i.e., final appealable judgments). If this is the intent of the policy, it should explicitly state so. At the same time, however, OPA is concerned that such a policy statement would leave open significant room for SPD employees to exercise undue influence on the criminal process. OPA therefore recommends the following Management Action:



- **Management Action Recommendation:** SPD should clarify whether SPD Policy 5.001-POL-21 applies only to those case dispositions which resolve the dispute between the parties and conclusively determine the legal questions before the court (i.e. final judgments) or whether the policy applies also to court orders which fall short of conclusive dispositions of the case (such as orders setting bail).

Recommended Finding: **Not Sustained (Management Action)**

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

***5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times***

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.)

OPA believes that this allegation is best evaluated in the context of whether NE#1’s conduct created a conflict of interest for the department, and therefore is addressed through the below Training Referral (see Named Employee #1 – Allegation #3).

Recommended Finding: **Not Sustained (Training Referral)**

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

***5.001 - Standards and Duties 18. Employees Must Disclose Conflicts***

NE#1 stated that he did not believe his presence at the hearing represented a conflict of interest because he attended and spoke as a private citizen. However, he also stated that he was acting pursuant to his job duties by representing the position of the community as a whole.

SPD Policy 5.001-POL-18 requires that SPD employees disclose potential conflicts. The policy specifically states that: “Employees shall immediately disclose to the Chief of Police, via their supervisor, any activities or relationships that may present an actual, potential, or apparent conflict of interest for themselves or other Department employees.” (SPD Policy 5.001-POL-18.)

After interviewing NE#1, as well as the defense attorney and other involved individuals, OPA is unable to conclusively establish that NE#1 knowingly created a conflict of interest by representing himself or allowing himself to be represented as an SPD employee during the hearing. However, even if – as NE#1 asserts – the defense attorney acted contrary to NE#1’s apparent wishes when she identified him by his job title after he left the room, NE#1 knew or should have known that there was a realistic possibility that she would do so. This was particularly the case given that she represented a party whose interests were directly averse to those of SPD and the assertion that an SPD employee supported her client would have possibly carried great weight with the Court.

OPA further finds it problematic that NE#1’s failed to consult with anyone at the Department prior to attending the hearing and testifying on the client’s behalf. Had he done so, he might have obtained vital context for this matter;



most notably, that a “resolution” between the defendant and victim was neither desirable nor possible given the severity of the charges.

Lastly, OPA has significant concerns with NE#1’s statements that he was acting “as a private citizen” while also “doing what [his] job description says.” OPA believes that acting in this fashion is inadvisable and problematic as it will frequently create potential conflicts of interest, such as that alleged here. Moreover, even if a true conflict of interest was not created in this case, NE#1’s actions had the appearance of impropriety and reflected negatively both on NE#1 and the Department.

Ultimately, the evidence is insufficient to support a finding that NE#1 intentionally created a conflict of interest. However, there are enough questions remaining concerning NE#1’s understanding of this policy and recognition of the consequences of his actions, that OPA is convinced that additional training is warranted. As such, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** OPA requests that NE#1 receive additional training concerning the elements of SPD Policy 5.001-POL-18. NE#1’s chain of command should meet with him to ensure that he fully understands the responsibility to avoid conflicts of interest generally. His chain of command should further discuss with him how he can continue in his role as a liaison to the East African community while avoiding the appearance of conflict between his private activities and those of the Department. Finally, NE#1’s chain of command should reinforce the importance of coordinating with other SPD employees to avoid repetitions of this incident. The retraining and associated counseling should be documented, and this documentation maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**