



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 18, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0249

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 (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 conducted investigations outside of Washington State without being properly licensed, a violation of law and Department policy.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Complainant and Named Employee #1 (NE#1) had both previously been members of an organization that provides accreditation for accident reconstructionists. The organization provides credentialing and ongoing training to reconstructionists and is independent of any governmental body or agency. Individuals must pass an examination to join and then complete continuing education training to sustain their membership and accreditation. The organization maintains its own set of bylaws that members must adhere to. Outlined therein are policies and procedures to address conduct that violates those regulations. Members are not paid, and the organization does not provide direct services.

In 2018, NE#1, who was a member of the organization's board of directors at the time, was attending an organizational training when he was informed that the Complainant may have violated organizational bylaws. In accordance with the organization's processes, NE#1 opened an investigation into the allegation. A Google search of the Complainant's name revealed civil court case, in which the Complainant had been hired by the defendants in the case, days after the plaintiff's relative was fatally injured in an accident. In that case, the court determined that the defendants were responsible for the spoliation of evidence. The court further found that the Complainant also was responsible. A judgment by a court relating to spoliation of evidence is considered "unacceptable conduct" and requires that the member undergo formal misconduct procedures as outlined in the organization's bylaws.



NE#1 went on to contact a retired law enforcement officer who was the lead investigator for the accident referenced in the civil court case. NE#1 did so by communicating via the professional connection website LinkedIn. NE#1 also contacted the lead attorney for the plaintiff in the civil suit. The attorney provided copies of case materials for NE#1's review. Upon the conclusion of his investigation, NE#1 drafted a report concerning the evidence surrounding the allegations against the Complainant. In that report, NE#1 concluded that the Complainant had violated organizational bylaws. In accordance with the organizational bylaws, he formed a three-person committee of current and former governing board members to review the complaint, submitted materials, and the report. The Complainant was eventually found to have violated organizational bylaws and was removed from his position within the organization and stripped of his accreditation. The Complainant appealed the decision, but the conclusion was upheld.

The Complainant later filed this complaint with OPA. In his complaint, the Complainant maintained that, by obtaining records of the civil suit that were filed outside of Washington state and by contacting the retired law enforcement officer who lived and worked outside of Washington state, NE#1 functionally conducted private investigations outside of Washington state and would therefore need a private investigator license for the states in which the case was litigated and where NE#1 worked. The Complainant pointed to the private investigation laws of the two states at issue, which require that individuals be licensed prior to conducting private investigations within their borders. The Complainant asserted his belief that the only way NE#1 could get around the licensure requirement would have been if he conducted this investigation using his authority as a member of the Seattle Police Department. He claimed that this would have been improper and likely illegal.

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. If NE#1 acted as a private investigator without the appropriate licensure, it could constitute a violation of this policy.

OPA concludes that, by investigating the Complainant's alleged violation of their shared organization's bylaws, NE#1 was not engaging in the work as a private investigator as contemplated under state law. OPA notes that, under such laws, private investigations are those conducted for a financial profit and as part of a business. This was not the case here. Instead, NE#1 was serving in his role as a board member of his organization. In that capacity, he was seeking to ensure that fellow members were following the bylaws and practices that each member agreed to upon joining. Ultimately, OPA uncovered no evidence suggesting that NE#1's organization was engaged in providing private investigative services or that NE#1 was contracted with and paid to do so. While the Complainant may be unhappy with this decision, as well as with the organization's decision to remove him as a member, there is no evidence that any SPD policies were violated by NE#1 and the Complainant's remedy, if one exists, does not lie with OPA.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

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