



## **CLOSED CASE SUMMARY**

ISSUED DATE: JULY 2, 2018

CASE NUMBER: 2015OPA-0370

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

**Named Employee #1**

<b>Allegation(s):</b>		<b>Director’s Findings</b>
# 1	Conformance to Law - 5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)
# 2	Professionalism - 5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Management Action)

***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, a retired officer who was directing traffic at a construction site, made a racist and unprofessional remark towards her. Specifically, the Complainant alleged that the Named Employee stated “in America we drive on the right side of the road” to the Complainant, who is Asian American. During its intake investigation, OPA added an allegation concerning whether the Named Employee was working off-duty employment without a valid special commission.

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

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

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

During the incident, Named Employee #1 (NE#1), who is a retired SPD officer, was working off-duty flagging traffic. NE#1 was permitted to do so because he possessed a special commission that was provided to him by SPD. NE#1’s special commission expired on January 1, 2015; however, during this incident, he was flagging traffic on March 17, 2015. Accordingly, OPA made a referral to the Department’s Investigations Bureau to determine whether NE#1 violated the law by doing so. During this investigation, it was determined that the Department extended the expiration date of all Extended Police Authority Commission (which is what NE#1 had) to April 15, 2015. Accordingly, on the date in question, NE#1’s special commission had not expired and there was no violation of policy or law.

As such, I recommend that this allegation be Not Sustained – Unfounded.

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

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



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

The Complainant, who is Asian American alleged that NE#1, who was flagging traffic, made a discriminatory comment towards her. The Complainant explained that, on the date in question, she was driving in a location that had substantial traffic. She attempted to follow the direction of the cars in front of her, but could not discern the driving lanes. She recounted that NE#1 jumped in front of her vehicle and told her to roll down her window. She stated that he then said to her: “in America, we drive on the right side of the road.” The Complainant described herself as “shocked” and told OPA that she found the Complainant’s statements to have been totally inappropriate. She believed that it was a blatantly racist comment and said: “I know if I was white he would not have said why are you driving on the wrong side of the road.” The Complainant further told OPA at her interview that, after she was asked why she was driving on the wrong side of the road, she responded that she was just following other cars. She said that NE#1 retorted: “do you follow all idiots.” The Complainant reported stating that she did not have time for this negative interaction and that she then drove off.

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 gave NE#1 multiple opportunities to be interviewed and to explain his version of what occurred. However, he declined to do so. As such, the sole evidence before OPA is the Complainant’s description of what occurred, which I deem to be credible. I find that NE#1’s statement to the Complainant that in America people drive on the other side of the road was inappropriate and unnecessary. I also find it plausible that the Complainant, who is Asian-American, believed that comment to be racially-motivated. It is ultimately unnecessary to determine this issue for two reasons. First, there is no allegation of biased policing classified in this case. Second, regardless if the comment was racist, it was clearly unprofessional, which is all that is needed to establish this allegation. I also find NE#1’s second comment concerning whether the Complainant followed “all idiots” was also unprofessional under the circumstances.

I find NE#1’s behavior in this incident to have been problematic and inappropriate. Were NE#1 still a SPD employee, I would recommend that this allegation be Sustained and that discipline be imposed. However, he does not work for the Department and, instead, possesses a Special Commission that permits him to work off-duty.

Based on this case, as well as other similar cases involving retired officers with Special Commissions, OPA has significant concerns regarding how SPD approves, monitors, and keeps records on holders of Special Commissions. OPA also has concerns regarding the training provided to such individuals and the lack of clarity from the paperwork associated with the Special Commissions whether the Department expects such individuals to comply with fundamental SPD policies, such as those concerning force, bias, professionalism, and the reporting of serious misconduct. While SPD has already made a number of positive changes in this area based on OPA’s initial flagging of these issues, there is still more that OPA believes needs to be done.

These concerns caused OPA to make Management Action Recommendations to the Department to change its policies surrounding Secondary Employment. Those recommendations are made in another related OPA case – 2018OPA-0395. OPA also flagged the issues surrounding Special Commissions for the Office of Inspector for Public Safety (OIG). The OIG has agreed to analyze Special Commissions in its work plan for 2019.



OPA is confident that the OIG's analysis and potential recommendations, coupled with OPA's Management Action Recommendations and the work SPD has already done, will serve to rectify this policy and ensure that individuals who commit misconduct similar to that engaged in by NE#1 can be held accountable in the future.

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