



## CLOSED CASE SUMMARY

ISSUED DATE:      SEPTEMBER 4, 2018

CASE NUMBER:     2018OPA-0038

### 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	Sustained
# 2	5.170 - Alcohol and Substance Use 7. No Employee Shall Use or Possess any Controlled Substance, Except at the Direction of a Medical Authority	Sustained
# 3	5.170 - Alcohol and Substance Use 1. Employees Shall Not Report for Duty Under the Influence of any Intoxicant	Not Sustained (Inconclusive)
# 4	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Allegation Removed

**Imposed Discipline**

Had the Named Employee not retired from the Department, his employment would have been terminated.

***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:**

It was alleged that the Named Employee may have possessed and used narcotics in potential violation of policies and law. It was further alleged that the Named Employee may have been under the influence of narcotics while on-duty.

**ADMINISTRATIVE NOTE:**

During the pendency of this investigation, Named Employee #1 went out on administrative leave. As such, OPA was unable to interview him. OPA requested that the Seattle Police Management Association grant an extension to the 180-day period for 30 days after Named Employee #1 returned to duty, which was agreed to. However, Named Employee #1 did not return to the Department and, instead, retired. Given that, the 180-day period is technically still tolled. For administrative purposes, however, OPA has set the 180-day period as the date of this DCM.

**STATEMENT OF FACTS:**

OPA received a complaint from the Complainant, who contended that Named Employee #1 (NE#1), who was formerly employed by SPD as a Lieutenant, stole his laptop, was using narcotics, and many have reported to work while under the influence. OPA interviewed the Complainant. The Complainant asserted that he and NE#1 drove to a friend’s house in NE#1’s truck. While at that house, the Complainant observed NE#1 use meth. The Complainant left his laptop and other items in the truck and those items later went missing. The Complainant stated that when he asked NE#1 about the laptop, NE#1 failed to provide any information about where it was. He then asked for NE#1 to



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pay him back for his lost items and when NE#1 did not do so, he filed this complaint with OPA. NE#1 eventually paid money to the Complainant to recompense him for the lost items.

Based on the Complainant's allegations, OPA referred this matter to SPD's Investigations Bureau for criminal investigation. The assigned detective interviewed the Complainant, who provided the same information as he disclosed to OPA, albeit with additional detail. The Complainant confirmed that he observed NE#1 use narcotics on a number of occasions, including when they went to their friend's house together. On that evening, the Complainant observed NE#1 both smoke and inject meth. The Complainant asserted that NE#1 did not use drugs while in uniform or when on-duty and that NE#1 tried to keep his drug use and his profession separated. The Complainant provided the detective with a series of texts messages between him and NE#1, which established that NE#1 and the Complainant had an ongoing relationship, that they visited the friend's house on the evening in question, that the Complainant left his laptop and other items in the car, that the Complainant initially unsuccessfully sought payment from NE#1, and that NE#1 later paid the Complainant. The text messages further intimated, without explicitly stating, that NE#1 and the Complainant were using drugs together (i.e. "Lets do that thing we do" and "Im gonna do that thing we do"). Lastly, the text messages confirmed that NE#1 was struggling with addiction at the time.

The detective also interviewed the friend whose house NE#1 and the Complainant went to. The friend also had NE#1's cellphone number saved. The friend confirmed that NE#1 smoked meth at his residence. The friend stated that he did not ever see NE#1 use drugs while in uniform or when he was on-duty.

The detective lastly spoke with a sergeant who reported that NE#1 had engaged in strange and paranoid behavior while working a demonstration during Martin Luther King, Jr. Day. NE#1 reportedly acted in a similar paranoid fashion when he used meth, as reported by both the Complainant and the friend.

The detective then concluded his investigation. Ultimately, this matter was not referred to a prosecutor and was, instead, sent back to OPA. In the return memorandum to OPA, the Assistant Chief of the Investigations Bureau noted that, to the extent narcotics were used by NE#1, it occurred in a social setting. The Assistant Chief further noted that a drug possession crime could not be charged retroactively. Lastly, the Assistant Chief stated that there was no evidence of any narcotics dealing by NE#1.

After receiving this matter back from the Investigations Bureau, OPA commenced its investigation. OPA relied on the statement it had taken from the Complainant and the Case Investigation Report. OPA attempted to interview NE#1 but he declined to be interviewed.

### **ANALYSIS AND CONCLUSIONS:**

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

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

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. As discussed above and below, applying a preponderance of the evidence standard, I find that NE#1's conduct violated a number of policies and laws. Most notably, NE#1 violated the criminal laws proscribing possession of narcotics, as well as SPD Policy 5.170-POL-7, which prevents employees from using or possessing controlled substances.



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For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

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

***5.170 - Alcohol and Substance Use 7. No Employee Shall Use or Possess any Controlled Substance, Except at the Direction of a Medical Authority***

SPD Policy 5.170-POL-7 prohibits Department employees from using or possessing any controlled substances, except at the direction of a medical authority. Here, both the Complainant and the friend confirmed that NE#1 had both possessed and used meth. Both verified that he had done so on multiple occasions while in their presence. Moreover, as described above, NE#1's text messages to the Complainant appear to confirm this possession and usage, as does the fact that he later sought drug counseling.

When applying a preponderance of the evidence standard, these uncontroverted facts establish that NE#1 violated this policy by possessing and using controlled substances. As such, I recommend that this allegation be Sustained. In reaching this finding, I note that drug addiction is a disease that can be inordinately difficult to overcome. OPA is happy and relieved to hear that NE#1, who was a hard-working, well-liked, and respected lieutenant, has sought drug counseling and that this counseling appears to have been successful. OPA wishes NE#1 all the best in his future endeavors.

Recommended Finding: **Sustained**

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

***5.170 - Alcohol and Substance Use 1. Employees Shall Not Report for Duty Under the Influence of any Intoxicant***

As discussed above, the detective spoke to a sergeant who reported that NE#1 showed up for duty acting strangely and in a paranoid fashion. Based on the texts written by NE#1 and on the interviews of the Complainant and the friend by both OPA and the detective, NE#1 allegedly engaged in similar behavior to that described by the sergeant when he was using meth. As such, it is plausible that NE#1's behavior during his shift on Martin Luther King, Jr. Day was caused by his usage of narcotics.

SPD Policy 5.170-POL-1 states that Department employees shall not report for duty under the influence of any intoxicant. Accordingly, if it could be proven that NE#1 did use narcotics prior to attending work, he would have acted in violation of this policy.

Ultimately, this issue is inconclusive. While the sergeant reported that NE#1's behavior was concerning, the sergeant had no direct evidence that NE#1 was, in fact, under the influence of an intoxicant. Moreover, both the Complainant and the friend stated that they had not seen NE#1 using drugs while either in uniform or on-duty.

For these reasons, I find that there is insufficient evidence to prove or disprove this allegation. As such, I recommend that this allegation be Not Sustained – Inconclusive.

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



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**Named Employee #1 - Allegation #4**

***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.)

Possessing and using narcotics while employed by SPD would certainly constitute unprofessional behavior that undermines NE#1 and the Department. However, given that I already recommend that the above allegations be Sustained, I find it unnecessary and duplicative to reach a similar finding here. As such, I recommend that this allegation be removed.

Recommended Finding: **Allegation Removed**