



Timothy M. Keller  
Mayor

# City of Albuquerque

## Albuquerque Police Department



Eric J. Garcia  
Interim Superintendent of Police Reform

### Interoffice Memorandum

February 7, 2022

**To:** Diane McDermott, Interim Executive Director, CPOA  
**From:** Eric J. Garcia, Interim Superintendent of Police Reform/DCAO  
**Subject:** Non-Concurrence of Findings and/or Discipline re: CPC 109-21

This memorandum serves to convey the articulation for APD’s points of non-concurrence in the above captioned administrative investigation conducted by the Civilian Police Oversight Agency.

**Summary of non-concurrence of finding(s):**

Policy	CPOA Finding	APD Finding
1-1-6(A)(3)	Sustained	Not Sustained

**Rationale for non-concurrence of the above listed finding against Detective K R :**

I concur with the recommendation provided by City of Albuquerque Legal as follows:

“Pursuant to §9-4-1-4(C)(3)(g) ROA 1994, I have reviewed the investigation and findings of the Civilian Police Oversight Agency (CPOA) regarding CPC 109-21, which pertained to allegations that Detective K R ; had violated SOP 1-1-4(D)(20) (“Personnel Code of Conduct”), which was in effect at all times relevant to the conduct at issue.

As noted in the investigation, the relevant portion of the SOP 1-1-4 is as follows: “D. On-Duty Conduct ... 20. Personnel will **truthfully answer all questions** specifically directed to them that are related to their employment and to all operations of the Department.” (emphasis added) It follows that in order for sworn personnel to have violated this section, they must deliberately lie, conceal facts and/or circumstances, or submit information they know to be false.

In short, Detective R was alleged to have withheld information regarding promises he made to a cooperating witness in a criminal matter pending in federal court. Detective R had been tasked with assisting in a federal case. This involved working with an incarcerated witness who was expected to testify against the defendant.

It is clear that Detective R , while acting in conjunction with federal authorities, was acting within the scope of his employment and that any information related to his efforts in that regard would fall

within the scope of the SOP at issue in this matter. He had an obligation to truthfully answer any and all questions directed to him that could be related to his involvement in the federal case.

The investigation, however, did not reveal any specific fact or circumstance that would show, by way of a preponderance of the evidence, that Detective R intended to lie, conceal, or advance false information in response to any inquiries about having made promises to a witness. The investigation revealed that Detective R did not receive any formal training from the federal agencies involved with regard to how to document interactions with witnesses.

A portion of Detective R testimony was apparently the main piece of evidence in the investigation which resulted in the determination that the allegation of misconduct was sustained. That testimony was quoted in the Court's order. However, that testimony does not contain any admission that Detective R intentionally lied, concealed relevant facts or circumstances or submitted false information. Instead, the testimony reflects that the detective, upon being questioned in court, admitted that he had previously made promises and failed to disclose them, not that he was aware of having made promises when he was asked to confirm the contrary some period of time afterward.

While the Court ultimately did not find this specific statement to be credible, the Court also held clearly that it could not assign a bad faith motive to the detective's failure to disclose the promises he made to the witness. The testimony from Detective R could equally be construed that he erred by failing to properly document all of his interactions with the witness rather than deliberately concealing or lying about the relevant interactions he had with the witness.

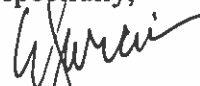
Detective R can certainly be criticized for failing to adequately and thoroughly document his conversations with the witness, but this alone does not give rise to a finding that he violated the relevant SOP. He clearly made normal promises to a witness, but failed to properly record these in a manner which might have resulted in compliance with the Court's later verbal and written discovery rulings.

Because the available facts and circumstances in the investigation cannot fairly point to one conclusion over another by a preponderance of the evidence, I must respectfully disagree with the CPOA investigation and conclude that the alleged misconduct be deemed "not sustained." As such, the Department will take no disciplinary action against Detective R regarding this allegation.

**Conclusion:**

As a result of the above mentioned points of non-concurrence, the CPOA's recommended adverse finding will be replaced with the non-adverse finding of "Not Sustained" as the official resolution to this case.

Respectfully,



Eric J. Garcia  
Interim Superintendent of Police Reform/DCAO  
Albuquerque Police Department, Police Reform Bureau

c: Harold J. Medina, Chief of Police