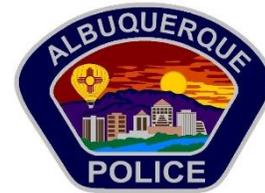




Timothy M. Keller
Mayor

City of Albuquerque

Albuquerque Police Department



Eric J. Garcia
Superintendent of Police Reform

January 2, 2025

Interoffice Memorandum

To: Diane McDermott, Executive Director, CPOA

From: Jimmy Collins, Major, Office of the Superintendent

Subject: Non-Concurrence of Finding re: CPC-211-2024

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.

| Policy | CPOA Finding | APD Finding |
|-------------------|--------------|-------------|
| 2-8-5-D-1 Sgt M. | Sustained | Exonerated |
| 2-8-5-D-1 Ofc. Sc | Sustained | Exonerated |
| 2-8-5-A Ofc. St. | Sustained | Exonerated |

Rationale for non-concurrence of action for 2-8-5-D-1 (Sgt. M.):

Commanders Waite and Landavazo conducted the Professional Integrity review and did not concur with the finding of sustained for this violation. Both commanders provided a detailed explanation as to why they did not agree with the CPOA in this matter and returned a finding of exonerated.

Sgt. M. recorded all contact with both the petitioner and the complainant/subject. OBRD was deactivated only when Sgt. M. was no longer in contact with the petitioner and complainant/subject and was performing administrative duties. A review of the definitions of investigative encounter and law enforcement encounter clearly refer to contact with "subjects" and it is reasonable for officers to deactivate their OBRD when they no longer have contact. Additionally, the definition of contact indicates "direct interaction," which in this incident would be face to face conversation. Once contact, or direct interaction, was intended anew, all officers reactivated their cameras. (*Commander Sean Waite, Professional Integrity Review*).

In reference to SOP 2.8.5.D.1(6M), Sgt. M. accompanied his officers in a case that he considered high profile, as it involved a Metro Court judge. The officers made contact with the caller who wanted an Emergency Restraining Order (ERO) on her ex-husband. After obtaining relevant information, the officers walked away to work on the ERO. Sgt. M. then walked away to check on the officers and at that point he turned off his OBRD. In his interview, Sgt. M. advised that he no longer engaged in a law enforcement contact and had completed all intended contact with the caller. I concur with Cmdr. Waite and the finding of exonerated. (*Commander Henry Landavazo, Professional Integrity Review*).

I reviewed the evidence presented in this investigation and I have concluded the conclusion reached by Commanders Waite and Landavazo was correct and reasonable.

Superintendent Garcia reviewed the circumstances of the non-concurrence and agreed with the finding of exonerated for this violation.

Rationale for non-concurrence of action for 2-8-5-D-1 (Ofc. Sc.):

Commanders Waite and Landavazo conducted the Professional Integrity review and did not concur with the finding of sustained for this violation. Both commanders provided a detailed explanation as to why they did not agree with the CPOA in this matter and returned a finding of exonerated.

Ofc. Sc. recorded all contact with both the petitioner and the complainant/subject. OBRD was deactivated only when Ofc. Sc. was no longer in contact with the petitioner and complainant/subject and was performing administrative duties. A review of the definitions of investigative encounter and law enforcement encounter clearly refer to contact with "subjects" and it is reasonable for officers to deactivate their OBRD when they no longer have contact. Additionally, the definition of contact indicates "direct interaction," which in this incident would be face to face conversation. Once contact, or direct interaction, was intended anew, officers reactivated their cameras. As a result, I recommend a finding of exonerated. (*Commander Sean Waite, Professional Integrity Review*).

The investigation reflects that Officer Sc. made contact with the caller who wanted an Emergency Restraining Order (ERO) on her ex-husband. After obtaining relevant information, Officer Sc. and Officer St. walked away to their police units to work on the ERO. Officer Sc. advised that he no longer contact with any one. I concur with Cmdr. Waite and the finding of exonerated. (*Commander Henry Landavazo, Professional Integrity Review*).

I reviewed the evidence presented in this investigation and I have concluded the conclusion reached by Commanders Waite and Landavazo was correct and reasonable.

Superintendent Garcia reviewed the circumstances of the non-concurrence and agreed with the finding of exonerated for this violation.

Rationale for non-concurrence of action for 2-8-5-A (Ofc. St.):

Commanders Waite and Landavazo conducted the Professional Integrity review and did not concur with the finding of sustained for this violation. Both commanders provided a detailed explanation as to why they did not agree with the CPOA in this matter and returned a finding of exonerated.

Ofc. St. recorded all contact with both the petitioner and the complainant/subject. OBRD was deactivated only when Ofc. St. was no longer in contact with the petitioner and complainant/subject and was performing administrative duties or speaking with the on-call judge. A review of the definitions of investigative encounter and law enforcement encounter clearly refer to contact with "subjects" and it is reasonable for officers to deactivate their OBRD when they no longer have contact. Additionally, the definition of contact indicates "direct interaction," which in this incident would be face to face conversation. Once contact, or direct interaction, was intended anew, officers reactivated their cameras. Finally, as to the telephone conversation with the judge, a judge is not a member of the public. As a result, I recommend a finding of exonerated. (*Commander Sean Waite, Professional Integrity Review*).

In reference to SOP 2-8-5-A (6M), the investigation reflects that officers made contact with the caller who wanted an Emergency Restraining Order (ERO) on her ex-husband. After obtaining relevant information, Officer St. and Officer Sc. walked away to their police units to work on the ERO. Officer St. turned off his OBRD and contacted a District Court Judge regarding obtaining approval of the ERO. In his interview, Officer St. advised that it was his understanding that phone conversations with an attorney and or a judge were privileged conversations and were not to be recorded. I concur with Cmdr. Waite and the finding of exonerated. . (*Commander Henry Landavazo, Professional Integrity Review*).

I reviewed the evidence presented in this investigation and I have concluded the conclusion reached by Commanders Waite and Landavazo was correct and reasonable.

Superintendent Garcia reviewed the circumstances of the non-concurrence and agreed with the finding of exonerated for this violation.

Conclusion:

Based on the totality of the information presented, Sergeant M., Officer Sc., and Officer St. were exonerated and no action was taken against them.

Respectfully,



Major Jimmy Collins,
Deputy Superintendent of Reform
Albuquerque Police Department

Cc: Eric Garcia, Superintendent of Police Reform