

CITY OF ALBUQUERQUE



CIVILIAN POLICE OVERSIGHT AGENCY

July 20, 2023

Via Certified Mail

7009 3410 0000 2321 2255

Re: CPC # 250-21

Mr. A :

PO Box 1293

Albuquerque

NM 87103

www.cabq.gov

COMPLAINT:

Ofc. D responded to A ex-wife's home to monitor a custody exchange of their children. This exchange was not completed as Ofc. D violated the court, and his actions caused the removal of A children during his period of care. Ofc. D unlawfully detained A , which resulted in the unlawful transfer of custody of A children back to their mother. A said Ofc. D aggressively stepped in front of him, pushed him, and stopped him from taking his kids home. A said Ofc. D threatened to fight him and charge him. A said Ofc. D showed favoritism due to his ex-wife's current husband being an APD officer.

Note: There was a significant delay in the completion of this case due to the primary employee being on military deployment.

EVIDENCE REVIEWED:

Video(s): Yes APD Report(s): Yes CAD Report(s): Yes

Complainant Interviewed: Yes Witness(es) Interviewed: Yes

APD Employee Interviewed: Yes

APD Employee Involved: Ofc. D

Other Materials: Court Order, military orders for suspension of case for over a year

Date Investigation Completed: March 16, 2023

FINDINGS

Policies Reviewed: 2.52.4.F.1.e & 1.1.7.E.1

1. **Unfounded.** Investigation classification when the investigator(s) determines, by clear and convincing evidence, that alleged misconduct did not occur or did not involve the subject officer.

2. **Sustained.** Investigation classification when the investigator(s) determines, by a preponderance of the evidence, the alleged misconduct did occur by the subject officer.

3. **Not Sustained.** Investigation classification when the investigator(s) is unable to determine one way or the other, by a preponderance of the evidence, whether the alleged misconduct either occurred or did not occur.

Policies Reviewed: 4.24.2.G.1, 2.68.4.A.8.b & 2.8.5.A

4. **Exonerated.** Investigation classification where the investigator(s) determines, by a preponderance of the evidence, that alleged conduct in the underlying complaint did occur but did not violate APD policies, procedures, or training.

5. **Sustained Violation Not Based on Original Complaint.** Investigation classification where the investigator(s) determines, by a preponderance of the evidence, misconduct did occur that was not alleged in the original complaint (whether CPC or internal complaint) but that other misconduct was discovered during the investigation, and by a preponderance of the evidence, that misconduct did occur.

6. **Administratively Closed.** Investigation classification where the investigator determines: The policy violations of a minor nature and do not constitute a pattern of misconduct (i.e. a violation subject to a class 7 sanction, -the allegations are duplicative; -the allegations, even if true, do not constitute misconduct; or -the investigation cannot be conducted because of the lack of information in the complaint, and further investigation would be futile.

Additional Comments:

2.52.4.F.1.e: OBRD showed Ofc. D placed his hand on A's shoulder in a non-aggressive manner to stop A from trespassing onto the property as the kids returned to their mother. This is not defined as a use of force. The context of fighting was not a physical threat or challenge. 1.1.7.E.1: Evidence does not support that Ofc. D acted inappropriately or favored Ofc. R. 4.24.2.G.1: OBRD showed Ofc. D maintained the physical custody status quo prior to A's manipulation of the situation. A and his ex-wife relied on different interpretations of the custody order to justify their actions. 2.68.4.A.8.b Ofc. D briefly prohibited A's departure due to existing reasonable suspicion and A's manipulation. Once things resolved Ofc. D utilized discretion to decline further investigation into the allegations of trespassing and false imprisonment alleged by the ex-wife. 2.8.5.A A's complaint Ofc. D turned off his OBRD while speaking with the Sgt. The exclusive conversation between Ofc. D and the Sgt. is a permissible time to discontinue recording. Recording was resumed during contact with the parties.

You have the right to appeal this decision. If you are not satisfied with the findings of the CPOA Executive Director within 30 calendar days (inclusive of holiday and weekends) of receipt of this letter, communicate your desire to have an appeal hearing before the CPOA Advisory Board in a signed writing addressed to the CPOA Director. Please send your request to P.O. Box 1293, Albuquerque, NM 87103 or by email CPOA@cabq.gov. Include your CPC number. Please note, **at this time the Advisory Board is being reconfigured so no hearings will take place until regularly scheduled meetings occur. If your appeal request is filed timely you will be notified of when your appeal will be scheduled and more information will follow. Once normal procedures resume the appeal hearings will proceed as specified in the Oversight Ordinance 9-4-1-10. In order for the Advisory Board to modify the Director's findings your appeal must demonstrate one or more of the following:**

- A) The findings by the Director had no explanation that would lead to the conclusion made; or,
- B) The findings by the Director were not supported by evidence that was available at the time of the investigation; or,
- C) The APD policy or APD policies that were considered by the Director were the wrong policies or they were used in the wrong way; or,
- D) The APD policy or APD policies considered by the Director were chosen randomly or they do not address the issues in your complaint.

Administratively closed complaints may be re-opened if additional information becomes available. Please provide your additional information in writing to the CPOA Director as listed above.

If you are not satisfied with the final disciplinary decision of the Chief of Police or any matter relating to the Chief's handling of the complaint you may request a review of the complaint by the City's Chief Administrative Officer. Your request must be in writing and within 30 calendar days (inclusive of holidays and weekends) of receipt of this letter. Include your CPC number. The review by the Chief Administrative Officer will not be delayed as it is not dependent upon the Advisory Board.

If you have a computer available, we would greatly appreciate your completing our client survey form at <http://www.cabq.gov/cpoa/survey>. There was a delay in the issuance of findings due to the resignation of the Executive Director and another not being appointed by City Council until some months later.

Thank you for participating in the process of civilian oversight of the police, ensuring officers and personnel of the APD are held accountable, and improving the process.

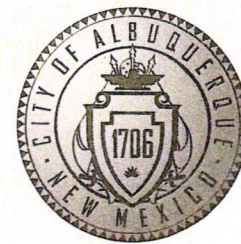
Sincerely,
The Civilian Police Oversight Agency by



Diane McDermott
Interim Executive Director
(505) 924-3770

cc: Albuquerque Police Department Chief of Police

CITY OF ALBUQUERQUE



CIVILIAN POLICE OVERSIGHT AGENCY

July 20, 2023

Via Certified Mail

7009 3410 0000 2321 2255

Re: CPC # 250-21

Mr. A :

PO Box 1293

Albuquerque

NM 87103

www.cabq.gov

COMPLAINT:

Ofc. D responded to A's ex-wife's home to monitor a custody exchange of their children. This exchange was not completed as Ofc. D violated the court, and his actions caused the removal of A's children during his period of care. Ofc. D unlawfully detained A's children which resulted in the unlawful transfer of custody of A's children back to their mother. A said Ofc. D aggressively stepped in front of him, pushed him, and stopped him from taking his kids home. A said Ofc. D threatened to fight him and charge him. A said Ofc. D showed favoritism due to his ex-wife's current husband being an APD officer.

Note: There was a significant delay in the completion of this case due to the primary employee being on military deployment.

EVIDENCE REVIEWED:

Video(s): Yes APD Report(s): Yes CAD Report(s): Yes

Complainant Interviewed: Yes Witness(es) Interviewed: Yes

APD Employee Interviewed: Yes

APD Employee Involved: Ofc. R

Other Materials: Court Order, military orders for suspension of case for over a year

Date Investigation Completed: March 16, 2023

FINDINGS

Policies Reviewed: 1.1.7.A

1. **Unfounded.** Investigation classification when the investigator(s) determines, by clear and convincing evidence, that alleged misconduct did not occur or did not involve the subject officer.

2. **Sustained.** Investigation classification when the investigator(s) determines, by a preponderance of the evidence, the alleged misconduct did occur by the subject officer.

3. **Not Sustained.** Investigation classification when the investigator(s) is unable to determine one way or the other, by a preponderance of the evidence, whether the alleged misconduct either occurred or did not occur.

4. **Exonerated.** Investigation classification where the investigator(s) determines, by a preponderance of the evidence, that alleged conduct in the underlying complaint did occur but did not violate APD policies, procedures, or training.

5. **Sustained Violation Not Based on Original Complaint.** Investigation classification where the investigator(s) determines, by a preponderance of the evidence, misconduct did occur that was not alleged in the original complaint (whether CPC or internal complaint) but that other misconduct was discovered during the investigation, and by a preponderance of the evidence, that misconduct did occur.

6. **Administratively Closed.** Investigation classification where the investigator determines: The policy violations of a minor nature and do not constitute a pattern of misconduct (i.e. a violation subject to a class 7 sanction, -the allegations are duplicative; -the allegations, even if true, do not constitute misconduct; or -the investigation cannot be conducted because of the lack of information in the complaint, and further investigation would be futile.

Additional Comments:

Ofc. R is the significant other of A ex-wife and, although not a parent of the children, is involved in the situation. According to the OBRD Ofc. R did not interfere with the call for service or try and become officious with A He did not ask Ofc. D for favoritism. Regarding the report, his intention was to alert his supervisor since he was involved, and Sgt. W advised that he would process things through normal channels. Ofc. R did not use his position to gain personal advantage.

You have the right to appeal this decision. If you are not satisfied with the findings of the CPOA Executive Director within 30 calendar days (inclusive of holiday and weekends) of receipt of this letter, communicate your desire to have an appeal hearing before the CPOA Advisory Board in a signed writing addressed to the CPOA Director. Please send your request to P.O. Box 1293, Albuquerque, NM 87103 or by email CPOA@cabq.gov. Include your CPC number. Please note, **at this time the Advisory Board is being reconfigured so no hearings will take place until regularly scheduled meetings occur. If your appeal request is filed timely you will be notified of when your appeal will be scheduled and more information will follow. Once normal procedures resume the appeal hearings will proceed as specified in the Oversight Ordinance 9-4-1-10. In order for the Advisory Board to modify the Director's findings your appeal must demonstrate one or more of the following:**

- A) The findings by the Director had no explanation that would lead to the conclusion made; or,
- B) The findings by the Director were not supported by evidence that was available at the time of the investigation; or,
- C) The APD policy or APD policies that were considered by the Director were the wrong policies or they were used in the wrong way; or,
- D) The APD policy or APD policies considered by the Director were chosen randomly or they do not address the issues in your complaint.

Administratively closed complaints may be re-opened if additional information becomes available. Please provide your additional information in writing to the CPOA Director as listed above.

If you are not satisfied with the final disciplinary decision of the Chief of Police or any matter relating to the Chief's handling of the complaint you may request a review of the complaint by the City's Chief Administrative Officer. Your request must be in writing and within 30 calendar days (inclusive of holidays and weekends) of receipt of this letter. Include your CPC number. The review by the Chief Administrative Officer will not be delayed as it is not dependent upon the Advisory Board.

If you have a computer available, we would greatly appreciate your completing our client survey form at <http://www.cabq.gov/cpoa/survey>. There was a delay in the issuance of findings due to the resignation of the Executive Director and another not being appointed by City Council until some months later.

Thank you for participating in the process of civilian oversight of the police, ensuring officers and personnel of the APD are held accountable, and improving the process.

Sincerely,
The Civilian Police Oversight Agency by



Diane McDermott
Interim Executive Director
(505) 924-3770

cc: Albuquerque Police Department Chief of Police