

CIVILIAN POLICE OVERSIGHT AGENCY BOARD

Chantal M. Galloway, Chair *Joanne Fine, Vice Chair* *Tara Armijo-Prewitt*

Dr. William J. Kass *Eric Olivas* *Valerie St. John*

Chelsea Van Deventer *Leonard Waites*

Edward Harness, Executive Director

BOARD AGENDA

Thursday, July 11, 2019 – 5:00 PM

Vincent E. Griego Chambers

- I. Welcome and call to order.**
- II. Pledge of Allegiance – *Valerie St. John***
- III. Mission Statement – *Chantal M. Galloway, Chair***

*“Advancing Constitutional policing and
accountability for APD and the Albuquerque
Community.”*
- IV. Approval of the Agenda**
- V. Public Comments**
- VI. Review and Approval of Minutes from June 13, 2019**
- VII. Reports from City Staff**
 - a. APD
 - b. City Council
 - c. Mayor’s Office
 - d. City Attorney
 - e. CPC
 - f. APOA
 - g. CPOA – *Edward Harness, Executive Director*
- VIII. Reports from Subcommittees**
 - a. Community Outreach Subcommittee – *Joanne Fine*
 - b. Policy and Procedure Review Subcommittee – *Chelsea Van Deventer*
 1. APOA Objection 2-57
 - c. Case Review Subcommittee – *Valerie St. John*
 - d. Personnel Subcommittee – *Chantal Galloway*
- IX. Discussion**
 - a. Personnel Matters
 - b. Status Conference w/Judge Browning
 - c. Board Members’ use of social media
 - d. Board Members’ impartiality
 - e. Subcommittee Appointments

X. Cases:

a. Administratively Closed Cases

009-19	028-19	032-19	034-19	043-19
047-19	049-19	056-19	060-19	061-19
065-19	066-19	075-19	078-19	089-19
098-19	099-19	100-19	107-19	108-19
109-19	111-19	112-19	113-19	117-19
118-19	119-19	124-19	127-19	141-19
145-19	148-19	149-19	150-19	247-18

b. Exonerated
074-19

c. Sustained
048-19 072-19 132-18

d. Unfounded
131-19

XI. Review of Appeal
095-19

XII. Serious Use of Force/Officer Involved Shooting Cases:

XIII. CPOA Board's Review of Garrity Materials:

XIV. Meeting with Counsel re: Pending Litigation or Personnel Issues:

Closed Discussion and Possible Action re: Pending Litigation or Personnel Issues

a. Matters subject to the attorney-client privilege pertaining to threatened or pending litigation in which the public body is or may become a participant pursuant to NMSA 1978, Section 10-15-1(H)(7); and

i. Arasim v. CPOA et al., D-202-CV-2018-08758

b. Limited personnel matters pursuant to NMSA 1978, Section 10-15-1(H)(2)

ii. Executive Director

XV. Other Business

XVI. Adjournment- *Next Regularly scheduled CPOA Board meeting will be on August 8, 2019 at 5:00 p.m. in the Vincent E. Griego Chambers.*

CIVILIAN POLICE OVERSIGHT AGENCY

Civilian Police Oversight Agency Board

Chantal M. Galloway, Chair *Joanne Fine, Vice Chair* *Tara Armijo-Prewitt*

Dr. William J. Kass *Eric Olivas* *Valerie St. John*

Chelsea Van Deventer *Leonard Waites*

Edward Harness, Executive Director

July 12, 2019

Via Certified Mail

7018 1130 0002 3428 9078

Re: CPC #048-19

Dear _____ :

A Civilian Police Oversight Agency (CPOA) Investigator was assigned to investigate your Complaint against Officers of the Albuquerque Police Department (APD) on February 12, 2019, regarding an incident that occurred on January 12, 2019. The CPOA thoroughly and impartially investigated the complaint.

Upon completion of the investigation, the CPOA determined, based on a preponderance of the evidence, whether or not the APD Officer(s) involved violated Standard Operating Procedures (SOPs). A preponderance of the evidence means that one side has demonstrated a greater weight of evidence (more than 50%) that is more credible and convincing than the other side. If the credible evidence is 50-50, the proper finding is Not Sustained.

Please be aware, the contract between the Albuquerque Police Officers' Association (APOA) and the City of Albuquerque requires that officers cooperate in the investigation; therefore, the officer's statements may not be made public. Below is a summary of the complaint, the CPOA's investigation, and findings.

I. THE COMPLAINT AND INVESTIGATION

Mr. S _____ complained about how Officer L spoke to his daughter, _____ concerning an allegation of child abuse. Mr. S _____ wrote Officer L went to his daughter's work instead of at her home, insisted his daughter committed the act, and tried to get her to admit it. Since his granddaughter was to return to Ms. S _____ for a custody exchange the next day, Officer L told Ms. S _____ she needed to agree to allow the father to retain custody of the child or the child would be taken to foster care. Mr. S _____ wrote Officer L was unprofessional and did not conduct a proper investigation.

The Executive Director of the CPOA reviewed the investigation conducted by the CPOA Investigator, which included a review of the applicable SOPs, the complaint, the Computer Aided Dispatch (CAD),

the police report, lapel videos, Mr. S interview, and Officer L's interview. Ms. S did not participate in the investigative process.

II. FINDINGS AND CONCLUSIONS REGARDING APPLICABLE STANDARD OPERATING PROCEDURES REGARDING OFFICER L'S CONDUCT

A) The CPOA reviewed Standard Operating Procedural Order 2-92-3B3 regarding Officer L's conduct, which states:

Officers will conduct a complete and thorough preliminary investigation and will write reports (using the State of New Mexico Uniform Incident Report) on all cases (confirmed or suspected) of child abuse, neglect, abandonment, or cruelty to children. Per state statutes, 32A-4-3 officers will immediately notify CYFD when they have reasonable suspicion that a child is abused or neglected.

Mr. S claimed Officer L was incompetent since she did not do a proper investigation and get a backstory in the situation. According to Mr. S, there was no history of abuse, but Officer L accused his daughter of abuse over minor scratches.

Officer L was called out to the home of the child's father. His address is in BCSO jurisdiction so originally the call started with BCSO. Officer L talked to the deputy regarding what he learned. The child's father showed Officer L past reports he has made with BCSO and CYFD regarding the situation with Ms. S and the care of his daughter. The child's father showed Officer L a letter allegedly written by Ms. S mother expressing concerns that her daughter was unfit to care for her granddaughter. Officer L reviewed the reports available to her, tried to contact Ms. S mother, and then contacted Ms. S for her side of the story. Officer L has more training and experience in child abuse cases than the average field officer. She contacted CYFD about the situation and her investigation.

APD SOP states that field services officers will have case responsibility for alleged misdemeanor abuse cases, which this was. By SOP, the Crimes Against Children Unit (CACU) was not necessary for this call. Officer L talked to the individuals available and reviewed the information available. She wrote a report and notified CYFD. Officer L is a certified CARE officer, meaning she has extra training when it comes to child abuse calls and previously worked in CACU.

The CPOA finds Officer L's conduct to be **UNFOUNDED** where the investigation determined the alleged misconduct did not occur.

B) The CPOA reviewed Standard Operating General Order 1-1-4D15 regarding Officer L's conduct, which states:

Personnel will treat the public with respect, courtesy, and professionalism at all times.

Mr. S complained that Officer L went to his daughter's work instead of at her home to discuss allegations of child abuse made by the father of the child. Mr. S claimed Officer L insisted Ms. S committed the act and tried to get her to admit it. Since his granddaughter was to return to Ms.

S for a custody exchange the next day, Officer L told Ms. S she needed to agree to allow the father to retain custody of the child or the child would be taken to foster care.

Officer L, after hearing the one side from the child's father, tried to call Ms. S to get her side. Ms. S did not answer. The father of the child said she would currently be at work. Officer L felt it was necessary to get an explanation for the injuries she observed to the child's face before the child returned to Ms. S custody. Officer L went to Ms. S work and asked if Ms. S would come outside to talk to her, but Ms. S wished to remain inside the business. Ms. S initial attitude was very nonchalant. Officer L asked what happened to her daughter's face and Ms. S claimed she did not know and indicated it was nothing. Officer L explained that she needed a reasonable explanation for the injury. She told Ms. S even if she or someone else did it accidentally, she just needed Ms. S to be honest with her. Ms. S became irritated and accused the father of her child of causing drama. Officer L asked her again to provide an explanation. Ms. S then said her dog caused the scratches on one side of the child's face and the cat on the other. Ms. S had no explanation for why she did not say that in the first place. Officer L has significant training and experience in child abuse cases; the injuries clearly looked to her as if someone grabbed the child's face hard causing nail bruises and the scratches were likely from nails if the child pulled her head away. Officer L told Ms. S what the cause of the injuries looked like to her. Officer L believed Ms. S delayed explanation was far-fetched. Ms. S maintained the story about the dog and the cat even though she did not see it happen, there were no additional injuries from the dog as the child would have been knocked down being a small child, and the scratches looked like they were from the same source even though Ms. S claimed they were from different sources. Officer L asked Ms. S to allow her daughter to stay with the father until CYFD looked into the situation. Ms. S asked the consequence if she did not agree. Officer L agreed she told Ms. S she would call CYFD to come out then and a determination would be made if a 48-hour hold were necessary since Officer L did not feel that she received a reasonable explanation for the injuries and wanted to make sure the child was safe. Ms. S agreed the child could stay with the father and wished not to speak to Officer L anymore.

Attempts were made to interview Ms. S, but she did not participate in the investigative process. Mr. S was not present during any of the interaction between Officer L and his daughter, he only heard about it after the fact. Officer L's description of what she said and what occurred was similar to Mr. S understanding of what was said, however the tone and manner in which the conversation occurred is unknown. Mr. S portrayed it as unprofessional whereas Officer L stated she was straightforward about the situation and working in the best interest of the child. There was no lapel recording with Ms. S as Officer L camera malfunctioned that night.

The CPOA finds Officer L's conduct to be **NOT SUSTAINED** where the investigation was unable to determine whether the alleged misconduct occurred.

C) The CPOA reviewed Standard Operating Procedural Order 2-16-2E1 regarding Officer L's conduct, which states:

All initial reports must be submitted at or before the end of the shift, except at the direction of a supervisor.

Officer L stated the call took a long time on her overtime shift. She did not complete a report at the end of shift and did not contact a supervisor for an extension. She had pulled a case number that night, but when she got to writing the report, she did not remember she had already obtained a number and so created a new CAD to generate a case number. She thought she pulled the number only a couple of days after the incident, but agreed the CAD indicated it was much later.

The CAD for the call showed the original case number obtained was cancelled. A new CAD was created with a case number, but that was not until March 20, 2019. This was prior to her notification about the complaint.

The CPOA finds Officer L's conduct to be a **SUSTAINED VIOLATION NOT BASED ON ORIGINAL COMPLAINT** where the investigation determined that misconduct did occur that was not alleged in the original complaint, but that was discovered during the misconduct investigation.

D) The CPOA reviewed Standard Operating Department Procedural Order 2-8-5F1ai regarding Officer L's conduct, which states:

Department personnel shall take these actions regarding OBRDs: a. Ensure that OBRDs assigned to them are functioning properly at the beginning and end of each shift, according to the manufacturer instructions. i. Department personnel shall report immediately and improperly functioning equipment to a supervisor.

Officer L had a couple of recordings that cut out in the middle with the father of the child. Officer L did not have a recording with Ms. S . Officer L stated she did not know exactly why she did not have videos other than her camera was malfunctioning that day. She did not notify her supervisor or document the failure in the report. When asked when she last tested the camera for functionality, Officer L stated she generally does not.

Officer L mentioned in her second lapel recording that her camera was dying so she had awareness that there were problems at least during the latter half of the call.

The CPOA finds Officer L's conduct to be a **SUSTAINED VIOLATION NOT BASED ON ORIGINAL COMPLAINT** where the investigation determined that misconduct did occur that was not alleged in the original complaint, but that was discovered during the misconduct investigation.

1. If you are not satisfied with the findings of the CPOA, please request an appeal in a signed writing to the undersigned within 30 days of receipt of this letter. Include your CPC number.

The POB may grant a Request for Reconsideration only upon the complainant offering proof that:

- A) The APD policy or APD policies that were considered by the POB were the wrong policies or they were used in the wrong way; or,
- B) The APD policy or APD policies considered by the POB were chosen randomly or they do not address the issues in your complaint; or,

- C) The findings of the POB had no explanation that would lead to the conclusion made by the POB;
or,
- D) The findings by the POB were not supported by evidence that was available to the POB at the time of the investigation.

2. If you are not satisfied with the final disciplinary decision of the Chief of Police, you can request a review of the complaint by the city's Chief Administrative Officer. Your request must be in writing and within 30 days of receipt of this letter. Include your CPC number.

If you have a computer available, we would greatly appreciate your completing our client survey form at <http://www.cabq.gov/cpoa/survey> .

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



Ed Harness
Executive Director

cc: Albuquerque Police Department Chief of Police

CIVILIAN POLICE OVERSIGHT AGENCY

Police Oversight Board

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Chelsea Van Deventer *Leonard Waites*

Edward Harness, Executive Director

July 12, 2019

Via Certified Mail

7018 1130 0002 3428 9085

Re: CPC #072-19

Dear Mr. R

A Civilian Police Oversight Agency (CPOA) Investigator was assigned to investigate your Complaint against Officers of the Albuquerque Police Department (APD) on March 25, 2019, regarding an incident that occurred on March 19, 2019. The CPOA thoroughly and impartially investigated the complaint.

Upon completion of the investigation, the CPOA determined, based on a preponderance of the evidence, whether or not the APD Officer(s) involved violated Standard Operating Procedures (SOPs). A preponderance of the evidence means that one side has demonstrated a greater weight of evidence (more than 50%) that is more credible and convincing than the other side. If the credible evidence is 50-50, the proper finding is Not Sustained.

Please be aware, the contract between the Albuquerque Police Officers' Association (APOA) and the City of Albuquerque requires that officers cooperate in the investigation; therefore, the officer's statements may not be made public. Below is a summary of the complaint, the CPOA's investigation, and findings.

I. THE COMPLAINT AND INVESTIGATION

Mr. R _____ wrote he was seated in his vehicle talking to a friend on the side of the road. Mr. R _____ observed two officers approach them, yelling if they knew the people inside a residence. Mr. R _____ wrote they had not been paying attention to the officers. Mr. R _____ wrote Sgt. L approached belligerently, yelling, cussing, and threatening to arrest his friend. Mr. R _____ wrote he repeatedly said he did not know the people they were asking about and asked Sgt. L why he was yelling. Mr. R _____ wrote Officer E approached his vehicle, got in his face, and told him not to interfere with their investigation. Mr. R _____ wrote he asked again, why the officers were yelling and cussing, to which one of them responded, "Because I fucking can." Mr. R _____ wrote his friend asked why they were being racially profiled and Sgt. L said he was darker than he was. Mr. R _____ wrote he received their man numbers, but they refused to give him business cards. Mr. R _____ wrote the encounter was a frightening experience because the two officers were unprofessional and aggressive.

The Executive Director of the CPOA reviewed the investigation conducted by the CPOA Investigator, which included a review of the applicable SOPs, the complaint, the Computer Aided Dispatch (CAD), the lapel video, Sgt. L's interview, and Officer E's interview. Mr. R did not participate in the investigative process. The other man's identity was unknown.

II. FINDINGS AND CONCLUSIONS REGARDING APPLICABLE STANDARD OPERATING PROCEDURES REGARDING SGT. L'S CONDUCT

A) The CPOA reviewed Standard Operating General Order 1-1-4D16 regarding Sgt. L's conduct, which states:

Police officers and Department employees are expected to conduct themselves in a professional manner at all times. Personnel are discouraged from using any language that could be considered profane, derogatory, or disrespectful toward any person. In certain situations, profanity may be acceptable, subject to review on a case-by-case basis.

Mr. R wrote that officers were yelling and cussing at them. Mr. R alleged when he asked why they were yelling and cussing one of the officers responded, "Because I fucking can."

The lapel video showed the officers did not use profanity with the individuals.

The CPOA finds Sgt. L's conduct to be **UNFOUNDED** where the investigation determined that the alleged misconduct did not occur.

B) The CPOA reviewed Standard Operating General Order 1-1-4D15 regarding Sgt. L's conduct, which states:

Personnel will treat the public with respect, courtesy, and professionalism at all times.

Mr. R wrote Sgt. L was belligerent, yelling, and threatening to arrest his friend. Mr. R wrote the officers provided their badge numbers, but refused to provide business cards. Mr. R wrote his friend asked why he was being racially profiled.

Sgt. L stated the man was immediately uncooperative and evasive, which made him suspicious as to whether this individual was possibly the offender in their call. He explained he was just trying to determine if they knew anything about the address of their call, but Mr. R immediately enflamed the situation and accused the officers of harassment. Mr. R then feigned reasonableness by asking why was he yelling and telling him to calm down. Sgt. L admitted he was frustrated because Mr. R involved himself and stirred up trouble to make his job that much more difficult. When Mr. R asked why he was yelling and he told him it was because he wanted to, it was out of frustration. Sgt. L explained he intentionally comes across strongly at first in order to prevent individuals from thinking they could gain the upper hand or cause harm. When the man mentioned something about only approaching because he was black, Sgt. L did not even recognize him as a black man as his skin tone was lighter than Sgt. L's skin, which he said something to that meaning.

The lapel video showed Sgt. L approached the man on the street first. The lapel video showed the man and Mr. R were immediately confrontational and accusatory. The lapel video showed Sgt. L never threatened to arrest the man, but was yelling and confrontational. Sgt. L made snarky, unnecessary remarks while determining if the person had knowledge about his call. The lapel video showed when Mr. R asked why he was yelling, Sgt. L said he wanted to yell to get his point across. The other man said something about racial profiling. Sgt. L told him, "You're whiter than I am dude. What are you talking about?" The lapel video showed Mr. R did not request business cards. The CAD described a male caller was concerned about the safety of a female friend and was near the dispatched address. There were concerns a male subject was holding the female friend hostage. Sgt. L did not know if the person on the street could be their caller or their suspect as he was near the residence. Mr. R description of events did not match the lapel video and he was unresponsive to be part of the investigative process, but the lapel video did show Sgt. L's response to the situation was unprofessional.

The CPOA finds Sgt. L's conduct to be **SUSTAINED** where the investigation determined that the alleged misconduct did occur.

II. FINDINGS AND CONCLUSIONS REGARDING APPLICABLE STANDARD OPERATING PROCEDURES REGARDING OFFICER E'S CONDUCT

A) The CPOA reviewed Standard Operating General Order 1-1-4D16 regarding Officer E's conduct, which states:

Police officers and Department employees are expected to conduct themselves in a professional manner at all times. Personnel are discouraged from using any language that could be considered profane, derogatory, or disrespectful toward any person. In certain situations, profanity may be acceptable, subject to review on a case-by-case basis.

Mr. R wrote that officers were yelling and cussing at them. Mr. R alleged when he asked why they were yelling and cussing one of the officers responded, "Because I fucking can."

The lapel video showed the officers did not use profanity with the individuals.

The CPOA finds Officer E's conduct to be **UNFOUNDED** where the investigation determined that the alleged misconduct did not occur.

B) The CPOA reviewed Standard Operating General Order 1-1-4D15 regarding Officer E's conduct, which states:

Personnel will treat the public with respect, courtesy, and professionalism at all times.

Mr. R wrote the officers were belligerent and yelling. Mr. R wrote Officer E got in his face and told him not to interfere with their investigation. Mr. R wrote the officers provided their badge numbers, but refused to provide business cards.

Officer E stated Mr. R tried to assert his opinion into the conversation between Sgt. L and the other man. His goal then was to distract Mr. R to prevent him from yelling and escalating things. He tried to explain to Mr. R why they were there. Mr. R kept trying to shout past him to Sgt. L. He sternly told Mr. R to be quiet so they could talk. Officer E denied he got in Mr. R's face. He did not remember a request specifically for business cards. Officer E believed it had been appropriate to talk to the men to determine if they knew anything

The lapel video showed Officer E approached Mr. R while Sgt. L spoke to the other man. It did not show Officer E in Mr. R's face as he described and their conversation was not elevated. Officer E approached because Sgt. L initiated the contact, but Officer E agreed they needed to determine the involvement if any of them men in the call they had. The CAD described a male caller was concerned about the safety of a female friend and was near the dispatched address. There were concerns a male subject was holding the female friend hostage. Officer E did not know if the person on the street could be their caller as he was near the residence. The lapel video showed Mr. R never asked for business cards. Mr. R's description of events regarding Officer E did not match the lapel video and he was unresponsive to be part of the investigative process.

The CPOA finds Officer E's conduct to be **UNFOUNDED** where the investigation determined that the alleged misconduct did not occur.

1. If you are not satisfied with the findings of the CPOA, please request an appeal in a signed writing to the undersigned within 30 days of receipt of this letter. Include your CPC number.

The POB may grant a Request for Reconsideration only upon the complainant offering proof that:

- A) The APD policy or APD policies that were considered by the POB were the wrong policies or they were used in the wrong way; or,
- B) The APD policy or APD policies considered by the POB were chosen randomly or they do not address the issues in your complaint; or,
- C) The findings of the POB had no explanation that would lead to the conclusion made by the POB; or,
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2. If you are not satisfied with the final disciplinary decision of the Chief of Police, you can request a review of the complaint by the city's Chief Administrative Officer. Your request must be in writing and within 30 days of receipt of this letter. Include your CPC number.

If you have a computer available, we would greatly appreciate your completing our client survey form at <http://www.cabq.gov/cpoa/survey>.

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.

Letter to Mr. R.
July 12, 2019
Page 5

Sincerely,
The Civilian Police Oversight Agency by

A handwritten signature in black ink, appearing to be 'Ed Harness', written over the printed name.

Ed Harness
Executive/Director

cc: Albuquerque Police Department Chief of Police