

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Inspector General

Inspector General



**Executive Summary Concerning the Results
of an Office of the Inspector General Investigation
Into Misconduct Violation by an Employee of the
District of Columbia Fire and Emergency Medical Services**

2009-0225(S)

INVESTIGATIVE SYNOPSIS

On February 19, 2009, then-D.C. Fire and Emergency Medical Services (FEMS) Chief requested that the District of Columbia Office of the Inspector General (OIG) investigate the allegation that a FEMS Lieutenant “attempted to testify in a civil trial as an expert witness against his employer, the D.C. Fire and Emergency Medical Services Department (D.C. Fire and EMS), on behalf of his part-time employer, using information he gained as a result of his employment with [FEMS].” The Chief was concerned “that [the Lieutenant’s] actions may constitute a violation of DPM § 1803.1 in that his conduct might have resulted in or created the appearance of using public office for private gain.”

OIG investigators interviewed the Assistant Attorney General (AAG), representatives from the law firms representing the private parties in the civil suits, and the Lieutenant. OIG investigators also reviewed a copy of FEMS’ internal investigative file pertaining to this matter, the Lieutenant’s time and attendance records, and pertinent financial records.

In 2003, the Lieutenant was the FEMS’ Casualty Investigations Officer. In that capacity, he investigated performance of duty injuries and allegations of employee administrative and criminal misconduct. In addition to his District government employment, the Lieutenant owned a process service company which, according to its website, performs background research, child support enforcement, domestic/spouse research, judgment enforcement, telephone searches, and service of court papers.

The AAG told OIG investigators that in 2008 he was lead counsel for the District in two civil matters that stemmed from a 2003 automobile accident involving a FEMS ambulance that was traveling in the wrong direction on a one-way street.¹ On October 6, 2008, the first day of trial, the attorney for one of the plaintiffs (Attorney 1) identified the Lieutenant as a possible witness even though the Lieutenant had not been listed by either party on the pre-trial witness list.

¹ *Sterling Hannah v. District of Columbia*, Civil Action No. 2004 CA 006057 B and *Kiana M. Vanhorne v. District of Columbia*, Civil Action No. 2004 CA 006109 B.

The AAG contacted FEMS and learned that the agency was not aware that the Lieutenant was scheduled to testify in the civil case. According to the AAG, the Lieutenant told him that he was the FEMS Casualty Investigations Officer who investigated the accident, and his investigative report² recommended that FEMS repeal its policy restricting the operation of emergency vehicles on one-way streets, to alleviate the possibility of future liability. The AAG, however, was unable to identify any such FEMS policy, procedure, or general order supporting the Lieutenant's claim of the one-way street restriction.

The AAG told OIG investigators that the Lieutenant met with Attorney 1 to discuss the case approximately 1-2 weeks prior to the start of the trial and provided him with FEMS documents. However, the AAG did not know what documents the Lieutenant had given Attorney 1. The AAG also recalled that the Lieutenant further admitted that he worked previously as a process server for Attorney 1 and his associates while off-duty. OIG investigators were able to verify this information.

The next day, the AAG questioned the Lieutenant outside the presence of the jury. After the hearing, the court did not permit the Lieutenant to testify as an expert witness at trial.

On June 17, 2009, OIG investigators interviewed the Lieutenant. He explained that he was assigned to investigate the ambulance accident,³ which resulted in a report with his findings and recommendations. He also told OIG investigators that he did not keep a copy of the report.

The Lieutenant stated that he attended an August 2008 meeting at Attorney 1's law firm on a personal matter.⁴ At that time, Attorney 1 asked the Lieutenant a "generic" question about the policy regarding ambulances traveling on one-way streets. During their conversation, Attorney 1 told the Lieutenant that his firm was representing one of the plaintiffs in a civil suit against the District regarding an ambulance accident. The Lieutenant stated that he told Attorney 1 that he investigated the accident and that he could not discuss the matter without a subpoena or a Freedom of Information Act request. The Lieutenant stated that he and Attorney 1 had no further conversations on this matter.

On September 20, 2008, the Lieutenant was served, at Engine Co. 9, with a subpoena⁵ to appear in court on behalf of the second plaintiff, who was represented by Attorney 2. The Lieutenant said that he made an entry in Engine Co. 9's daily log book and provided his Battalion Chief with a copy of the subpoena. The Lieutenant also believed that the Battalion Chief noted receipt of the subpoena in his log book as well.⁶

² The AAG and OIG investigators were unable to obtain a copy of the Lieutenant's report either from the Lieutenant or FEMS.

³ Two other FEMS officials (a Safety Officer and an EMS Supervisor) and the Metropolitan Police Department also investigated various aspects of the accident.

⁴ The Lieutenant acknowledged that his process service company has done business with Attorney 1's law firm in the past.

⁵ An examination of the copy of the subpoena provided to OIG investigators reveals that the subpoena was not signed, as required.

⁶ The OIG reviewed the log books from September 20 – 23, 2008, for Engine Company 9 and the Battalion Chief and found no entry regarding the Lieutenant's subpoena.

The Lieutenant told OIG investigators that he did not know why he had been subpoenaed in the civil suit. He also stated that prior to the first day of trial, he had no communication with either the District's or plaintiffs' attorneys about the civil case. The Lieutenant attended all 3 days of the trial.⁷

The Lieutenant first told OIG investigators that neither FEMS nor the plaintiffs compensated him for the 3 days he attended the trial. Later in the OIG interview, the Lieutenant acknowledged that Attorney 2's law firm paid him a witness fee. The Lieutenant said that he received a check for \$250 made payable to him but mailed to his business' address. He could offer no explanation as to why the check was mailed to him at his business' address or how the attorney would know of that address. The Lieutenant told OIG investigators that he assumed the check was payment for services rendered by his business, so he gave it to his office manager to process. When the check could not be matched with an outstanding invoice, the Lieutenant contacted Attorney 2's law firm and learned that the check was payment for his appearance as a witness during trial. According to the Lieutenant, once he learned that the check was for his appearance at trial, he returned the witness fee, although he said he could not recall whether he returned the law firm's check or issued one of his business' checks as repayment.

Attorney 2 told OIG investigators that his law firm paid the Lieutenant a \$500 expert witness fee and provided OIG investigators with a copy of the check. Attorney 2 told OIG investigators that he subpoenaed the Lieutenant because Attorney 1 recommended that he do so. Attorney 2 further stated that he and Attorney 1 had been attempting to obtain a copy of FEMS' policy governing the operation of emergency vehicles on one-way streets and information about the ambulance driver. Attorney 1 told him that the Lieutenant should be used as a witness because he is an FEMS officer and should be more knowledgeable than a paramedic.

A review of pertinent financial records revealed that the Lieutenant endorsed the \$500 check from Attorney 2's law firm and cashed it on September 22, 2008, at a store in Riverdale, Maryland. The store manager told OIG investigators that the Lieutenant regularly cashes checks associated with his business at the store.

When OIG investigators confronted the Lieutenant about the \$500 check from Attorney 2's law firm, he provided investigators with the scanned "customer copy" of the cashier's check as evidence of repayment of the expert witness fee to Attorney 2's law firm. The "customer copy" of the check, however, is dated September 8, 2010, nearly 13 months after OIG investigators first interviewed the Lieutenant on June 17, 2009.

⁷ He was scheduled to work at FEMS on the first day of trial and was scheduled off for the second and third day. The Lieutenant said that he did not recall how he entered his time and attendance into PeopleSoft, but that the Battalion Chief listed him as "off-duty/in court" on the battalion's "manning sheet." A review of the Lieutenant's PeopleSoft time and attendance records revealed that the Lieutenant received 24 hours of regular pay for October 6, 2008. PeopleSoft indicated no work hours for October 8, 2008, and October 9, 2008.

ANALYSIS AND CONCLUSIONS

The Lieutenant acknowledged that in August 2008, he and Attorney 1 had a “generic” discussion about FEMS policy concerning ambulances on one-way streets. The Lieutenant also told Attorney 1 he was the FEMS investigator for the automobile accident in which Attorney 1 represented one of the plaintiffs. Prior to the start of the civil case, the second plaintiff’s attorney, Attorney 2, subpoenaed the Lieutenant as an expert witness to testify about FEMS ambulance policy based on a recommendation from Attorney 1.

In addition, two weeks before the start of trial, the Lieutenant received a \$500 check made payable to him from Attorney 2’s law firm for expert testimony on behalf of one of the plaintiffs in the civil action. The Lieutenant cashed the check the same day he received it. When investigators questioned him about the witness fee, the Lieutenant initially denied being paid. Subsequently, the Lieutenant stated that he was only paid \$250, which he paid back. The Lieutenant’s repayment check to Attorney 2’s law firm was dated September 8, 2010, long after the Lieutenant’s June 17, 2009, interview in which he stated the fee already had been repaid.

The investigation revealed that the Lieutenant exhibited a lack of candor and credibility to OIG investigators. Contrary to the evidence, the Lieutenant claimed he had no communication with either the government’s or the plaintiffs’ attorneys prior to trial and no idea why he had been subpoenaed to provide testimony in the civil suit. The Lieutenant further claimed that he only received \$250 as payment to provide expert testimony and had paid back the \$250 witness fee prior to his June 2009 interview. The records, however, do not support his claim.

Accordingly, the issue of whether the Lieutenant violated DPM § 1803.1(a)(1) (Using public office for private gain); DPM § 1803.1(a)(4) (Losing complete independence or impartiality); and DPM § 1803.1(a)(6) (Affecting adversely the confidence of the public in the integrity of government) is **substantiated**.

RECOMMENDATIONS

Based on the results of this investigation, the OIG recommends that FEMS:

- Address the Lieutenant’s conduct with appropriate administrative action; and
- Ensure that all FEMS employees are trained appropriately regarding the District’s standards of conduct, specifically as they pertain to conflicts of interest and the appearance of conflicts of interest.

July 14, 2011