

MPD'S OUTSIDE EMPLOYMENT POLICIES



REPORT AND RECOMMENDATIONS OF THE POLICE COMPLAINTS BOARD

To

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THE COUNCIL OF THE DISTRICT OF COLUMBIA, AND
CHIEF OF POLICE PETER NEWSHAM
September 28, 2018**

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I. Introduction

Over 100 law enforcement agencies around the country, together employing over 100,000 officers, permit their officers to engage in outside employment.¹² The Metropolitan Police Department (MPD) is among these law enforcement agencies, as it allows uniformed officers to engage in part-time, outside employment contracts with local businesses.³

The benefits for allowing outside employment are apparent. It allows officers the ability to supplement their income when needed, in addition to providing increased police presence that the District of Columbia (the District) is not able to finance directly. However, there are countervailing interests that necessitate a review of the outside employment policies currently in place. General Order 201.17 outlines MPD's current policies regarding outside employment. The Police Complaints Board's review has indicated that while some of the policies in place are in line with best practices across the country, others are in need of updating to promote transparency and accountability while ensuring that the laws of the District are enforced fairly and without bias by all MPD officers that choose to engage in outside employment.^{4 5}

II. MPD's Outside Employment Policies

On April 24, 2000, the "Omnibus Police Reform Amendment Act" was enacted.⁶ Contained in the "Omnibus Police Reform Amendment Act" was the "Police Officers Outside Employment Amendment Act of 2000" (Act). The goal of this Act was "to amend the Metropolitan Police Department Manual to revise the standards on outside employment for police officers" including placing restrictions on the types of businesses MPD members can contract with to engage in outside employment and limiting MPD's involvement in outside employment contracting.⁷ The standards are further defined in D.C. Municipal Regulations, 6A §§300-399.

In April 2004, MPD published General Order 201.17 (Order) to guide MPD members who are considering or engaged in outside employment.⁸ The Order incorporates all the changes

¹ Seth W. Stoughton, *Moonlighting: the Private Employment of Off-Duty Officers*, 2017 U. Ill. L. Rev. 1847, 1848.

² The term "outside employment," as used in MPD regulations, means the performance, by an MPD member, of any type of work or service for a person, firm, or corporation, other than MPD, for the purpose of obtaining wages, salary, fees, gifts, or any other compensation.

³ See MPD General Order 201.17 "Outside Employment," (effective April 16, 2004) Available at , https://go.mpdconline.com/GO/GO_201_17.pdf.

⁴ The Police Complaints Board (PCB) is issuing this report pursuant to D.C. Code § 5-1104(d), which authorizes the Board to recommend to the District of Columbia Mayor, Council, MPD Police Chief, and the Director of District of Columbia Housing Authority reforms that have the potential to improve the complaint process or reduce the incidence of police misconduct.

⁵ The PCB would like to recognize and thank legal intern Nicole Ezeh for her contributions to this policy recommendation.

⁶ 1999 D.C. ALS 160, 1999 D.C. Stat 160, 1999 D.C. Law 160, 1999 D.C. Act 334

⁷ *Id.*

⁸ See MPD General Order 201.17

codified by the Act, and outlines the policies members must adhere to when they engage in outside employment.

Under the current policies, all members must wear their Class B service uniform and equipment while performing outside employment.⁹ This consists of the light blue shirt and midnight blue pants that most MPD officers wear daily, as well as their standard equipment—radio, Oleoresin Capsicum (OC) Spray, collapsible baton, body-worn camera, and service weapon.^{10 11} MPD members must file a form for approval to engage in outside employment, employers must sign an agreement to the conditions of employment, and the member must file a quarterly report on outside employment hours worked.¹² MPD members must request special permission to perform outside employment in any other uniform, or in plainclothes.¹³

When MPD members engage in outside employment, they are off-duty.¹⁴ However, every member is required to respond to felonies in progress when employed in outside employment, and the outside employer must agree to this condition in writing.¹⁵ Members are also required to report all crimes they observe to the Office of Unified Communications (OUC), as well as radio in with their location at the beginning and end of their outside employment detail.¹⁶ Members are forbidden from engaging in “direct police action” as an MPD officer unless a felony suspect’s escape is imminent due to untimely response by on-duty MPD officers.¹⁷ None of MPD’s General Orders state a definition for “direct police action.”

III. Case Example

While the above policies and regulations aim to best facilitate the beneficial aspects of outside employment, both for the community and for MPD members, some aspects of the guidance fall short, while others are not followed in a manner that makes the policy effective. When these problems mix, it causes confusion for MPD members and the public that undermines the benefits that the outside employment program should bring to the community. Some complaints OPC has received in the past several years illustrate this issue.

Since 2016, there have been several complaints arising from incidents at a fast-food restaurant in Northwest involving off-duty MPD officers performing outside employment. The fast-food restaurant’s parking lot is private, and contains a notice warning drivers that the lot is for customers only, and that violators will be ticketed and towed. The restaurant hires MPD

⁹ *Id.*

¹⁰ See MPD General Order 110.11 “Uniforms and Equipment” (effective July 22, 2002)

¹¹ See MPD General Order 302.13 “Body Worn Camera Program” (effective March 11, 2016). Available at https://go.mpdconline.com/GO/GO_302_13.pdf.

¹² See MPD General Order 201.17 Part V.G, and 6A DCMR §§302.1, 303.3, 305.6.

¹³ See MPD General Order 201.17 Part V.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

officers to patrol the parking lot, as it is small and often used by people who do not patronize the business. On several occasions, MPD officers have issued parking citations, some amounting to up to \$250, for cars parked in the parking lot, even though the driver of the vehicle was inside the restaurant at the time the citation was issued. On one occasion, a complainant who received a parking citation spoke to both the issuing officer as well as the restaurant's manager because he was unsure who was in charge of issuing the parking citations. The officer and the restaurant manager gave this person conflicting information. The complainant believed the citation was some sort of scam because of how quickly he was ticketed and towed, and how little the officer listened to his concerns. Another complainant who experienced a similar situation, attempted to dispute the ticket at the Department of Motor Vehicles, and found the ticket never entered the system.

The incidents at this business illustrate some of the issues with outside employment policies in their current form. Because of the vagueness of the phrase "direct police action," it is unclear whether MPD officers engaged in outside employment are permitted to write parking citations, an action that civilians are not able to do. In addition, because MPD officers are in full uniform while working outside employment, community members see these officers and assume they are on-duty officers. However, because the MPD officers are taking direction from the owners of the business employing them, community members are confused and unsure who should be the point of contact when presenting a concern, and how that concern will be addressed.

IV. Other Jurisdictions

Other jurisdictions have implemented policies that address the issues with the current MPD General Order.

The San Francisco Police Department (SFPD) is tasked with serving and protecting a city with great similarity to the District. The District and San Francisco both boast a large metropolitan population, about 693,000 and 800,000, respectively.¹⁸ San Francisco is also a majority-minority city with high population density.^{19 20}

In California, relevant case law dictates that law enforcement officers do not have police power when engaged in certain types of off-duty employment.²¹ If an officer is employed by a private entity, the officer does not carry their arrest powers.²² Conversely, if an officer is employed by a public entity (e.g. libraries, schools, etc.), the officer keeps their arrest powers.

¹⁸ "2010 Census Interactive Population Search: CA – San Francisco city". U.S. Census Bureau.

¹⁹ "Historical Census Statistics on Population Totals By Race, 1790 to 1990, and By Hispanic Origin, 1970 to 1990, For Large Cities And Other Urban Places in the United States". U.S. Census Bureau.

²⁰ <https://mayor.dc.gov/release/washington-dc-population-closing-700000>.

²¹ See *Cervantes v. J.C. Penney Co.*, 24 Cal. 3d 579 (1979).

²² *Id.*

The regulations regarding off-duty employment for the San Francisco Police Department fall in line with the California law. SFPD officers are not permitted to use any department issued equipment while engaged in off-duty employment.²³ This includes any department issued weapons, though officers are permitted to carry personally owned mace or OC spray. Officers may not display their stars depicting their rank and police membership or their departmental identification card while engaged in off-duty employment unless when necessary to perform a police duty that is not directly related to the secondary employment.

In an effort to increase community trust, the Baltimore Police Department (BPD) recently established an outside employment policy that identifies three different types of “secondary employment” that officers may choose to perform, and assigned appropriate uniform requirements for each type.^{24 25} BPD officers may engage in any of the following three types of outside employment:

1. Non-uniformed additional employment, where an officer is employed in a capacity that will not require the use or potential use of law enforcement powers by the off-duty employee (e.g. landscaping, home improvement, retail);
2. Non-uniformed secondary employment, where an officer is employed for security services by an entity that does not have preexisting agreement with BPD to hire uniformed officer (e.g. security for a retail establishment);
3. Uniformed secondary employment, where an officer is employed by an entity that has a preexisting agreement with BPD to hire uniformed BPD officers (e.g. tasks like traffic control, and crowd control where uniform is necessary).²⁶

Of the three types of outside employment available to BPD officers, only one requires an officer to wear their full uniform. Outside employment similar to the case of fast-food restaurant would be designated as non-uniformed secondary employment. In Baltimore, an officer employed in this capacity would wear plainclothes or a different uniform provided by the employer.

Also in Maryland, the Montgomery County Police Department (MCPD) limits the actions an officer can take while employed in security related outside employment.²⁷ Security related outside employment must be limited to surveillance tasks.²⁸ Whenever an officer engaged in off-duty employment determines that an offense report or investigative action is necessary, the officer must call an on-duty officer to provide those services.²⁹ This policy mirrors portions of the MPD policy, as MPD officers engaged in outside employment are instructed not to take

²³ San Francisco Police Department General Order 11.02 (published August 10, 1994)

²⁴ See BPD Policy 1702 “Secondary Employment” (published July 1, 2016)

²⁵ BPD defines the term “secondary employment” as “[a]ny employment, in addition to a member’s regular duties, that is conditioned on the actual or potential use of law enforcement powers by the member while in BPD uniform.”

²⁶ See BPD Policy 1702 “Secondary Employment” (published July 1, 2016)

²⁷ See Montgomery County Ethics Commission “Article 27 Secondary Employment”

<https://www.montgomerycountymd.gov/ethics/resources/files/pdfs/article27secondaryemploymentpolice.pdf>.

²⁸ *Id.*

²⁹ *Id.*

direct police action “unless escape is imminent due to failure of a timely response by on-duty officers.”³⁰ However, “direct police action” is still not clearly defined by MPD, and MCPD provides greater clarity to their members.

Both of these Maryland police departments forbid officers from individually soliciting off duty employment. Instead these departments have outside employers request officers for details and the department assigns officers to those details.

V. Best Practices and MPD Conformity

In August 2011, the New Orleans Bureau of Governmental Research (BGR) released a report outlining best practices in the area of paid police moonlighting.³¹ The BGR recommended that the New Orleans Police Department (NOPD) embrace the following policy changes regarding outside employment:

1. Centralize control and administration of details.
2. Prohibit officers from soliciting detail work.
3. Strengthen eligibility requirements for officers.
4. Create a fair system for assigning officers to details.
5. Establish a fee schedule that standardizes pay and allows the department to recoup its detail related costs.
6. Prohibit cash payments to officers.
7. Increase monitoring and supervision of details.³²

MPD’s policies are in conformity with some of these best practices. MPD requires officers to obtain proper authorization to engage in outside employment, and monitors officers performing outside employment through use of the radio system and OUC. Probationary officers and officers who do not have police powers are barred from participating in outside employment.

At the same time, MPD policies are not in agreement with many of the above best practices. The MPD outside employment general order clearly states that members may not engage in brokering³³ outside employment, and the MPD website states that employers interested in hiring a part-time off duty officer must negotiate the wage with the officer directly.³⁴ Funds are also paid directly to the officer, instead of being paid to the department and then paid to the

³⁰ GO 201.17 at 12

³¹ Bureau of Governmental Research, Moonlighting: An Overview of Policies Governing Paid Police Details (August 2011).

³² *Id.* at 7

³³ Brokering is defined as “any practice whereby one member of the Metropolitan Police Department acts as an intermediary, liaison, referral agent, consultant, or third-party provider of police-related outside employment between a current or potential outside employer and any other member of the Metropolitan Police Department for the purpose of scheduling, coordinating, or any other similar activity.” See Police Officers Outside Employment Amendment Act of 2000

³⁴ Metropolitan Police Department “Hiring an Officer: Part-Time Employment (Private Property Only) <https://mpdc.dc.gov/node/1047122>.

officer through the payroll system. While the department does require that officer file paperwork for approval to engage in outside employment, and to track the hours worked each quarter, there is very little other relevant information required to be shared by the member, such as pay and/or benefits from the outside employer.³⁵ These policies differ from best practices established through practice and research, specifically polices 1, 2, and 7 outlined above from the BGR report.

VI. Recommendations

To help improve and facilitate better relations and increase trust between MPD officers and community members, the PCB recommends that:

1. MPD review and revise its General Order relating to outside employment to conform to best practices used by other police departments.

(a) MPD should review its policies to ensure they are not contradictory in nature, and that they conform to the latest best practices. The current directive has not been updated for more than 14 years. The Department should rewrite General Order 201.17 to remove or clearly define vague terms like “direct police action.” This would promote better understanding of the policies by both the public and by MPD officers.

(b) MPD should also review and revise the administrative policies regarding the documents required for outside employment. As the officers are using government resources for their outside employment, they should be required to report the salary and benefits they are receiving for that work. This would increase transparency and limit the potential for corruption.

(c) Alternatively, MPD could have civilian personnel act as a liaison for entities seeking officers for outside employment. While District law³⁶ and MPD policy currently prohibits members from brokering outside employment, member does not generally refer to civilians. Thus, a civilian role could be established to coordinate outside employment positions, and provide full transparency for the process.

2. MPD should revise the outside employment uniform policy to identify members as MPD officers who are working outside employment.

A different outside employment uniform standard would continue to identify a member as an MPD officer, while also identifying that said officer is not working a regular tour of duty. It would increase community trust, allowing the public to recognize when an officer is working at the direction of a business, versus when an officer is working in their usual capacity. The change in uniform could be as simple as adding an outer layer, such as a high visibility vest or jacket,

³⁵ See P.D. 180, 180-A, and 108-B

³⁶ See Police Officers Outside Employment Amendment Act of 2000

over the officer's service uniform. It would reduce confusion like that expressed by the complainant in the fast-food restaurant, as the uniform would remove questions of who has authority in a situation at a private business. Yet this would also promote accountability, as the officer would still be wearing their BWC.

3. MPD should require all MPD officers that choose to engage in outside employment to complete a training that outlines the specialized guidance for officers working outside employment.

A training class that covers outside employment would help reduce instances of confusion or tension with the community when officers are engaged in outside employment. It could cover de-escalation, when to request back-up from on-duty officers, and how to mediate situations between their private employers and patrons of the businesses. This training must also make clear to officers what constitutes "direct police action," and how that impacts what they can and cannot do in the course of outside employment.

VII. Conclusion

MPD should acknowledge and address the complications that arise from privately-funded off-duty officer employment, specifically by conforming to best practices in other jurisdictions and overtly delineating off-duty officers from officers performing their regular tour of duty.

While MPD has made some effective policy choices by overseeing the outside employment of MPD officers through the applicable general order, there are additional steps that the department can take to ensure the use of outside employment benefits the officers, while also benefiting, protecting, and serving the District of Columbia community.