

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF POLICE COMPLAINTS**

DECISION BY FINAL REVIEW PANEL

Complaint No.:	06-0053
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER
Allegation 1:	Harassment
Allegation 2:	Insulting, Demeaning, or Humiliating Language or Conduct
Final Review Panel Members:	Maia Caplan, Laurie Kohn, Sundeep Hora
Decision Date:	April 28, 2010

Pursuant to D.C. Official Code § 5-1112(g)(2) and D.C. Mun. Regs., Title 6A, § 2121.1, the Chief of Police of the Metropolitan Police Department (“MPD”) has returned the Merits Determination issued in this matter on December 21, 2009, for review by a final review panel.

This final review panel was convened by the Office of Police Complaints (“OPC”) and issues this decision in accordance with D.C. Official Code § 5-1112(g)(2) and D.C. Mun. Regs., Title 6A, § 2121.3.

I. SUMMARY OF COMPLAINT EXAMINER DECISION

On July 2, 2009, the Complaint Examiner reviewing this complaint issued Findings of Fact and a Merits Determination and reached the following conclusion(s) regarding the allegation(s) in the complaint:

Allegation 1: Sustained

Allegation 2: Sustained

II. STANDARD OF REVIEW

Under District law, a final review panel is charged with reviewing the record of a complaint, and without taking additional evidence, issuing a written decision regarding the correctness of the merits determination to the extent that the Police Chief has concluded that it erroneously sustained one or more allegations. D.C. Official Code § 5-1112(g)(2); D.C. Mun. Regs., Title 6A, § 2121.3. The final review panel “shall uphold the merits determination as to any allegation of the complaint that the determination was sustained, unless the panel concludes

that the determination regarding the allegation clearly misapprehends the record before the original complaint examiner and is not supported by substantial, reliable, and probative evidence in that record.” D.C. Official Code § 5-1112(g)(2); D.C. Mun. Regs., Title 6A, § 2121.4.

III. ANALYSIS AND DISCUSSION

The final review panel (the “Panel”) reviewed the OPC Report of Investigation, the attached exhibits, the decision of the Complaint Examiner and the material provided by Chief William Pittman of the MPD. The Panel concludes that the harassment finding is unsupported by substantial, reliable and probative evidence, and is premised on a clear misapprehension of the record. *Id.* The Panel upholds the Complaint Examiner’s finding of Insulting, Demeaning or Humiliating Conduct.¹

A. Harassment

The Complaint Examiner’s finding of harassment principally derived from the assumed failure of SUBJECT OFFICER to serve a copy on COMPLAINANT of the October 29, 2005 notice barring WITNESS #1, her then thirteen-year-old grandson, from her District of Columbia Housing Authority-owned apartment. The consequences of this alleged omission included arrest for unlawful entry of the minor, and more, amounting to harassment. Findings of Fact and Merits Determination No. 06-0053 at 1, 9 at n.3 (hereafter “Findings”). The evidentiary record is inadequate to support such finding.

Review of the evidence in the record evinces its unreliability. Beyond COMPLAINANT, the only corroborating evidence is from WITNESS #1 and his mother, WITNESS #2.² Like the grandmother, WITNESS #2 has abundant reason to begrudge SUBJECT OFFICER and his policing of her son. At minimum, his policing had serious housing implications for them. And, while the investigative record is replete with alleged offenses of one type or another, glaringly omitted from it is any inquiry to SUBJECT OFFICER about notice to a guardian. On this record, an evidentiary leap is required to conclude that SUBJECT OFFICER failed to proffer notice to COMPLAINANT, let alone that he failed to do so with the requisite knowledge or purpose of illegality, or recklessness, to constitute harassment as opposed to mistake or ignorance. *Id.* at Sec. 2199.1 (2002). Had the investigators inquired directly, they might well have learned that SUBJECT OFFICER effected notice, or made attempts to do so but was rebuffed. *See id.* at tit. 14 Sec 9600.7(a). Similarly, had a hearing been held, either SUBJECT OFFICER’s representative could have examined him on notice, once its relevance to the

¹ The Panel is prohibited from considering evidence provided after the merits determination. Consequently, while we were apprised of a belated affidavit submitted by SUBJECT OFFICER, we did not consider it. D.C. Mun. Regs. tit. 6A, Sec. 2121.3.

² COMPLAINANT’S adult son also lives with the complainant and witnessed the arrest but proffered no evidence regarding service of notice on COMPLAINANT.

Examiner became evident, or the Hearing Examiner herself could have. *Id.* at tit 6A, Sec. 2118.10(c). Bypassing a hearing here meant that the record remained incomplete with respect to guardian notice, and moreover foreclosed assessments of credibility that are virtually impossible to effect on the basis of paper alone, especially given the prevalence of universally unflattering (and often extraneous) information and the clear partiality of witnesses.

In reversing the harassment determination, we do not thereby exonerate SUBJECT OFFICER or discredit COMPLAINANT or WITNESS #2. We find merely that the evidence in the record is insufficient to support a finding of harassment. By corollary, we also find that the harassment determination is premised on a clear misapprehension of the record.

B. Insulting, Demeaning or Humiliating Conduct

The Complaint Examiner also found that SUBJECT OFFICER used language that was insulting and demeaning toward WITNESS #2 during the arrest of WITNESS #1. Given the testimony of COMPLAINANT and WITNESS #2, as well as COMPLAINANT and SUBJECT OFFICER'S colleagues as to other regulatory infractions, particularly involving female residents, we cannot state with certainty that the Hearing Officer clearly misapprehended the record before her here. Our own inclination is that a hearing with live testimony and cross-examination was appropriate, yet there is arguably sufficient evidence in the record to sustain allegation two. We therefore affirm the determination that SUBJECT OFFICER used insulting and demeaning language toward WITNESS #2.

IV. SUMMARY OF FINAL REVIEW PANEL DECISION

SUBJECT OFFICER
Merits Determination issued on July 2, 2009

Merits Determination Conclusion Regarding Allegation 1: Harassment	Reversed
Merits Determination Conclusion Regarding Allegation 2: Insult et al.	Upheld

Submitted on May 6, 2010.

Maia Caplan
Complaint Examiner

(signatures continued. . . .)

Laurie Kohn
Complaint Examiner

Sundeeep Hora
Complaint Examiner