

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	15-0383
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER
Allegation 1:	Insulting, Demeaning, or Humiliating Language or Conduct
Allegation 2:	Discriminatory Treatment
Complaint Examiner:	Danielle E. Davis
Merits Determination Date:	September 30, 2016

Pursuant to D.C. Official Code § 5-1107(b-1), the Office of Police Complaints (“OPC”) has the sole authority to adjudicate citizen complaints against members of the Metropolitan Police Department (“MPD”) that allege abuse or misuse of police powers by such members, as provided by § 5-1107(a). This complaint was timely filed in the proper form as required by § 5-1107, and the complaint has been referred to this Complaint Examiner to determine the merits of the complaint as provided by § 5-1111(e).

I. SUMMARY OF COMPLAINT ALLEGATIONS

COMPLAINANT filed a complaint with OPC on September 10, 2015. COMPLAINANT alleges that on September 2, 2015, the SUBJECT OFFICER used language or engaged in conduct that was insulting, demeaning or humiliating toward her when he called her “mujer problematica,” translated as “problematic woman.” Additionally, Complainant alleges that SUBJECT OFFICER discriminated against her based on her national origin, Hispanic.¹ Specifically, Complainant alleges that SUBJECT OFFICER provided her substandard police service because she is a limited proficiency or non-English speaker, which resulted in an insufficient investigation regarding allegation of assault against WITNESS, with whom Complainant shared an apartment.

¹ Complainant also alleged that SUBEJCT OFFICER used language or engaged in conduct toward her that was insulting, demeaning, or humiliating when he yelled at her. Pursuant to D.C. Code § 5-1108(1), on May 5, 2016, a member of the Police Complaints Board dismissed this allegation, concurring with the determination made by OPC’s Executive Director.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation, this Complaint Examiner determined that there are no genuine issues of material fact in dispute requiring a hearing.² See D.C. Mun. Regs. tit. 6A, § 2116.3

III. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On September 2, 2015, Complainant, who is a limited proficiency or non-English speaker, called 911 to request the assistance of a Spanish-speaking MPD officer.
2. Complainant alleged that WITNESS, with whom Complainant shared an apartment, intentionally struck her foot with a brush.
3. WITNESS OFFICER #1 and WITNESS OFFICER #2, neither of whom speak Spanish, arrived at the apartment first. Later, they were joined by SUBEJECT OFFICER.
4. SUBEJECT OFFICER previously interacted with Complainant on August 19, 2015.
5. Upon entering the apartment on the date of the incident, SUBJECT OFFICER stated words to the effect of, "¡Ah! ¡Me imagine que era usted! Está señora ya la conozco. ¡Esta es una mujer problemática!" translated, "Ah! I imagined that it was you! I already know this woman. She is problematic woman!"³
6. The incident report, written by WITNESS OFFICER #1 merely states, "C-1 and C-2 were involved in a verbal altercation because of C-2 moving more items into C-1's home and not paying any rent for the month, but no physical contact occurred. C-1 and C-2 are roommates. A Spanish-speaking officer responded to the scene to interpret for both parties." This report is inconsistent with Complainant's account of the incident with

² SUBJECT OFFICER failed to submit objections to OPC's May 26, 2016 Report of Investigation.

³ In her September 2, 2015 written statement, Complainant alleged that SUBJECT OFFICE said, "Oh, I thought it would be you! I know this woman and she is problematic." In her September 30, 2015 written statement, Complainant alleged that SUBJECT OFFICER said, "Ah! I imagined that it was you! I already know this woman. She is a problematic woman!" Despite slight variations in the words allegedly used by SUBJECT OFFICER, the Complaint Examiner finds that Complainant's written statements are sufficiently similar as to not call into question her veracity.

WITNESS, and the account that SUBJECT OFFICER contends he “conveyed” to WITNESS OFFICER #1 and WITNESS OFFICER #2.

7. When asked why the incident report stated that “no physical contact occurred,” WITNESS OFFICER #1 stated that “that was what was reported to [her]” by SUBJECT OFFICER.
8. In his recorded interview with OPC, SUBJECT OFFICER admitted that he did not provide oral interpretation of Complainant’s account of the incident with WITNESS to WITNESS OFFICER #1 and WITNESS OFFICER #2.

IV. DISCUSSION

Pursuant to D.C. Code § 5-1107(a), (b-1), OPC has the sole authority to adjudicate “a citizen complaint against a member or members of the MPD . . . that alleges abuse or misuse of police powers by such member or members, including “(1) harassment; (2) use of unnecessary or excessive force; (3) use of language or conduct that is insulting, demeaning, or humiliating; (4) discriminatory treatment based upon a person’s race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, physical handicap, matriculation, political affiliation, source of income, or place of residence or business; (5) retaliation against a person for filing a complaint pursuant to [the Act]; or (6) failure to wear or display required identification or to identify oneself by name and badge number when requested to do so by a member of the public.”

A. Insulting, Demeaning, or Humiliating Language or Conduct

According to MPD General Order 201.26, Part V, Section C, “All members of the department shall be courteous and orderly in their dealings with the public. They shall perform their duties quietly, remaining calm regardless of provocation to do otherwise. . . . Members shall refrain from harsh, violent, course, profane, sarcastic, or insolent language. Members shall not use terms or resort to name calling which might be interpreted as derogatory, disrespectful, or offensive to the dignity of any person.”

Complainant alleges that upon entering the apartment that she shared with WITNESS, SUBJECT OFFICER stated, “¡Ah! ¡Me imagine que era usted! Está señora ya la conozco. ¡Esta es una mujer problemática!” translated, “Ah! I imagined that it was you! I already know this woman. She is problematic woman!” Complainant further alleges that SUBJECT OFFICER yelled such words within earshot of WITNESS. Complainant also alleges that SUBJECT OFFICER’s language was “insulting” and “slandorous.” She also alleges that the subject officer’s language “emotionally hurt” her, left her feeling “dejected and in despair,” and damaged her reputation.

In his recorded interview with OPC, MPD WITNESS OFFICER #2, who was one of the two officers who arrived at Complainant's apartment before SUBJECT OFFICER, stated that he did not remember whether SUBJECT OFFICER said something to the effect of, "I know this woman." WITNESS OFFICER #2 also did not remember whether SUBJECT OFFICER said something to the effect of, "this woman is problematic." According to WITNESS OFFICER #2, it did not appear that SUBJECT OFFICER knew either Complainant or WITNESS.

However, in his recorded interview with OPC, SUBJECT OFFICER admitted that he had previously interacted with Complainant regarding the issuance of a temporary protection order to her former landlord. SUBJECT OFFICER denies stating in Spanish, "¡Ah! ¡Me imagine que era usted! Está señora ya la conozco. ¡Esta es una mujer problemática!" SUBJECT OFFICER also denies stating in English "Ah! I imagined that it was you! I already know this woman. She is problematic woman!" According to SUBJECT OFFICER, he would not say, "Usted es problemática." Rather, he might have said, "Could you please control yourself?" to Complainant. SUBJECT OFFICER stated that he did not voice his personal opinions "about what was happening" in the presence of Complainant, but admits that he voiced his "personal opinions" in the presence of WITNESS OFFICER #2.

In her recorded interview with OPC, WITNESS corroborated Complainant's allegation that SUBJECT OFFICER called Complainant a "problematic woman." Specifically, WITNESS stated that SUBJECT OFFICER told Complainant that she should be "appreciative [of WITNESS] because I already know your behavior." According to WITNESS, SUBJECT OFFICER told her that he knew Complainant and then told Complainant that she is "problematic" and instructed her to "control" herself. WITNESS also stated that she heard SUBJECT OFFICER tell the other officers at the scene that Complainant was a "problematic woman" in the English language. The cultural significance of SUBJECT OFFICER's words was not lost on WITNESS. Indeed, according to WITNESS SUBJECT OFFICER's underlying message was that Complainant should stop annoying, accusing, and gossiping about other people and concentrate on her own personal life, as it is "ugly" for a woman to be involved in "these things."

WITNESS is a bilingual English and Spanish speaker whose interests were adverse to that of Complainant. Nevertheless, she supported Complainant's allegation that SUBJECT OFFICER called her a "problematic woman" several times. Given that WITNESS's interests were adverse to that of Complainant and had no apparent bias in favor of Complainant, the Complaint Examiner finds her account of the incident credible.

Although SUBJECT OFFICER denies calling Complainant a "problematic woman," he admits that upon entering the apartment, he recognized Complainant from a previous interaction and later expressed his "personal opinions" to one of the other officers on the scene.

General Order 201.26 states that officers are to "refrain from harsh . . . sarcastic, or insolent language. Members shall not use terms or resort to name calling which might be

interpreted as derogatory, disrespectful, or offensive to the dignity of any person.” Given WITNESS’s corroboration of Complainant’s statements, the Complaint Examiner finds Complainant to be credible. The weight of the evidence supports the conclusion that SUBJECT OFFICER called Complainant a “problematic woman,” which is not only insolent language, but also name calling which Complainant found to be “insulting,” “slandorous,” and emotionally hurtful. Complainant also alleges that such language left her feeling “dejected and in despair” and damaged her reputation. Indeed, any reasonable person would find such chauvinistic language to be derogatory, disrespectful, and offensive. As such, Complainant’s allegation against SUBJECT OFFICER based on his insulting, demeaning, or humiliating language or conduct is **SUSTAINED**.

B. Discriminatory Treatment

The District of Columbia Human Rights Act provides in pertinent part:

[I]t shall be an unlawful discriminatory practice for a District government agency or office to limit or refuse to provide any facility, service, program, or benefit to any individual on the basis of an individual’s actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, source of income, or place of residence or business.

D.C. Code §2-1402.73 (2015).

MPD General Order 201.26 provides that, “[i]n accordance with D. C. Official Code § 2-1401, *et. seq.* (District of Columbia Human Rights Act), members shall not discriminate, either in the enforcement of the law, or in the provision of police service, on the basis of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity and expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, status as a victim of an intra-family offense and place of residence or business.

The regulations governing OPC define discriminatory treatment as “[c]onduct by a member of the MPD . . . that results in the disparate treatment of persons because of their race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, physical handicap, matriculation, political affiliation, source of income, place of residence or business or any other ground of discrimination prohibited under the statutory and the common law of the District of Columbia.” D.C. Mun. Regs. tit. 6A, § 2199.1.

The D.C. Language Access Act of 2004 requires MPD to provide oral language services at a level equal to English proficient individuals to all limited or non-English proficiency

(“LEP/NEP”) persons who seek to access or participate in the services, programs, or activities offered by MPD.

Additionally, MPD General Order 304.18 (effective April 22, 2015) requires MPD “to provide equal access to programs and services to all persons living, working, or visiting D.C. regardless of their ability to speak English.” That General Order also states, “In every circumstance where LEP/NEP persons and MPD members need to communicate, members shall: . . . Provide language access services in a manner that ensures full and accurate communication between the member and the LEP/NEP individual.” Pursuant to the Language Access Mandates in that same General Order, “Failure to provide oral interpretation and written translation services to LEP/NEP individuals may be construed as national origin discrimination.”

Here, Complainant alleges that SUBJECT OFFICER violated the D.C. Human Rights Act and MPD General Orders when he did not provide language access services in a manner that ensured full and accurate communication between the reporting officer and the LEP/NEP complainant. Specifically, Complainant alleges that SUBJECT OFFICER did not assist her in providing her account of the incident with WITNESS to WITNESS OFFICER #2 and WITNESS OFFICER #1.

In his recorded interview with OPC, SUBJECT OFFICER denied discriminating against Complainant on the basis of her national origin. According to SUBJECT OFFICER, he spoke Spanish with Complainant and “conveyed” her account of the incident with WITNESS to WITNESS OFFICER #2 and WITNESS OFFICER #1. However, during his recorded interview with OPC, SUBJECT OFFICER was unable to recall what account he gave to WITNESS OFFICER #2 and WITNESS OFFICER #1, and was unable to state whether he relayed Complainant’s allegation that WITNESS hit her with a brush to WITNESS OFFICER #2 and WITNESS OFFICER #1.

Indeed, the incident report, written by WITNESS OFFICER #1 merely states, “C-1 and C-2 were involved in a verbal altercation because of C-2 moving more items into C-1’s home and not paying any rent for the month, but no physical contact occurred. C-1 and C-2 are roommates. A Spanish-speaking officer responded to the scene to interpret for both parties.” When asked why the incident report stated that “no physical contact occurred,” WITNESS OFFICER #1 stated that “that was what was reported to [her]” by SUBJECT OFFICER. Moreover, in his recorded interview with OPC, SUBJECT OFFICER did not state that he provided oral interpretation of Complainant’s account of the incident with WITNESS to WITNESS OFFICER #2 and WITNESS OFFICER #1, but that he merely “conveyed” to the Officers that WITNESS hit Complainant while sweeping.

The weight of the evidence supports the conclusion that SUBJECT OFFICER did not provide full and accurate communication between the primary or reporting officers and the LEP/NEP complainant, in violation of MPD General Order 304.18. First, SUBJECT OFFICER merely “conveyed” an account of the incident to WITNESS OFFICER #2 and WITNESS

OFFICER #1, and did not provide oral interpretation of Complainant's account, as required by the General Order. Second, the account of the incident that SUBJECT OFFICER "conveyed" was inconsistent with Complainant's actual account of the incident with WITNESS and her stated reason for calling 911.

When SUBJECT OFFICER denied Complainant oral language services at a level equal to English proficient individuals, he subjected her to disparate treatment based on the fact that she is a LEP/NEP speaker. As such, the Complaint Examiner finds that SUBJECT OFFICER discriminated against Complainant based on her national origin, Hispanic, in violation of D.C. Code § 5-1107(a), MPD General Order 201.26, MPD General Order 304.18, and the D.C. Language Access Act of 2004. Accordingly, Complainant's allegation that SUBJECT OFFICER unlawfully discriminated against her is **SUSTAINED**.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1: Insulting, Demeaning, or Humiliating Language or Conduct	Sustained
Allegation 2: Discriminatory Treatment	Sustained

Submitted on September 30, 2016.



Danielle Davis
Complaint Examiner