

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	22-0309
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officer(s), Badge No., District:</b>	SUBJECT OFFICER
<b>Allegation</b>	Harassment
<b>Complaint Examiner:</b>	Jennifer A. Fischer, Esq.
<b>Merits Determination Date:</b>	November 20, 2022

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**

The complainant, COMPLAINANT (Complainant), filed a complaint with the Office of Police Complaints (OPC) on March 14, 2022. Complainant alleged that on March 13, 2022, Metropolitan Police Department (MPD) SUBJECT OFFICER (Subject Officer), harassed him by intimidation and by threatening to ticket Complainant while off-duty.<sup>1</sup>

Specifically, Complainant stated that on March 13, 2022, while he was driving into the parking garage of his apartment building, he noticed Subject Officer speaking with a resident about parking in employee parking spaces. It was Sunday so building employees were not in the office, however, Subject Officer was going on about how residents could not park there and he threatened to issue a ticket. The resident drove out of the parking garage and Complainant pulled into the space directly behind the parking spot as he waited for his wife and their dog. Subject Officer, who is also a resident of the building and was in plain clothes at the time, approached

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<sup>1</sup> COMPLAINANT further alleged that Subject Officer used language or engaged in conduct that was insulting, demeaning, or humiliating when using profanity toward him. COMPLAINANT also alleged that SUBJECT OFFICER discriminated against him based on his race, Hispanic. Pursuant to D.C. Code § 5-1108 (1), on September 22, 2022, a member of the Police Complaints Board dismissed these allegations, concurring with the determination made by OPC's executive director.

Complainant, showed his MPD identification, and told Complainant to move his car or he would issue him a \$250 ticket.

## **II. EVIDENTIARY HEARING**

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation, Body Worn Camera Footage recorded by WITNESS OFFICER #1 and WITNESS OFFICER #2 on March 13, 2022, objections submitted by Subject Officer on October 11, 2022 (Subject Officers' Objections), and OPC's response to the Objections dated October 19, 2022, the Complaint Examiner determined that the Report of Investigation presented no genuine issues of material fact in dispute that required a hearing. *See* D.C. Mun. Regs. Tit. 6A, § 2116.3.

## **III. FINDINGS OF FACT**

Based on a review of OPC's Report of Investigation, Body Worn Camera Footage recorded by WITNESS OFFICER #1 and WITNESS OFFICER #2 on March 13, 2022, objections submitted by Subject Officer on October 11, 2022 (Subject Officers' Objections), and OPC's response to the Objections dated October 19, 2022, the Complaint Examiner finds the material facts regarding this complaint to be:

1. Complainant filed a complaint with OPC on March 14, 2022.
2. Both Complainant and Subject Officer reside in the apartment building at NW, WASHINGTON, DC.
3. Subject Officer has an "Officer License Agreement" with the building management. The Agreement provides that Subject Officer and his spouse, SPOUSE may reside in Apt. # REDACTED without payment of rent, in exchange for Subject Officer providing "Uniformed daily/nightly rounds. Report[ing] to management and to MPD of any undesirable conduct," and "creat[ing] MPD reports upon any instance of such conduct and provid[ing] the same to management." The Agreement explicitly does not include a garage/parking spot or carport.
4. Subject Officer did not receive approval from MPD to provide such off-duty services.
5. Residential parking spots in the parking garage of the building at NW, WASHINGTON, DC, are assigned and under contract to various residents. One is assigned to Subject Officer and his SPOUSE. In addition, three spots at the back of the parking garage have signs posted stating that they are for employee parking only. According to management, these spots are to be reserved for employee parking at all times, including evenings and weekends, but in practice, residents park there outside of the apartment office working hours.
6. Subject Officer claims that in addition to the resident space he is assigned, he is also, as an employee, allowed to park in the employee parking spaces, and, in particular, that the left most space of the three is designated for him. There is nothing official to designate

this space as his, however, nor has anything official been told to the residents by the building management. Nonetheless, Subject Officer claims that he has informed the other residents that this spot is his.

7. Subject Officer claims that the building management has instructed him to issue parking tickets to anyone parked in the employee parking spots. As a matter of practice, however, Subject Officer does not issue tickets to vehicles parked in the employee parking spots outside of building office hours except to vehicles parked in his alleged designated employee parking spot on the left most side.
8. On March 13, 2022, at approximately 4:00 pm., Subject Officer was off-duty and not in uniform or performing patrols for the building. He drove into the parking garage, returning from doing laundry. He found a car parked in his designated employee parking spot (not his designated resident spot) and told the person in the car to move his car or he would issue him a ticket.
9. The person parked in the spot said he would move and pulled out.
10. Complainant who had been stopped nearby as he waited for his wife to come down from their apartment, then pulled behind the space, blocking entrance to it, as he continued to wait.
11. Subject Officer identified himself to Complainant as an MPD officer who worked for the building and told Complainant that the parking spot Complainant was blocking was his and if Complainant didn't move his car, Subject Officer would issue him a ticket. Complainant objected because Subject Officer wasn't ticketing the other cars parked in the two other employee parking spots and because the spot was not marked as being designated for Subject Officer.
12. Subject Officer then went up to his apartment and obtained his ticket book
13. Complainant, meanwhile, called 911 and moved his vehicle outside of the parking garage. WITNESS OFFICER #1 and WITNESS OFFICER #2 arrived to the scene.
14. When Subject Officer returned, he spoke to Witness Officers. WITNESS OFFICER #1 told Subject Officer and Complainant that he had been to the parking garage previously in regards to the issue of Subject Officer issuing parking tickets in the parking garage.
15. Subject Officer continued to tell Complainant that he would issue him a ticket because he had photos of his illegal parking. WITNESS OFFICER #1 tried to calm Complainant by telling him that he could fight the ticket. They all continued talking and eventually Subject Officer said that he would not issue Complainant a ticket, but that anytime Subject Officer sees Complainant's vehicle in the garage he will ticket it.

#### **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...”

Harassment is defined in MPD General Order 120.25, Part III, Section B, No. 2 and in the regulations governing OPC as “words, conduct, gestures, or other actions directed at a person that are purposefully, knowingly, or recklessly in violation of the law, or internal guidelines of the MPD, so as to: (a) subject the person to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien, or other infringement of personal or property rights; or (b) deny or impede the person in the exercise or enjoyment of any right, privilege, power, or immunity.”

“In determining whether conduct constitutes harassment, [OPC] will look to the totality of the circumstances surrounding the alleged incident, including, where appropriate, whether the officer adhered to applicable orders, policies, procedures, practices, and training of the MPD ... the frequency of the alleged conduct, its severity, and whether it is physically threatening or humiliating.” D.C. Mun. Regs. tit. 6A, § 2199.1.

It is undisputed that Subject Officer threatened to issue Complainant a parking ticket for parking in Subject Officer’s alleged employee parking spot, and, at the time of the threat, was off-duty from his official role as police officer, not in uniform and not driving a Department-issued vehicle. Exh. 6 at 1:20, 3:50, 4:00, 5:02. Exh. 8 at 5:51, 8:03; Exh. 13; Exh. 15; WITNESS OFFICER #1 BWC; WITNESS OFFICER #2 BWC. In these circumstances, the question is whether Subject Officer had the authority to issue Complainant a parking ticket, and, if not, if his violation was done purposefully, knowingly or recklessly.

**A. Subject Officer, regardless of the status of his Agreement to provide private security, was off-duty at the time he threatened to issue a parking ticket to Complainant.**

Subject Officer’s Agreement to provide security services to the apartment building did not provide him with the authority to issue parking tickets. Exh. 21. Perhaps most importantly, the Agreement was not approved by MPD. Exh. 8 at 5:51; Exh. 20. General Order 201.17 states in section IV that “Members shall not engage in outside employment without proper authorization from their Assistant Chief/Senior Executive Director.” GO 201.17 (Outside Employment), dated April 16, 2004. The Agreement thus violated G.O. 201.17.

Moreover, even if Subject Officer had been properly engaged in “Police-related outside employment,” defined as “any outside employment which is conditioned upon membership in the Metropolitan Police Department or . . . police powers,” General Order 201.17, he is still subject to the rules applicable to an off-duty police officer, even if wearing his uniform. General Order 201.17 Part VI.K.2. distinguishes between off-duty Members engaged in outside employment and on-duty officers.

“No member who is engaged in outside employment shall take direct police action as a Metropolitan Police Officer, unless escape is imminent due to failure of a timely response by on-duty officers. Members engaged in any type of outside employment, particularly police-related outside employment, shall inform the OUC prior to engaging in any direct police action where it is practical to do so.”<sup>2</sup>

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<sup>2</sup> Part V of G.O. 201.17 provides additional evidence of a distinction between on-duty officers and those engaged in

Police-related outside employment, distinguishing the latter as “off-duty.” For example, G.4 states that “Members

Thus, Subject Officer here was off-duty regardless of the status of his Agreement with the building management and thus subject to the requirements of an off-duty officer. Beyond that Subject Officer wasn’t even engaging in security at the time he threatened Complainant as he had just returned from doing laundry. Exh. 6 at 1:20. In every sense then, Subject Officer was off-duty at the time he threatened Complainant.

**B. Subject Officer in his off-duty capacity did not have authority to issue parking tickets and was thus, in violation of MPD policy, and his threat constituted mistreatment of Complainant.**

The next question is whether Subject Officer, in his off-duty capacity had the authority to issue parking tickets. He did not have such authority.

MPD Executive Order 21-032 provides that off-duty sworn members shall not take police action except as necessary to protect the member’s life or the lives of others in any incident when they are personally involved or have a conflict of interest. In these cases, members shall notify the Office of Unified Communications (OUC) to request an on-duty member and official to respond to the scene.” Off-Duty Service Firearms and Police Action, dated December 30, 2021, Part II. B. 3 (emphasis added). Similarly, General Order 201.36 (Code of Ethics) provides that “police powers shall not be used for personal profit or gain.” GO 201.36 Part II.

Here, Subject Officer was personally involved in the dispute over the parking spot and had a conflict of interest. Not only did he claim that the parking spot for which he threatened to issue a parking ticket was his designated spot, but he claimed that it was his spot by virtue of his employment with the building management in exchange for which he was receiving a rent-free apartment. WITNESS OFFICER #1 BWC 4:07; Exh. 21. In such a situation, EO-21-032 requires that he only take police action if it is necessary to protect his life or that of others. Enforcing parking restrictions is not protecting his or anyone else’s life. Rather, contrary to GO 201.36, Subject Officer’s threats were for Subject Officer’s own personal gain. Thus, Subject Officer violated EO-21-032 and GO 201.36.

In addition, EO-21-032 reminds off-duty officers that they are also required to adhere to GO-SPT-303.1 (Traffic Enforcement) in relation to any off-duty traffic and parking enforcement regardless of conflict-of-interest concerns. *Id.* at Part II. B. 2. General Order 303.1 provides that traffic enforcement action may only be taken by off-duty officers when they are “driving their marked take-home vehicles” or “a Department vehicle equipped with emergency lights and sirens **and** the violation is so grave that it poses an immediate threat to the member or others.” GO-SPT-303.1 (Traffic Enforcement), dated April 30, 1992 (and as updated on March 29, 2018), Part I. A. 2. a. (3), (4). Furthermore, “when taking action in these instances, members shall request the assistance of a marked unit as soon as possible.” *Id.*

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shall not accept any compensation for services rendered while on-duty.” G.11 provides that “Any injury sustained by a member of the force in the course of outside employment shall not under any circumstance be considered an injury in the performance of duty.” And G.12. states that “Damage to uniforms in the course of outside employment shall be considered not in the performance of duty.”

Although the policy does not provide a definition of “traffic enforcement,” it is the title of the general order and the general order includes responsibilities and procedures for the enforcement of parking regulations. Thus “traffic enforcement” as used in GO 303.1 includes parking enforcement. Notably, the only time the policy allows for traffic enforcement by a member who is not operating a marked take-home vehicle or Department vehicle equipped with emergency lights and sirens is when the member is on-duty and in uniform.

Here, Subject Officer, as already discussed, was off-duty, not in uniform, and not in a requisite Department vehicle. Moreover, a parking violation is not “grave” such that it posed an immediate threat to Subject Officer or others. The proper response for enforcing parking violations in this situation, therefore, especially given the conflict-of-interest, would be to report it to OUC to request an on-duty member to respond to the scene. Thus, Subject Officer’s threat to issue a parking ticket in these circumstances is a violation of EO-21-032 and GO-303.1.

Although Subject Officer did not ultimately issue Complainant a ticket, his threat to do something that was a violation of MPD policy subjected Complainant to mistreatment as reflected in Complainant stating that he felt intimidated, so much so that he called 911. Subject Officer’s action thus constitutes harassment if Subject Officer’s violation of policy was done purposefully, knowingly, or recklessly.

### **C. Subject Officer at a minimum recklessly violated MPD policy.**

Here, Subject Officer’s violation is at a minimum a reckless violation of MPD policy. Subject Officer is required to know the laws he is enforcing and the policies that he is to follow. *See e.g.*, GO-RAR 201.36 (Metropolitan Police Department Sworn Law Enforcement Officer Code of Ethics), Eff. June 1, 2017, Part III. (“I will be exemplary in obeying the law and the regulations of my Department.”); GO-PER-201.26 (Duties and Responsibilities of Members of the Department), Eff. April 5, 2011, Part V. B. 1. (“Sworn Members . . . shall: 1. Familiarize themselves with the laws and regulations they are required to enforce.”).

Subject Officer was thus required to know that he could not take on outside employment, particularly providing private security as a police officer, without MPD authorization. He was also required to know what actions he could take as an off-duty police officer whether he was engaged in properly approved private security or not. In particular, he was required to know that he was not authorized in his off-duty capacity, even if properly approved to provide security and in uniform, to issue parking tickets.<sup>3</sup> All the more so when he faced a conflict-of-interest because the parking violation he was attempting to enforce was of his own alleged parking spot.

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<sup>3</sup> It is disconcerting that there was confusion among the officers as to Subject Officer’s off-duty authority to issue parking tickets. WITNESS OFFICER #2 advised Complainant that Subject Officer, employed to do security at the building, was allowed to issue parking tickets. On the other hand, WITNESS OFFICER #1 said that a Sergeant had come out previously for this same issue and that it had been “a big thing,” suggesting that a different message had been conveyed earlier.

Given the potential for abuse and corruption in these types of off-duty situations, stemming from a strong likelihood of conflict-of-interest when an officer is being privately paid for police presence, more effort should be made to educate officers about these policies regardless of their independent duty to familiarize themselves with the policies. The Office of Police Complaints has twice in the past ten years, in [2012](#) and in [2018](#), issued reports raising

In Subject Officer's Objections, he cites to *Flores v. United States*, 37 A.3d 866, 869 (D.C. 2011) for the proposition that recklessness means "a state of mind in which a person does not care about the consequences of his or her actions." That was not the holding of *Flores*, however, which specifically discussed recklessness in terms of "conduct without direction or target." *Flores*, 37 A. 3d 869. Regardless, even using Subject Officer's definition, the question becomes in this context, when Subject Officer threatened Complainant with a parking ticket, whether he did so with any concern for his legal authority to make that threat, i.e., did he care if he was violating MDP policy or not? If he had the legal authority then his actions would not have caused mistreatment of Complainant. The problem is that he didn't have such legal authority.

Subject Officer, as observed in the BWC footage and in his interview with OPC, seems either unaware that he did not have the legal authority to make the threat he did or that he didn't care. What comes across as most important to him was protecting the parking spot that he believed he was entitled to and he saw himself as justified in using his status as a police officer to protect it. What his actual authority was in that situation was not anything he gave any thought to and he was blind to the conflict of interest of his situation. As an officer trying to exercise enforcement authority, his lack of thought and blindness was reckless. His reckless violation of MPD policy in turn, is what turned his threat of issuing a parking ticket into intimidation and harassment.

Subject Officer's signed Agreement with the building management indicates that his violation may have been more than reckless, however, and risen to a knowing violation. That he signed it indicates that he read it (and if he did not, that too was reckless). The Agreement he signed was fully in keeping with MPD policy. Exh. 21. It specifically does not provide for Subject Officer to issue parking tickets, but, rather to "report[] to management and to MPD of any undesirable conduct," and "creat[e] MPD reports upon any instance of such conduct and provide the same to management." *Id.* That Subject Officer was taking it upon himself to issue parking tickets was not part of his agreement with management just as it was a violation of MPD policy.

#### **D. Subject Officer harassed Complainant**

Therefore, Subject Officer's threatening to issue Complainant a parking ticket subjected Complainant to mistreatment as a consequence of Subject Officer's reckless violation of MPD policies GO 201.17, GO 303.1, and EO 21.032. It thus amounted to harassment under D.C. Code §5-1107 and MPD General Order 120.25. Complainant's harassment allegation is sustained.

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awareness with MPD about the problem surrounding potential abuse of police-related outside employment. There is simply no excuse for why officers might be confused about what police activity they are allowed to undertake in those situations.

**V. SUMMARY OF MERITS DETERMINATION**

SUBJECT OFFICER

<b>Allegation</b>	Harassment	Sustained
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Submitted on November 20, 2022.

  
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Jennifer A. Fischer, Esq.  
Complaint Examiner