

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

DECISION BY FINAL REVIEW PANEL

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| Complaint No.: | 06-0393 |
| Complainant: | COMPLAINANT |
| Subject Officer, Badge No., District: | SUBJECT OFFICER, Sixth District |
| Allegation 1: | Harassment |
| Allegation 2: | Humiliating Language or Conduct |
| Allegation 3: | Use of Excessive or Unnecessary Force |
| Final Review Panel Members: | Jennifer A. Fischer, Stephen Kong, and Kevin Judd |
| Decision Date: | June 27, 2012 |

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 February 27, 2012, for review by a final review panel.

This Final Review Panel was convened by the Office of Police Complaints (OPC), formerly the Office of Citizen Complaint Review (OCCR), 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 April 27, 2011, 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:** Unfounded
- Allegation 3:** Sustained

II. STANDARD OF REVIEW

Under District law, a final review panel is charged with reviewing the record regarding a complaint, and without taking any additional evidence, issuing a written decision, with supporting reasons, regarding the correctness of the merits determination issued for the

complaint 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 (“Panel”) reviewed the OPC Report of Investigation, the attached exhibits, the Objections to Report of Investigation (“Objections”) submitted by Robert Merrick, Union Representative, the response to the Objections from the Office of Police Complaints, the decision of the Complaint Examiner and the material provided by Chief of Police, Cathy L. Lanier. In particular, Chief Lanier objected to the weight given to the statements of witnesses who were COMPLAINANT’S friends.¹ The Panel has considered Chief Lanier’s objection and upholds the Complaint Examiner’s determinations of “harassment” and “use of excessive or unnecessary force.”²

The Complaint Examiner determined that SUBJECT OFFICER harassed COMPLAINANT by arresting him without a legitimate law enforcement purpose. In reaching his conclusion, the Complaint Examiner focused on the following facts: 1) that SUBJECT OFFICER’S statement to the OPC investigator did not include any verbal threats by COMPLAINANT which would have comprised the basis of the felony threats charge for which SUBJECT OFFICER arrested COMPLAINANT; 2) that COMPLAINANT was not ultimately prosecuted for the felony threats charge; 3) that SUBJECT OFFICER’S statement to the D.C. Superior Court in connection with the charge was different from his statement to OPC; 3) that other witnesses corroborate an exchange between COMPLAINANT and SUBJECT OFFICER, but little evidence supported the charge that COMPLAINANT made threats to harm Subject Office or any other MPD officer on the scene; and 5) that it was not reasonable for SUBJECT OFFICER to feel threatened by COMPLAINANT in the large, and likely chaotic crowd of seventy people when COMPLAINANT had not incited the crowd with his statements and had not been brought to trial on his former arrest by SUBJECT OFFICER. Thus, the weight given to the statements of COMPLAINANT’S friends made up only a small piece of the Complaint Examiner’s decision to sustain the harassment allegation. While our inclination would have been to hold an evidentiary hearing with live testimony and cross-examination in which to resolve inconsistencies in the evidence and to make credibility determinations, the record contains

¹ Although Chief Lanier made two other objections, only the objection relating to the credibility of the witness statements is appropriate for review by a final review panel and the other two are not considered here.

² The Complaint Examiner’s determination that the allegation of Humiliating Language or Conduct was unfounded is not under review here.

substantial, reliable, and probative evidence upon which to sustain the harassment determination and we cannot state that the Complaint Examiner clearly misapprehended the record before him. We therefore affirm the determination that SUBJECT OFFICER harassed COMPLAINANT.

The Complaint Examiner also determined that SUBJECT OFFICER used unnecessary or excessive force while arresting COMPLAINANT. Based upon the witness statements, including statements by SUBJECT OFFICER and MPD Witness Officer that COMPLAINANT and SUBJECT OFFICER fell to the ground during the arrest, the Complaint Examiner found that some force was applied by SUBJECT OFFICER. He determined that the use of force was unnecessary or excessive because, as Complaint Examiner determined under the harassment allegation, SUBJECT OFFICER had no legitimate law enforcement purpose for arresting COMPLAINANT and there was no evidence of an immediate threat to the safety of the officer or others. Here again, the weight given to the statements of COMPLAINANT'S friends had only a small impact on the Complaint Examiner's decision to sustain the "use of unnecessary or excessive force" allegation. While our inclination would have been to hold an evidentiary hearing with live testimony and cross examination, the record contains substantial, reliable, and probative evidence upon which to sustain the "use of unnecessary or excessive force" determination and we uphold the determination.

IV. SUMMARY OF FINAL REVIEW PANEL DECISION

SUBJECT OFFICER, Sixth District

Merits Determination issued on June 27, 2012.

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| Merits Determination Conclusion Regarding Allegation 1: | Upheld |
| Merits Determination Conclusion Regarding Allegation 3: | Upheld |

Submitted on June 27, 2012.

Jennifer A. Fischer, Esq.
Complaint Examiner

Stephen Kong, Esq.
Complaint Examiner

Kevin Judd
Complaint Examiner