

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	03-0243
Complainant:	COMPLAINANT
Subject Officer, Badge No., District:	SUBJECT OFFICER, ROC Central
Allegation 1:	Harassment
Complaint Examiner:	Linda Reese Davidson
Merits Determination Date:	July 7, 2005

Pursuant to D.C. Official Code § 5-1107(a), the Office of Police Complaints (OPC), formerly the Office of Citizen Complaint Review (OCCR), has the 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 that section. 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 alleged that on January 29, 2003, SUBJECT OFFICER, Regional Operations Command (ROC) Central, harassed her when he stopped the complainant and issued her a traffic ticket for failing to yield the Right-Of-Way. The Notice of Infraction was issued after the complainant did not yield to the subject officer in traffic.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because based on review of OPC's Report of Investigation, 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., title 6A, § 2116.

III. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation and the objections submitted by the subject officer on June 15, 2005 the Complaint Examiner finds the material facts regarding this complaint to be:

1. On March 11, 2003, the complainant filed a complaint with the Office of Police Complaints against the subject officer.
2. On January 29, 2003, at approximately 7:35 a.m., both the complainant and SUBJECT OFFICER were operating their separate vehicles. Both were traveling westbound on New York Avenue, N.E.
3. Both parties submitted written responses to the Office of Police Complaints.
4. Both parties indicated that they are familiar with the roadway and travel the route daily.
5. In the complainant's written statement, she indicated that she was already in the exit lane for New York Avenue, and that she had the right of way; a motorist operating a black Sedan, attempted to enter her lane and "Force her out of the lane."
6. In an effort to avoid sharing a lane or worse a collision, one motorist had to yield. There is a yield sign posted.
7. The complainant stated that the subject officer pointed his finger at her, and said, "Let me in there or I'll throw you in jail."
8. The complainant told the driver, "I'm calling the police."
9. The subject officer responded, "I am the police."
10. The subject officer was off duty at the time of the incident, was not wearing a uniform and was driving an unmarked vehicle.
11. The complainant called 911.
12. The subject officer indicated that the complainant was "Honking her horn, screaming and gesturing with her arms to get over into the first lane....that she was being an aggressive driver...trying to force her way into traffic."
13. The subject officer stated that he did yield and allowed the complainant to go in front of him.
14. The complainant observed a police car parked in a nearby gas station and drove towards it.
15. The subject officer activated the vehicle's siren and lights and followed the complainant into the gas station.

16. The subject officer pulled into the gas station, got out of his vehicle and approached the police officers. He directed the officers to give him a ticket book.
17. The subject officer issued the complainant a ticket for failing to yield the right of way.
18. There are no other witnesses with first hand knowledge of the circumstances surrounding the incident.
19. The three Metropolitan Police Officers parked at the gas station are identified as WITNESS OFFICER #1, WITNESS OFFICER #2, and WITNESS OFFICER #3. However, the officers do not have first hand knowledge of the circumstances surrounding the cause for the issuance of the Notice of Infraction.

IV. DISCUSSION

Pursuant to D.C. Official Code § 5-1107(a), “The Office [of Police Complaints] shall have the authority to receive and 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; or (5) retaliation against a person for filing a complaint pursuant to [the Act].”

Harassment, as defined by MPD Special Order 01-01, Part III, Section G, includes “acts that are intended to bother, annoy, or otherwise interfere with a citizen’s ability to go about lawful business normally, in the absence of a specific law enforcement purpose.”

The regulations governing OPC define harassment as “[w]ords, 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 (1) subject the person to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien, or other infringement of personal or property rights; or (2) 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., title 6A, § 2199.1

There are two issues before the Complaint Examiner. The first issue is whether the subject officer stopped the complainant and issued the Notice of Infraction a) out of a response to an observation of a legitimate violation of a traffic law or b) out of a response to an action, on the

part of the complainant, that he found to be offensive. The second issue is whether the stop and the issuance of the Notice of Infraction is harassment.

Turning to the first issue, the Complaint Examiner must examine what degree of objectivity the subject officer was able to exercise at the time the subject officer stopped the complainant and issued the Notice of Infraction. The Notice of Infraction was not issued in the typical case whereby an issuing officer personally observes one motorist failing to yield to another. Based upon that personal observation, a Notice of Infraction is issued to the violator. However, in this instance, the subject officer was directly involved in the incident. The subject officer stated that the complainant was “driving aggressively and forcing her way into traffic.” Further, he stated that he stopped and allowed the complainant to go first. Afterwards, he activated his emergency equipment, followed the complainant and issued the Notice of Infraction. The officer was driving an unmarked vehicle, was not wearing a uniform and he was off duty. The Complaint Examiner would have to be omniscient to make a determination as to whether the subject officer should have yielded to the complainant or the complainant should have yielded to the subject officer. Nevertheless, it is very clear is that the subject officer was personally affected by the complainant’s actions. And, resolution of this issue, even if the complainant did commit a traffic violation, does not affect the outcome of this complaint.

Turning to the second issue, the subject officer’s actions are in violation of Police Department policy and amount to harassment. In his written statement, the subject officer stated, “The incident in question involved the common act of issuing a NOI for a violation committed in the presence as a sworn law enforcement officer.” Instead of complying with the Metropolitan Police Department’s General Order 303.1, Section 2(a)(2) and (4), the subject officer justified the stop based upon an incorrect analysis and application of *Terry v. Ohio*, 392 U.S. 1 (1968). He wrote, “a police officer may stop an individual that he/she has reasonable suspicion to believe has committed a violation of the law.” *Terry* is a criminal case. Additionally, the facts in *Terry* are not similar to the facts in this matter. In *Terry*, the law enforcement officers did not observe the persons engage in criminal activity. The officers approached the persons standing in a public place, asked them questions and requested to see identification. Here, the subject officer was one of two motorists involved in the altercation.

The subject officer justified the stop and the issuance of the Notice of Infraction by characterizing the complainant’s driving as aggressive. But he neither made a summary arrest nor issued a citation for Reckless Driving (Not Involving Bodily Injury). At the time of the incident, the issuing officer was operating an unmarked vehicle, not wearing a uniform and not on duty. Looking to the relevant MPD guidelines, MPD General Order 303.1, Section 2a (4) reads:

Traffic enforcement action may be taken under the following circumstances:
(4) Members who are not in uniform or are in unmarked vehicles may take enforcement action only in the case of a violation that is so grave as to pose an IMMEDIATE THREAT to the safety of others.

Additionally, Special Order, Changes to MPD General Order 303.1 reads in part:

Recently, concerns have been expressed that some members operating unmarked vehicles are making traffic stops in violation of Department policy.

Part 1A-2.a

(5) Unmarked vehicles equipped with grill lights and siren, may be used by uniformed members to conduct traffic enforcement.

Looking to the definition of Harassment under MPD Special Order 01-01 and OPC regulations § 2199.1, the Complaint Examiner finds that SUBJECT OFFICER's conduct rises to the level of Harassment. The subject officer used his professional authority to respond to a personal affront. At the time he issued the NOI, he was predisposed to his own point of view. The subject officer knowingly violated Department policy. He was not wearing a uniform and there were no exigent circumstances [that posed an immediate threat to the safety of others] that required the subject officer to stop the complainant and issue the ticket. He, therefore, had no specific law enforcement purpose; he violated internal guidelines of the MPD to subject the complainant to detention and mistreatment.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER, ROC Central

Allegation 1:	SUSTAINED
----------------------	-----------

Submitted on July 7, 2005.

Linda Reese Davidson
Complaint Examiner