

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF CITIZEN COMPLAINT REVIEW**

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	02-0396
Complainant:	COMPLAINANT
Subject Officer:	SUBJECT OFFICER, 4th District
Allegation 1:	Insulting, Demeaning, or Humiliating Language or Conduct
Complaint Examiner:	Eleanor Nace
Merits Determination Date:	September 15, 2003

Pursuant to D.C. Official Code § 5-1107(a), 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

In a complaint filed with the Office of Citizen Complaint Review (OCCR) on July 11, 2002, COMPLAINANT alleged that the subject officer, 4th District, harassed him on July 8, 2002 when he entered his restaurant and asked to see his government-issued operating licenses. COMPLAINANT also alleged that SUBJECT OFFICER subjected him to insulting, demeaning or humiliating language during that incident by telling him to “shut up” and calling him “dumb” and “stupid.” On June 13, 2003, a member of the Citizen Complaint Review Board (CCRB) dismissed only the harassment allegation of the complaint, concurring with the determination made by OCCR’s executive director. SUBJECT OFFICER filed written objections to OCCR’s conclusion that police misconduct may have occurred.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint, even though, based on a review of OCCR’s Report of Investigation and SUBJECT OFFICER’s Objections thereto, the Complaint Examiner determined that the Report of Investigation presented genuine issues of material fact in dispute that required a hearing because the Complainant failed to participate in the Preliminary Hearing Conference. *See* D.C. Mun. Regs., Title 6A, § 2116.3,

Having determined that an evidentiary hearing was necessary, the Complaint Examiner asked Mr. J. Marshall Wolman of ADR Associates to assist in arranging a Preliminary Hearing Conference (PHC), which he did. A Notice of Preliminary Hearing Conference (Attachment A) was sent to both parties, along with individual letters (Attachments B and C). The Preliminary Hearing Conference (PHC) was scheduled after telephone conversations with SUBJECT OFFICER and COMPLAINANT. Mr. Wolman of ADR Associates spoke with Complainant on

July 29th, August 4th and August 6th regarding his participation in PHC and the consequences of failure to participate.

At the time scheduled for the PHC, the Complainant did not answer at the telephone number he gave. SUBJECT OFFICER was available at the time scheduled and was informed by the Complaint Examiner that due to Complainant's failure to participate, she would not go forward with a hearing. ADR Associates made further efforts to reach the Complainant, to no avail.

III. FINDINGS OF FACT

Based on a review of OCCR's Report of Investigation and its Exhibits, and the objections submitted by SUBJECT OFFICER on July 1, 2003, and drawing the permissible adverse inferences that may be drawn from the Complainant's failure to participate in the Preliminary Hearing Conference, the Complaint Examiner finds the material facts regarding this complaint to be:

1. The Complainant was in partnership with WITNESS #1, owner of LOCATION #1, N.W., the location of the incident on the date of the Complaint. Complainant was providing food services to the LOCATION #1, N.W.
2. On July 8, 2002, WITNESS #2, Complainant's father, approached some members of a community group, who had filed complaints against LOCATION #1, N.W. At that time, SUBJECT OFFICER approached and asked WITNESS #2 for the Certificate of Occupancy. Because he did not have this document, WITNESS #2 took the Officer inside LOCATION #1, N.W., where Complainant and WITNESS #1 were located.
3. SUBJECT OFFICER had conversations with WITNESS #1, Complainant, and WITNESS #2.
4. WITNESS #1 produced the documents requested by the Officer, who returned them to her.
5. Food was being grilled outside, despite a Cease and Desist Order (Attachment D).
6. Complainant was agitated and verbose.
7. SUBJECT OFFICER and WITNESS OFFICER #1 were responding to numerous complaints from the neighborhood concerning the activities and clientele of LOCATION #1, N.W. Complainant was fearful of having the business shut down.
8. SUBJECT OFFICER raised his voice to be heard over the Complainant's voice.

IV. DISCUSSION

Pursuant to D.C. Official Code § 5-1107(a), “The Office [of Citizen Complaint Review] 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].”

Language or conduct that is insulting, humiliating, or demeaning, as defined by MPD Special Order 01-01, Part III, Section H “includes, but is not limited to acts, words, phrases, slang, slurs, epithets, ‘street’ talk or other language which would be likely to demean the person to whom it is directed or to offend a citizen overhearing the language; demeaning language includes language of such kind that its use by a member tends to create disrespect for law enforcement whether or not it is directed at a specific individual.”

MPD General Order 201.26, Part I, Section C provides that “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.”

MPD General Order 201.26, Part I, Section C, No. 3 states, “Members shall refrain from harsh, violent, coarse, 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.”

The Complainant and his supporting witnesses, all of whom were related to him either by blood or economic interest, stated that SUBJECT OFFICER told the Complainant to “shut up,” called him “stupid,” was “loud and aggressive,” and/or called the Complainant “dumb.” The Officer denied using any untoward language. He did candidly acknowledge having to raise his voice in order to be heard over COMPLAINANT’s voice. However, raising one’s voice does not necessarily mean that one is no longer calm.

Cross-examination of the witnesses and their demeanor as they testified at an evidentiary hearing would have assisted the Complaint Examiner in determining the merits of this complaint. However, as noted above, the Complainant failed to participate in the Preliminary Hearing Conference, so no hearing was scheduled or held. The Complainant was fully aware of the consequences of his failure to participate in the PHC. It is significant to the Complaint Examiner that the Officer, in his written objections, alleged essentially that the complaint was specious and had been filed in retaliation for the Officer’s conscientiousness. Also, the Complainant’s supporting witnesses are relatives and business associates rather than independent observers.

Applying the permissible negative inferences to the Complainant's failure to participate in the PHC, which was scheduled with his knowledge and consent, at a mutually agreeable time, the Complaint Examiner cannot find sufficient facts to support the allegation.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1:	Unfounded
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Submitted on September 15, 2003.

ELEANOR NACE
Complaint Examiner