

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	02-0468
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officer(s), Badge No., District:</b>	SUBJECT OFFICER, Third District
<b>Allegation 1:</b>	Insulting, Demeaning, or Humiliating Language or Conduct
<b>Complaint Examiner:</b>	Aaron D. Schuham
<b>Merits Determination Date:</b>	August 12, 2004

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**

COMPLAINANT alleged that, on July 27, 2002, MPD SUBJECT OFFICER used language toward him that was insulting, demeaning, or humiliating when the subject officer stopped the complainant's vehicle and issued him a ticket. Specifically, COMPLAINANT maintained that SUBJECT OFFICER aggressively approached him after conducting a stop on 18th Street, N.W., and called the complainant a "jackass."

**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 ("PHC"). *See* D.C. Mun. Regs., Title 6A, Section 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 PHC, which he did. A Notice of PHC (Attachment A) was sent to both parties, along with individual letters

(Attachments B and C). The PHC was scheduled for June 14, 2004. Mr. Wolman of ADR Associates attempted to reach Complainant but was unsuccessful.<sup>1</sup>

At the time scheduled for the PHC, the Complainant did not answer at the telephone number Mr. Wolman found. SUBJECT OFFICER was available at the time scheduled and was informed by the Complaint Examiner, by voicemail message, that due to Complainant's failure to participate, the Complaint Examiner would not go forward with the PHC.

### 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 April 19, 2003, and drawing the permissible adverse inferences that may be drawn from the Complainant's failure to participate in the PHC, *see* D.C. Mun. Regs., Title 6A, Section 2117.4, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On July 27, 2002, at approximately 3:45 a.m., COMPLAINANT drove his car northbound on 18th Street, N.W. As he approached the intersection of 18th Street and Kalorama Streets, N.W., in Adams Morgan, COMPLAINANT observed two police officers (SUBJECT OFFICER and another police officer) engaged in a conversation with two women.
2. The officers, including SUBJECT OFFICER, had blocked the northbound lane of 18th Street with their cruiser, as a barricade. The southbound lane was not blocked and traffic proceeded northbound just beyond the stopped police cruiser.

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<sup>1</sup> Specifically, COMPLAINANT filed his Complaint on November 6, 2002, following a letter he sent to various District of Columbia officials, dated July 27, 2002. Neither of these documents contained COMPLAINANT's telephone number. Subsequently, OCCR investigators met with COMPLAINANT at his residence and did not include a telephone number in the Memorandum of Interview. In the referral of this matter from OCCR on April 24, 2004, the only telephone information for COMPLAINANT was the area code of his home telephone number.

In preparing for the PHC, Mr. Wolman conducted a world wide web search for COMPLAINANT's telephone number. Mr. Wolman initially found an incorrect telephone number at the U.S. Patent and Trademark Office. Neither the Maryland nor District of Columbia Bar Association websites contained attorney contact information for COMPLAINANT.

On June 1, 2004, Mr. Wolman left a voicemail message for COMPLAINANT at a phone number he found for him on a Verizon website. Immediately thereafter, Mr. Wolman left a second voicemail message for COMPLAINANT with a realtor's office, which listed COMPLAINANT as an employee there. Neither call was returned. Finally, the Notice of PHC was sent via First Class Mail to COMPLAINANT's home address on June 3, 2004, indicating that the Conference was scheduled to take place on June 14, 2004. COMPLAINANT did not respond in any way to the Notice.

3. There was heavy pedestrian traffic on 18th Street early that morning due to activity at several nightclubs on 18th Street.
4. COMPLAINANT approached the police cruiser in his car and, seeing no barricades other than the stopped police car and no officer directing traffic, continued to approach the police cruiser. COMPLAINANT subsequently maneuvered his car around the police cruiser to continue northbound to his destination.
5. COMPLAINANT's car crossed the location where SUBJECT OFFICER was standing. The Complaint Examiner is unable to substantiate COMPLAINANT's allegation that Officer called COMPLAINANT a "jackass" as he passed by.
6. SUBJECT OFFICER and the other officer then entered their cruiser and pulled COMPLAINANT over approximately one block away from where the cruiser had been parked as a barricade.
7. SUBJECT OFFICER exited the police cruiser and approached COMPLAINANT's car. The Complaint Examiner is unable to substantiate COMPLAINANT's contention that SUBJECT OFFICER acted towards COMPLAINANT in an "aggressive, belligerent, and insulting manner." Further, the Complaint Examiner is unable to substantiate COMPLAINANT's claim that SUBJECT OFFICER called him a "jackass" for the second time.
8. SUBJECT OFFICER felt "mad and irritated" that vehicles had passed his parked police cruiser, which he had intended to act as a barricade to northbound traffic on 18th Street. However, the Complaint Examiner is unable to substantiate that SUBJECT OFFICER acted upon those feelings in his conduct with COMPLAINANT.
9. COMPLAINANT indicated to SUBJECT OFFICER that he did not think that the street had been completely blocked off. Nevertheless, SUBJECT OFFICER ordered COMPLAINANT to provide his driver's license and registration.
10. SUBJECT OFFICER returned to his police cruiser and issued the complainant a \$100 ticket for going around the police barricade.

### **III. 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 stated that SUBJECT OFFICER called him a “jackass” twice, and treated him in an aggressive, belligerent, and aggressive manner. Complainant also asserted that he feared physical harm by SUBJECT OFFICER. The Officer denied these charges, claiming that although he acknowledged feeling “mad and irritated that vehicles were passing a police barricade,” he never acted upon those feelings in his interactions with the Complainant.

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 PHC, so no hearing was scheduled or held.

Applying the permissible negative inferences to the Complainant’s failure to participate in the PHC, which was scheduled with actual notice provided to him, the Complaint Examiner cannot find sufficient facts to support the allegation.

#### **IV. SUMMARY OF MERITS DETERMINATION**

SUBJECT OFFICER

<b>Allegation 1:</b>	Unfounded
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Submitted on August 12, 2004.

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Aaron D. Schuham  
Complaint Examiner