

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	02-0467
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER, Third District
Allegation 1:	Harassment
Allegation 2:	Insulting, Demeaning, or Humiliating Language
Complaint Examiner:	Eleanor Nace
Merits Determination Date:	May 4, 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 has alleged that SUBJECT OFFICER harassed him and his wife, WITNESS #1, and used language that was insulting, demeaning, or humiliating, on the morning of August 30, 2002. The incident began at the intersection of Southern Avenue, S.E., and Branch Avenue and continued in varying degrees until WITNESS #1 and SUBJECT OFFICER parted ways at the L'Enfant Plaza Metro Station.

The parties met at a red light on Southern Avenue. SUBJECT OFFICER was a passenger in the first vehicle stopped in the left hand lane from which traffic turned left onto Branch Avenue. The Complainant, who wished to make the same left turn, had been unable to maneuver his car into the left-hand lane traffic. When the Complainant was stopped by the red light, in the right lane, he pulled in front of the van carrying SUBJECT OFFICER, after signaling his intentions and desire to make the turn, in order to position his car to go left as soon as the light turned. SUBJECT OFFICER's response to this action is the gist of the Complaint.

When SUBJECT OFFICER displayed his badge and told COMPLAINANT that what he was doing was illegal, and that he should let the Officer's vehicle go first, the Complainant responded that the off-duty officer, travelling in a non-official car, had no authority to enforce the traffic laws. Tempers flared and profanities were exchanged. The officer continued the

altercation after both vehicles reached their destination: the Naylor Road Metro Station. There, SUBJECT OFFICER renewed his verbal interchange, the Complainant again questioned his authority, the Officer sought to obtain information to use against the Complainant in the future, and more profanities flew back and forth. The Officer's friend, who was the driver of the van in which he was a passenger, was present for part of the exchange. COMPLAINANT's wife attempted to cool the tempers at the Metro station before leaving for work.

After COMPLAINANT drove off, with both men still exchanging profanities, SUBJECT OFFICER followed WITNESS #1 into the Metro station, yelling at her to provide her name. He stood unnecessarily close to her on the platform and got into the same car. He continued to stare at WITNESS #1 during the ride to her destination, and spoke to Transit police officers at the L'Enfant Plaza Station when she exited the train. Her efforts to speak to the Transit police about the Complainant were thwarted by the Officer.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a 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, § 2116.3. In those instances where the Complainant and the Officer offered different versions of events, the Complaint Examiner credited the Complainant's version on the basis of credibility and plausibility.

III. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation, the Complaint Examiner finds the material facts regarding this complaint to be:

1. At approximately 8:30 a.m. on August 30, 2002, SUBJECT OFFICER was riding in the front passenger seat of the van belonging to his friend, WITNESS #2. WITNESS #2 was driving SUBJECT OFFICER to the D.C. Metro station at Naylor Road.
2. SUBJECT OFFICER was off-duty. However, he was dressed in his full MPD uniform, over which he was wearing a mesh sports jersey. He told the investigators that he was on his way to court.
3. COMPLAINANT also was en route to the Naylor Road Metro station at the same time, in order to drop off his wife, WITNESS #1. The Complainant had just dropped off his oldest child at school. In addition to his wife, their two younger children were passengers in the car at the time of the incident.

4. Both parties to this Complaint were stopped at a red light at the intersection of Branch and Southern Avenues at approximately 8:30 a.m. on August 30, 2002. WITNESS #2's grey van was the first vehicle in the left-hand lane on Southern Avenue.
5. The traffic in the right lane on Southern Avenue had to turn right. The Complainant wished to turn left, in the same direction as SUBJECT OFFICER, but could not maneuver his vehicle into the left-hand lane before reaching the stop light.
6. The Complainant indicated that he wanted to make a left-hand turn to WITNESS #2, the driver of the grey van. While they both waited for the light to turn green, the Complainant moved his car from the right lane into the intersection at an angle in front of the van. His left hand turn signal was flashing.
7. SUBJECT OFFICER, the passenger in the van, rolled down his window and asked the Complainant if he knew what he was doing was illegal. The Complainant said that he did.
8. SUBJECT OFFICER then showed COMPLAINANT a police badge. The Complainant had already noticed the uniform under the mesh sports jersey.
9. SUBJECT OFFICER said, "If I were you, I'd let us go first." COMPLAINANT told him that he only wanted to get into the intersection so that he could turn left onto Branch Avenue. SUBJECT OFFICER told him again that what he was doing was illegal, and the Complainant replied that the officer could not enforce the traffic violation because he was a passenger in a non-police vehicle. At that point, both parties used profanity, including the words "asshole" and "fuck you."
10. When the light turned green, COMPLAINANT drove in front of the vehicle occupied by SUBJECT OFFICER, made his left turn onto Branch Avenue, and reached the drop-off area of the Naylor Road Metro station. Both the Complainant and his wife exited their car. COMPLAINANT was retrieving his wife's briefcase from the trunk when he noticed the van carrying SUBJECT OFFICER.
11. SUBJECT OFFICER approached the Complainant's vehicle on foot and agitated. The Complainant said, "You don't know who you are dealing with." He then told the Officer that he was a former Maryland State trooper.
12. The Officer and the Complainant engaged in a verbal altercation and used profanity.
13. SUBJECT OFFICER said he was going to obtain COMPLAINANT's license information from his car tags so that he could give him a ticket at a later time. This prompted the Complainant to remark that the Officer was either stupid or new, because he had paper tags which contained no useful information.

14. The driver of the van, WITNESS #2, got out of his vehicle and began yelling and cursing. The Complainant's wife attempted to calm everyone down. She then walked toward the Metro station. The Complainant got back into his car but could not leave immediately because the Officer was standing too close to his passenger side mirror.
15. SUBJECT OFFICER followed WITNESS #1 into the Metro station, up the escalators, and onto the platform. She initially heard him yelling. Then he said he wanted her name. She told him he could see her driver's license but he did not respond.
16. SUBJECT OFFICER stood only a few feet from WITNESS #1 on the Metro platform and followed her onto the same car. He did not speak to her on the train but stared at her.
17. While still on the Metro station platform, WITNESS #1 called 911 and was advised to talk to the transit police about the Officer's behavior.
18. Upon exiting the train at the L'Enfant Plaza Metro stop, WITNESS #1 noticed several transit officers on the platform. However, SUBJECT OFFICER reached them before she did and yelled at her to step back.
19. When WITNESS #1 spoke to another transit officer about the situation she was advised to file a complaint at the police station.

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.

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.”

Given the Findings of Fact above, and the comprehensive Discussion of the allegations contained in the Report of Investigation, which is incorporated herein by reference, the outcome is clear. The language used by the Officer in his exchange with the Complainant was insulting and demeaning, regardless of the language used by the Complainant in return. Additionally, the Officer’s yelling after WITNESS #1 was humiliating. Further, by sharing Metro cars with WITNESS #1 and intercepting her attempts to speak with the transit police, the Officer interfered with her ability to go about her business normally.

V. SUMMARY OF MERITS DETERMINATION

OFFICER COMPLAINANT

Allegation 1:	Sustained
Allegation 2:	Sustained

Submitted on May 4, 2005.

ELEANOR NACE
Complaint Examiner