

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	10-0015
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER, Second District
Allegation 1:	Language or Conduct
Complaint Examiner:	Linda Reese Davidson
Merits Determination Date:	February 9, 2012

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 alleges that on September 23, 2009, SUBJECT OFFICER used language or engaged in conduct that was insulting, demeaning or humiliating when he used profanity and yelled at COMPLAINANT and his friends.¹ COMPLAINANT and several of his friends were celebrating a birthday at a bar. The credit card left by the party did not cover the entire bill. COMPLAINANT stepped outside, where several members in his party had assembled. According to COMPLAINANT, he was in the process of collecting the balance of the bill when SUBJECT OFFICER approached him and began to scream expletives, ordering him to pay the bill.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation and the attached exhibits, 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.

III. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation and the objections submitted by SUBJECT OFFICER on September 22, 2011, the Complaint Examiner finds the material facts regarding this

¹ COMPLAINANT also alleged that SUBJECT OFFICER used unnecessary or excessive force against him and his friend when he "push [ed]" them in the chest. COMPLAINANT further alleged that SUBJECT OFFICER harassed him by threatening to arrest him if he did not promptly pay a bar tab, deploying his tactical police baton, and then arresting him for disorderly conduct - inciting a riot. Finally, COMPLAINANT alleged that SUBJECT OFFICER failed to provide his name and badge number when asked. Pursuant to D.C. Code Sec. 5-1108 (1), on August 18, 2011, a member of the Police Complaints Board dismissed these allegations, concurring with the determinations made by the OPC's Executive Director. (The dismissal inadvertently listed the date of the incident as September 16, 2009, instead of September 23, 2009.) Accordingly, only the language or conduct allegation involving SUBJECT OFFICER is at issue in this Report of Investigation.

complaint to be:

1. COMPLAINANT filed a complaint with OPC on October 13, 2009.
2. On September 16, 2009, at approximately 2:30 a.m., COMPLAINANT and approximately thirteen (13) of his friends were celebrating a birthday at the Sky Lounge Bar located at 1919 Pennsylvania Ave. N.W. According to COMPLAINANT, the group had a table at a cost of \$500.00. In addition to the cost of the table service, the group ordered two (2) bottles of vodka. The final bill, including a \$100.00 tip, came to \$700.00.
3. At the beginning of the evening, a credit card was given to WITNESS #1 (WITNESS #1 identified the name of the cardholder by first name only).
4. There is little dispute that the individuals in the group were inebriated. COMPLAINANT asserted that he was "slightly intoxicated" and believed that his friends were also intoxicated. SUBJECT OFFICER, WITNESS OFFICER, and WITNESS #1, all agree that the individual members of the party were intoxicated (Some more visibly intoxicated than others).
5. At the end of the evening, the bar was closing and the bill had to be settled. WITNESS #1 approached the credit card holder and handed him the bill. She asked him if he wanted to have the bill processed on his credit card.
6. According to WITNESS #1, the credit card holder responded that the bill would be paid in cash but he needed to gather the group together so the money could be collected. The members of his party were scattered throughout the bar; some members of the group were already outside.
7. WITNESS #1 stated that she waited. A short time later, she attempted to process the bill on the credit card holder's credit card but the card was declined. She informed the bouncer and they went outside.
8. WITNESS #1 stated that there was arguing among the group regarding the individual amounts owed towards the bill.
9. According to WITNESS #1, a second bouncer came out of the bar. A police cruiser was in sight and the bouncer flagged down the officers.
10. The officers stopped and approached the crowd.
11. According to COMPLAINANT, while he and the other members of the group were in the process of collecting money for the bill, SUBJECT OFFICER walked up to him and immediately "screamed in an 'irate and belligerent manner 'What's the problem?'"
12. COMPLAINANT asserted that he continued his efforts to collect money and SUBJECT OFFICER said, "Pay the tab. Pay the tab. Pay the God damned tab." COMPLAINANT repeated that he was trying to pay the tab. According to COMPLAINANT, SUBJECT OFFICER continued to get upset and yelled, "Pay the fucking tab! Pay the God damned tab."

13. WITNESS #1, in her statement dated November 12, 2009, stated that SUBJECT OFFICER was "very loud from the beginning" and that he "seemed aggressive." It should be noted that WITNESS #1 did not recall hearing SUBJECT OFFICER using expletives.
14. WITNESS #1, stated that the remainder of the bill was finally paid.
15. WITNESS #2, in his statement dated November 12, 2009, stated he and his friends were in front of the Sky Lounge Bar trying to collect money from their friends when SUBJECT OFFICER approached him and "loudly" stated, "Pay the tab now!" When WITNESS #2 tried to explain that he was trying to collect the money, SUBJECT OFFICER shouted, "Pay the fucking tab now!" WITNESS #2 stated that SUBJECT OFFICER was "aggressive in the way he spoke", that he was, "very loud from the beginning" and that he shouted very close to [his] face."
16. WITNESS #2 stated, "I raised my voice after SUBJECT OFFICER raised his voice to me. I did so because I was frustrated that he was not listening when I told him that I was trying to pay the tab."
17. WITNESS #3, in his statement dated, September 16, 2009, stated, "We ordered two bottles of Absolut vodka, and I had two or three mixed drinks from them...I was not very intoxicated."
18. WITNESS #3 stated that he and his friends were standing outside the bar discussing the bill when SUBJECT OFFICER approached them and shouted, "Pay your fucking tab!" He stated, "We responded to him that we were trying to figure it out... SUBJECT OFFICER only shouted again to "Pay the fucking tab."
19. WITNESS #4, in his statement dated February 17, 2010, stated that by the time he exited the club, eight (8) or nine (9) of his friends were already outside. He stated, "I saw COMPLAINANT and WITNESS #2 try to count their money... SUBJECT OFFICER then repeated, "Pay your fucking tab!" According to WITNESS #4, he went inside the club, gave WITNESS #1 his debit card and paid the \$300.00 balance due on the tab. WITNESS #4 stated, "I went outside... and presented the receipt to three officers standing aside."
20. SUBJECT OFFICER, in his statement dated June 11, 2010, stated that on the date of the incident, he and his partner were stopped by employees of the Sky Lounge Bar. He stated that the employees informed him that there was a group of patrons that did not pay their tab. SUBJECT OFFICER stated that he observed some of the group members and informed them that they could be arrested for theft of services if the bill was not paid.
21. According to SUBJECT OFFICER, "the group appeared to be quite intoxicated and a couple of the members seemed combative." SUBJECT OFFICER continued, "In between trying to help the group settle their tab, I tried to get this individual to sit down on the ground so that he would not fall. The group appeared to be making some efforts toward settling the bill, but again I advised them that they needed to pay up or that they could be arrested. "
22. SUBJECT OFFICER stated, "I raised my voice during the incident, only to speak over and be heard by the group, who were often yelling and being loud... I do not remember if I used profanity. I do not remember if I told the group to "pay their god damn tab" or "pay their fucking tab...The incident ended when COMPLAINANT was arrested and a spokesperson for the group had successfully settled

the bar tab."

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; (5) retaliation against a person for filing a complaint pursuant to [the Act]; or (6) failure to wear or display required identification or to identify oneself by name and badge number when requested to do so by a member of the public."

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."

COMPLAINANT asserts that on the early morning of September 16, 2009, he and approximately thirteen of his friends, were celebrating a birthday at the Sky Lounge Bar, located at 1919 Pennsylvania Ave. N.W. The group sat at a table. The group was charged \$500.00 for the table service.

Additionally, they ordered two bottles of Absolut vodka, at a cost of \$200.00. WITNESS #1 was given a credit card for collateral. The group left a \$100.00 tip, bringing the final bill to \$700.00. At the end of the evening the bar was closing; WITNESS #1 asked the credit card holder, whether she should process the bill on his card. The credit card holder stated that the bill would be paid in cash and that he would need to gather together the group and collect the money. The members of the party were scattered throughout the bar; some of the members of the party had already left the bar. The credit card holder and some of his friends went outside where other members of the party had congregated.

WITNESS #1 stated that soon afterwards, she attempted to process the payment but the card was declined. WITNESS #1 stated that she and a bouncer went outside to where the group had assembled. She asserted she heard the group discussing the bill. The bill ended up being more than expected so individuals had to pay additional money to settle the tab. She and the bouncer stood by as the group collected money. A second bouncer came outside. The second bouncer flagged down a police cruiser. Two police officers walked over to the crowd. According to WITNESS #1, one of the officers, SUBJECT OFFICER "was loud from the beginning" ..and "seemed aggressive." However, it should be noted that WITNESS #1 stated that she did not hear SUBJECT OFFICER use profanity.

There is no dispute that the members of the party were inebriated, some more than others. WITNESS #1 stated that earlier in the evening, one unidentified member of the group punched out a mirror in the bathroom; another had passed out in the flower bed outside. SUBJECT OFFICER asserted that he advised the group that if the bill was not settled, they could be arrested for theft of services. SUBJECT OFFICER stated that "there appeared to be some waffling over the bill amongst the group members." The SUBJECT OFFICER asserted, "The group appeared to be quite intoxicated and a couple members of the group were combative." However, even during the middle of the chaotic situation,

SUBJECT OFFICER admitted that the crowd was making progress toward collecting money to pay the bill. In his statement, he asserted, "The group appeared to be making some efforts towards settling the bill, but again I advised them that they needed to pay up or that they would be arrested." SUBJECT OFFICER asserted that he raised his voice because the crowd was talking over him and that the crowd was "loud and boisterous." On the other hand, the members of the group complained that while they were actively in the process of collecting the money for the bill, SUBJECT OFFICER was screaming, "Pay the tab! Pay the tab! Pay the God damn tab! Pay the fucking bill!" One of the members of the group admitted that he raised his voice to SUBJECT OFFICER after SUBJECT OFFICER raised his voice. In accordance with MPD General Order 201.26, Part 1, Section C, "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." SUBJECT OFFICER came on the scene in an aggressive manner, despite the fact that the group was actively in the process of collecting money to pay the bill.

SUBJECT OFFICER stated that as he helped the crowd in their efforts to collect money for the bill, COMPLAINANT and others interfered with his efforts to control the group. SUBJECT OFFICER stated that he could not remember if he used profanity. Several of the witnesses stated that SUBJECT OFFICER counted backwards, which they perceived as a pressure tactic to move the process of collecting money along at a faster pace. SUBJECT OFFICER stated that he did not remember counting backwards. In his statement, SUBJECT OFFICER asserted, "Because of the intoxication level of the group, the tension level went up and down several times."

The fluidity of the tension levels applied to both SUBJECT OFFICER and the members of the group. But it was SUBJECT OFFICER who had a duty "to remain calm regardless of provocation to do otherwise" In determining whether SUBJECT OFFICER used language and engaged in conduct toward COMPLAINANT that was insulting, demeaning or humiliating, the Complaint Examiner reviewed the record and focused on statements submitted by all of the parties. While WITNESS #1 stated that she did not hear SUBJECT OFFICER use profanity to the group, she did state that he was "loud" and "aggressive" "from the beginning." SUBJECT OFFICER asserted that the group appeared to be making progress in collecting money to pay the bill. Yet, SUBJECT OFFICER repeated his earlier statement to the group, "but again I advised them that they needed to pay up or that they could be arrested." If SUBJECT OFFICER observed that progress was being made by the group to collect money and pay the bill, why threaten the group with arrest? Even in their varied states of intoxication, the group was collecting money to pay the bill. SUBJECT OFFICER was able to provide an accurate recall of all his efforts taken to avert a possible riot but could not remember once, if at any time, he used profanity to anyone in the group.

According to WITNESS OFFICER'S statement, when he and SUBJECT OFFICER exited the vehicle, "the manager pointed to this group of patrons who had not paid their tab." WITNESS OFFICER described the group as unruly and argumentative. However, this assessment does not capture the entire situation. The group was discussing the varied amounts owed on the bill. Albeit, the discussion was not taking place in an organized manner, nevertheless, it was taking place.

The Complaint Examiner finds that the evidence reviewed in this matter supports the finding that SUBJECT OFFICER used language and conduct toward COMPLAINANT that was insulting, humiliating, or demeaning.

Complaint No. 10-0015

February 9, 2012

Page 6

V. SUMMARY OF MERITS DETERMINATION

[SUBJECT OFFICER'S NAME]

Allegation 1: Insulting, Demeaning or Humiliating Language or Conduct	Sustained
--	------------------

Submitted on February 9, 2012.

Linda Reese Davidson
Complaint Examiner