GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF POLICE COMPLAINTS

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	06-0053
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER, D.C. Housing Authority Police Department
Allegation 1:	Harassment
Allegation 2:	Insulting, Demeaning, or Humiliating Language or Conduct
Complaint Examiner:	Eleanor Nace
Merits Determination Date:	July 2, 2009

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) and the District of Columbia Housing Authority Police Department (DCHAPD) 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

The COMPLAINANT filed a complaint with the Office of Police Complaints (OPC) on December 5, 2005. COMPLAINANT alleged that on December 1, 2005, the subject officer, District of Columbia Housing Authority Police Department (DCHAPD) SUBJECT OFFICER, harassed her, her grandson WITNESS #1, and her daughter WITNESS #2 (WITNESS #1's mother), by arresting WITNESS #1 for unlawful entry. COMPLAINANT further alleged that SUBJECT OFFICER, in the course of arresting WITNESS #1, used language or engaged in conduct toward her daughter, WITNESS #2, that was insulting, demeaning, or humiliating.[1]

Specifically, COMPLAINANT alleged that on December 1, 2005, at approximately 4 p.m., SUBJECT OFFICER arrested her then- 13-year-old grandson, WITNESS #1, for unlawful

[1] COMPLAINANT's allegations on behalf of her grandson and daughter are permissible pursuant to D.C. Code § 5-1107(c), which provides, "Any individual having personal knowledge of alleged police misconduct may file a complaint with [OPC] on behalf of a victim."

entry as WITNESS #1 was entering the Park Morton apartment building, a District of Columbia Housing Authority (DCHA)-owned property where the complainant lived with her adult children, WITNESS #3 and WITNESS #2, and WITNESS #2's minor children, 13-year-old WITNESS #1 and 9-year-old WITNESS #4.

SUBJECT OFFICER told COMPLAINANT that he had arrested her grandson WITNESS #1 because WITNESS #1 was the subject of a DCHA bar notice, which banned WITNESS #1 from living at Park Morton until the bar notice had expired. Neither COMPLAINANT nor her daughter WITNESS #2 were aware of the existence of a bar notice against WITNESS #1, and they questioned whether such a notice actually existed. SUBJECT OFFICER allegedly ignored efforts by the complainant and her daughter to challenge the validity of WITNESS #1's arrest. SUBJECT OFFICER also allegedly cursed at the complainant's daughter, WITNESS #2, and threatened to arrest her.

COMPLAINANT was so upset by SUBJECT OFFICER's actions in arresting her grandson that she immediately went to the Park Morton rental office, where she allegedly was told that no bar notice was on file for WITNESS #1 and that a verbal bar notice is not valid. WITNESS #1 ultimately was released, as the unlawful entry charge was "no papered."[2] However, the complainant alleged that SUBJECT OFFICER unlawfully arrested WITNESS #1 as part of a continuing campaign of harassment against her and her family. A copy of the complaint, which was submitted timely and in the proper form, was attached to OPC's Report of Investigation as the first of twenty-five exhibits. The Complaint Examiner reviewed the entire report.

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. And for the reasons set forth below, the complainant's credibility was considered to be far greater than that of SUBJECT OFFICER, on any disputed issues.

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[2] The term "no papered" means that upon review of the police reports submitted in connection with an arrest, the prosecuting attorney declined to file a criminal complaint or juvenile petition. Accordingly no court case was ever initiated.

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. The COMPLAINANT was a resident of the Park Morton apartment building, a District of Columbia Housing Authority (DCHA)-owned property, on December 1, 2005.

2. Living with her at that time were COMPLAINANT's adult children, WITNESS #3 and WITNESS #2, and WITNESS #2's minor children, 9-year old WITNESS #4 and 13-year old WITNESS #1.

3. The subject officer was a Housing Authority police officer at the Park Morton complex.

4. On December 1, 2005, at approximately 4 p.m., WITNESS #1 was arrested by SUBJECT OFFICER for unlawful entry as he was entering the Park Morton apartment building in which he lived with his mother and grandmother.

5. The basis of the charge was a DCHA bar notice which the subject officer had obtained against WITNESS #1. According to SUBJECT OFFICER, the bar notice prohibited WITNESS #1 from entering the premises prior to its expiration date.

6. Neither the complainant nor WITNESS #1's mother were aware of any bar notice.

7. At the time of WITNESS #1's arrest on December 1, 2005, the complainant had not been served with any bar notices concerning her grandson, WITNESS #1.

8. On December 1, 2005, the complainant was informed by her son and daughter that SUBJECT OFFICER was arresting WITNESS #1. She went outside and found WITNESS #1 in handcuffs.

9. The complainant overheard SUBJECT OFFICER say to WITNESS #2, "Take the fucking jewelry off because you're barred too."

10. SUBJECT OFFICER ignored the complainant's and WITNESS #2's challenges to the validity of WITNESS #1's arrest.

11. The complainant went to the Park Morton rental office, and was informed that they had no bar notice on file and that a verbal bar notice was not valid.

12. The December 1, 2005 unlawful entry charge was "no papered, .i.e., upon review, the prosecuting attorney declined to file charges based on the police reports.

13. In addition to being unaware of any bar notice, complainant and her daughter informed SUBJECT OFFICER that WITNESS #1 was required by order of the D.C. Superior

Court to reside with his grandmother at Park Morton as a condition of his release in a pending case. SUBJECT OFFICER ignored this information because they were not able to produce a copy of the order. He continued to ignore this information even after it was confirmed later in the day.

14. There is a history of conflict between SUBJECT OFFICER and members of complainant's family.

15. SUBJECT OFFICER confirmed that while on duty he visited a strip club known as "the House." However, he claimed it was only for work-related purposes.

16. WITNESS OFFICER #1, the subject officer's supervisor at the time, stated that officers are not authorized to visit "the House" while on duty and that he had issued a verbal warning to SUBJECT OFFICER in this regard. WITNESS OFFICER #1 also told OPC that DCHAPD specifically advises officers not to socialize with residents.

17. SUBJECT OFFICER asked WITNESS #1's mother for a date prior to any problems, but she declined.

18. SUBJECT OFFICER told WITNESS #2 that he did not need a barring notice to arrest WITNESS #1 because it is private property, and he had previously "told his ass he was barred from this property."

19. Contrary to regulations, SUBJECT OFFICER delivered WITNESS #1's personal property from the juvenile processing center to COMPLAINANT's Park Morton apartment and handed them to WITNESS #2, with whom he had expressed interest in having a romantic relationship on more than one occasion.

20. During the events of December 1, 2005, SUBJECT OFFICER told WITNESS #2 that she, too, was not authorized to reside at Park Morton.

III. DISCUSSION

Pursuant to D.C. Code § 5-1107(a) and (j), "[t]he Office [of Police Complaints] shall have the authority to receive and to dismiss, conciliate, mediate, or adjudicate a citizen complaint against a member or members of the [DCHAPD] . . . that alleges abuse or misuse of police powers by such member or members. Such allegations may include, among other things, harassment, and the use of language or conduct that is insulting, demeaning, or humiliating.

DCHAPD officers are prohibited from harassing DCHA residents and members of the public by DCHAPD General Order 402.1.4 (c) (effective Dec. 1, 1998). The order states that

DCHAPD officers "shall not threaten, fight with, intimidate, abuse, or coerce residents or other members of the public, or provoke such actions by them."

Harassment is also defined in OPC's regulations as:

> Words, 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 covered law enforcement agency, 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 covered law enforcement agency, the frequency of the alleged conduct, its severity, and whether it is physically threatening or humiliating.

D.C. Mun. Regs. tit. 6A, § 2199.1 (2002).

WITNESS #1's alleged status as barred formed the basis for an arrest whose lawfulness has been challenged, and the issue of whether an arrest carried out by a DCHAPD officer constituted harassment is expressly within OPC's jurisdiction to decide.

DCHA's barring policy and procedures are set forth in Title 14, Chapter 96 of the D.C. Municipal Regulations (effective February 27, 2004). The regulations state in relevant part:

9600.2 No person may enter upon DCHA property unless that person is authorized to be on the property. The only persons authorized to be on DCHA property are:

(a) residents of the property;
(b) Members of the resident's household;
(c) A resident's guests except as provided in § 9600.3
(d) Persons authorized under § 9600.3
(e) Licensees including their invitees; and
(f) Persons employed by or doing business with DCHA at the property . . .

9600.4 Any person not identified in § 9600.2 as an authorized person may be subject to the issuance of a Bar Notice for five years.

9600.5 Resident's guests may be subject to the issuance of a Bar Notice pursuant to the following:

(a) Any resident's guest who engages in any activity that threatens the health, Safety or right to peaceful enjoyment of the premises by other residents or DCHA employees or violates DCHA policy is an unauthorized person.

(b) For any activity by a resident's guest that violates § 9600.5 (a), a Temporary or Permanent Bar Notice may be issued to the unauthorized person as follows:

(1) Temporary Bar Notices shall remain in effect for the first infraction for sixty (60) days, second infraction for six (6) months, and third infraction for one (1) year for the following infractions:

(A) Entering DCHA property without presenting identification or properly signing the visitor log;

(B) Being on or about DCHA property or other dwelling units other than the location identified on the guest pass or visitor log;

(C) Residing as an unauthorized occupant in a DCHA dwelling unit; or

(D) Disruptive conduct while on DCHA property that disturbs the health, safety or peaceful enjoyment of the property.

. . .

9600.7 Bar Notices shall be served to persons pursuant to the following:

(a) Personal Service or attempted personal service in writing of Bar Notices shall be made to each person barred from DCHA property.

(b) The Bar Notice shall identify the basis for the issuance of the Bar Notice and the time period for which the person is barred from DCHA property. The Bar Notice shall reflect the date, method and manner of service upon the barred person. The Bar Notice does not have to be served on DCHA property.

(c) A copy of the Bar Notice issued to a guest will be provided to the resident, if the guest has identified the unit number and name of the resident.

. . .

9600.9 The issuance of a Bar Notice requires the barred person to immediately leave the DCHA property from which the person was barred and not return for the period the Bar Notice remains in effect.

Should a barred person fail to leave the DCHA property after the issuance of the Bar Notice, or later returns to the DCHA property noted on the Bar Notice at any time while the Bar Notice is in effect, the person may be arrested for "unlawful entry" pursuant to D.C. Official Code § 22-3302 (2001), as amended.

D.C. Mun. Regs. tit. 14 § 9600 *et seq.* (2004).

Pursuant to the foregoing provisions, a DCHA resident's guests are subject to barring if they reside as unauthorized occupants of a DCHA dwelling unit or engage in disruptive conduct while on DCHA property that disturbs the health, safety, or peaceful enjoyment of the property. SUBJECT OFFICER contends that WITNESS #1 and his mother WITNESS #2 both were subject to barring because they were not named on COMPLAINANT's lease and thus were unauthorized occupants of COMPLAINANT's dwelling unit. He further contends that WITNESS #1 was subject to barring for the additional reason that he engaged in disruptive behavior that disturbed the health, safety or peaceful enjoyment of the property.

We need not decide whether or not WITNESS #1 and his mother were subject to barring as guests because they were not on the lease. Nor need we decide whether or not then- 13-year-old WITNESS #1 was also subject to barring for behavior that disturbed the health, safety, and peaceful enjoyment of the Park Morton property. The record in this case clearly establishes that no valid bar notice had been entered against WITNESS #1 prior to his arrest. To be valid, a bar notice must be in writing and must be personally served on the subject. *See* D.C. Mun. Regs. tit. 14 § 9600.7(a). Attempted service of a written notice will suffice, however, if the person to be barred refuses personal service. *Id*. A document provided to OPC by DCHAPD that purports to represent the October 29, 2005, bar notice indicates that SUBJECT OFFICER attempted to personally serve it on WITNESS #1 but that WITNESS #1 refused. No similar document was provided to OPC regarding the alleged November 11, 2005, bar notice. The document that purports to reflect the November 11, 2005, bar notice is a computer printout which indicates that WITNESS #1 was again barred on November 11, 2005, but it is not a copy of the actual bar notice, and it does not reflect whether personal service on WITNESS #1 was attempted or achieved. Thus, there is insufficient evidence from which to find that WITNESS #1 validly was barred a second time on November 11, 2005.

Assuming *arguendo* that the attempted service on WITNESS #1 of the October 29, 2005, bar notice was sufficient to place WITNESS #1 on notice that he was banned from Park Morton until after December 29, 2005, there is no evidence at all that SUBJECT OFFICER served a copy of the notice on COMPLAINANT, as required by D.C. Mun. Reg. tit. 14 § 9600.7(c). The statements provided to OPC by COMPLAINANT and her daughter WITNESS #2 reflect that at

the time of WITNESS #1's December 1, 2005, arrest, neither had been notified that a bar notice had been entered against WITNESS #1. WITNESS #2's statement reflects that when SUBJECT OFFICER informed her on December 1, 2005, that he was arresting WITNESS #1 because he had been barred, she asked, "Well, if he's barred, where is the bar notice?" COMPLAINANT's statements attached to her complaint form and given during her OPC interview reflect that she reacted to the arrest of WITNESS #1 on December 1, 2005, by going to the Park Morton rental office to determine if a bar notice had been entered against WITNESS #1 and demanding assistance despite that the office was then closed. Furthermore, COMPLAINANT stated that she was told there was no bar notice on file and that there is no such thing as a verbal bar notice, information which frustrated COMPLAINANT greatly because WITNESS #1 still had to undergo the entire juvenile arrest process, despite that the unlawful entry charge ultimately was "no papered." COMPLAINANT's claim that she was told there is no such thing as a verbal bar notice is supported by section 9600.7 (a) of the applicable regulations, which provides that a bar notice must be "in writing." *See* D.C. Mun Regs., tit. 14 § 9600.79 (a). This suggests that SUBJECT OFFICER's assertion that he verbally barred WITNESS #2 and WITNESS #1 from Park Morton following WITNESS #1's November 11, 2005, arrest in a motor scooter incident was invalid and, thus, did not actually bar either WITNESS #1 or WITNESS #2.

With respect to the October 29, 2005, bar notice, SUBJECT OFFICER was required by DCHA's governing regulations to provide a copy to COMPLAINANT. *See* D.C. Mun. Reg. tit. 14 § 9600.7(c). Moreover, the language of that provision makes clear that where a DCHA resident's name and apartment number are known, providing the resident with a copy of the notice barring his/her guest is mandatory, not discretionary: "A copy of the Bar Notice issued to a guest *will be provided* to the resident, if the guest has identified the unit number and name of the resident." *Id*. (emphasis added). This mandatory notice is particularly important in cases, such as this one, where the subject of the bar notice is a minor child. It cannot be the case that DCHAPD officers are authorized to ban from a DCHA property a child who lives at the property with his mother and grandmother, without officially notifying the adults who have legal custody of the child. To construe the barring provisions otherwise would mean that DCHAPD officers are authorized to render homeless a 13-year-old without any corresponding obligation to notify the child's legal guardians or the DCHA resident(s) acting *in loco parentis*. Such a result would be absurd, and OPC is certain that the District of Columbia does not intend such an outcome.

SUBJECT OFFICER's obligation to comply with all provisions of DCHA's barring regulations, including the one requiring that he furnish a copy of a barring notice to a known resident whose guest has been barred, is stated unequivocally in the introduction to the DCHAPD Manual of Policy and Procedure, which provides that DCHAPD officers "shall be responsible for complying with . . . [the DCHAPD] General Orders . . . [and the] laws and regulations governing the District of Columbia Housing Authority." *See* DCHAPD Manual of Policy and Procedure, Introduction, Section II. C.

SUBJECT OFFICER's failure to notify COMPLAINANT that her 13-year-old grandson had been barred from Park Morton for 60 days, either on October 29, 2005, or shortly thereafter,

was a violation of D.C. Mun. Regs., tit. 14 section 9600.7(c) that deprived COMPLAINANT of the opportunity to prevent an arrest that was upsetting to WITNESS #1 and his family. Had COMPLAINANT been provided the required notification of WITNESS #1's barring, she could have, if possible, made arrangements for WITNESS #1 to live with other relatives until the notice expired or she could have earlier appealed to DCHA for leave to add WITNESS #1 to her lease, using the D.C. Superior Court orders that she ultimately relied upon to obtain official permission for WITNESS #1 to remain at Park Morton. Instead, the complainant and her family were greatly inconvenienced in several ways. WITNESS #1, fearful for several weeks that he might be arrested, was unable to go about his lawful business normally. Then, on December 1, 2005, when WITNESS #1 was arrested, COMPLAINANT had to spend time trying to determine whether a bar notice existed after the rental office had closed, and she expended energy trying to determine whether WITNESS #1 could be released to his family without first being taken to D.C. Superior Court. COMPLAINANT's daughter WITNESS #2 had to travel to D.C. Superior Court and be interviewed by court social workers before WITNESS #1 could be released following the "no papering" of his arrest for unlawful entry.

The Complaint Examiner, therefore, finds that SUBJECT OFFICER's failure to provide a copy of the notice barring WITNESS #1 to COMPLAINANT constituted a purposeful, knowing, or reckless violation of DCHA's barring regulations, that subjected WITNESS #1 to arrest by precluding the FAMILY from taking action to prevent the arrest. Moreover, the subject officer's omission resulted in a verbal exchange during which he threatened to arrest the complainant's daughter WITNESS #2 for violating an invalid verbal bar notice, an act which had no purpose other than to intimidate WITNESS #2 for challenging his failure to notify her and her mother of the existence of a bar notice against WITNESS #1. In so doing, SUBJECT OFFICER harassed COMPLAINANT, her grandson WITNESS #1, and her daughter WITNESS #2, in violation of DCHAPD General Order 402.1.4 (c).[3]

COMPLAINANT has also claimed that the subject officer used language or engaged in conduct toward her daughter, WITNESS #2, that was insulting, demeaning or humiliating, during their exchange while WITNESS #1 was being arrested. The Complaint Examiner notes that the complainant and her daughter gave consistent versions of these events in separate interviews. SUBJECT OFFICER denied using any profanity during the incident; however, his explanation for why that would have been unwise does not ring true, namely, that he was "outnumbered" by WITNESS #1's family members. WITNESS #1 was handcuffed, the subject officer had called for back-up, the complainant was approaching and he was speaking to the 13-year old's mother. He was not sufficiently intimidated by being "outnumbered" to alter his

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[3] The complainant and her daughter asserted that SUBJECT OFFICER may have been motivated to harass WITNESS #1 and the entire FAMILY because of his unsuccessful attempt to date WITNESS #2. SUBJECT OFFICER denies that allegation. It is not necessary to make a factual determination on that issue because the subject officer's knowing or reckless failure to provide notice of WITNESS #1's barring to COMPLAINANT and the impact of that omission is sufficient evidence of harassment to obviate the need to determine the subject officer's motive.

course of action when he was told repeatedly that WITNESS #1 had been ordered to reside at Park Morton and there was no bar notice. Therefore, the Complaint Examiner finds that SUBJECT OFFICER used language that was insulting and demeaning toward WITNESS #2.

IV. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1:	Sustained
Allegation 2:	Sustained

Submitted on July 2, 2009.

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ELEANOR NACE
Complaint Examiner