

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

FINDINGS OF FACT AND MERITS DETERMINATION

| | |
|---|---|
| Complaint No.: | 06-0279 |
| Complainant: | COMPLAINANT |
| Subject Officer(s), Badge No., District: | SUBJECT OFFICER, NSID |
| Allegation 1: | Insulting, Demeaning or Humiliating Language or Conduct |
| Complaint Examiner: | Arthur D. Sidney |
| Merits Determination Date: | January 30, 2008 |

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

The COMPLAINANT, a juvenile, filed a complaint with the Office of Police Complaints (OPC) on July 6, 2006. COMPLAINANT alleged that on May 22, 2006, the Subject Officer, Metropolitan Police Department (MPD) SUBJECT OFFICER, Narcotics and Special Investigations Division (NSID) used language or engaged in conduct that was insulting, demeaning, or humiliating.¹

Specifically, COMPLAINANT alleged that on May 22, 2006, while waiting to be transported to the D.C. Department of Youth Rehabilitation Services facility at 1000 Mt. Olivet Road, N.E., the Subject Officer remarked, "What kind of mother has a son out here doing this shit, she should be locked up."

II. EVIDENTIARY HEARING

¹ The complainant also alleged that WITNESS OFFICER #1, Narcotics and Special Investigations Division, and WITNESS OFFICER #2, Narcotics and Special Investigations Division (NSID), used unnecessary or excessive force against him. COMPLAINANT further alleged that WITNESS OFFICER #1 and a third officer, WITNESS OFFICER #3, NSID, used language or engaged in conduct toward him that was insulting, demeaning, or humiliating. Additionally, the complainant alleged that a fourth officer, an unidentified MPD officer later identified by OPC as WITNESS OFFICER #2, harassed him by conducting an improper search. On November 15, 2007, a member of the Police Complaints Board (PCB) dismissed these allegations, concurring with the determination made by the executive director. Individual PCB members are assigned to rotating two-week dismissal schedules.

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.

III. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation and the objections submitted by SUBJECT OFFICER, NSID, on November 21, 2007, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On May 22, 2006, COMPLAINANT, a juvenile, was arrested for the alleged distribution of crack cocaine by several members of the MPD.
2. On the same day, following his arrest, while waiting to be transported to the juvenile processing center at the D.C. Department of Youth Rehabilitation Services facility in Northeast, D.C., Subject Officer remarked something to the effect, "What kind of mother has a son out there doing this shit, she should be locked up."
3. Another MPD officer, WITNESS OFFICER #4, indicated that he heard the Subject Officer make a similar statement.

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." Such allegations may include, among other things, "the use of language or conduct that is insulting, demeaning, or humiliating." *See* D.C. Official Code § 5-1107(a).

Language or Conduct

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.”

The evidence reviewed in this matter supports the finding that the Subject Officer used language or conduct toward Complainant that was insulting, humiliating, or demeaning and that she failed to exercise courtesy in her dealings with the Complainant. The Complainant Examiner finds credible the Complainant’s statement that the Subject Officer remarked, “what kind of mother has a son out here doing this shit, she should be locked up.” While the Subject Officer denies making the statement, another MPD officer, WITNESS OFFICER #4, corroborated the Complainant’s version of the incident. The Complaint Examiner finds that WITNESS OFFICER #4, as a member of the MPD, had no incentive to fabricate the statement. The Complaint Examiner finds that derogatory statements regarding a person’s mother are inherently insulting and demeaning. The Subject Officer’s statement at issue is no exception and had the effect of being offensive regardless of her good intentions. Thus, the Complaint Examiner finds that the Subject Officer’s statement is evidence of inappropriate language or conduct because the Subject Officer discourteously made a statement regarding the Complainant’s mother which had the effect of demeaning both the Complainant and the Complainant’s mother.

On December 13, 2007, the Subject Officer filed certain objections to the ROI with the OPC. In the objections, the Subject Officer asserted that she did not make the statement at issue and challenged the procedures followed by the OPC in its decision to submit this case to a Complaint Examiner. *See* Objections to Report of Investigation from the Office of Police Complaints, Complaint Number 06-0279 (December 13, 2007) (Objections) at 1-2. As discussed above, this Complaint Examiner does not find credible the Subject Officer’s denial. This Complaint Examiner also does not find that OPC failed to adhere to its regulatory procedures. This Complaint Examiner finds that even if OPC did violate its regulatory procedures, any procedural deficiencies noted by the Subject Officer did not result in any prejudice to the Subject Officer because this matter was still presented for decision by a Complaint Examiner. *See Le Chic Taxicab Co. v. D.C. Taxicab Co.*, 614 A.2d 943, 945 (D.C. 1992) (quoting *Arthur v. District of Columbia Nurses' Examining Bd.*, 459 A.2d 141, 146 (D.C. 1983) (“Reversal and remand is required only if substantial doubt exists whether the agency would have made the same ultimate finding with the error removed”).

The Subject Officer claims that a “hearing is the only opportunity for the Subject Officer to present a defense.” *See* Objections at 2. However, the Subject Officer is wrong because an opportunity was afforded already for the Subject Officer to present a defense. According to the evidence presented in the ROI, the Subject Officer was interviewed by the OPC staff, the Subject Officer’s statement and version of the facts was written by the OPC staff, and the Subject Officer reviewed, signed, and dated the statement attesting to its authenticity and accuracy. *See* ROI at

Exhibit 4. While the Subject Officer may take issue with OPC's signed statement policy, the Complainant Examiner finds that concerns about OPC's investigative policies and procedures are not sufficient basis for requiring an evidentiary hearing. *See* Memorandum From: Thomas E. Sharp, Deputy Director, Office of Police Complaints, To: Complaint Examiner, OPC Complaint No. 06-0279, (December 19, 2007) at 1.

Thus, for the reasons discussed above, because the Complaint Examiner finds the Complainant's statement, as corroborated by WITNESS OFFICER #4, credible and because the Complaint Examiner finds the statement made by the Subject Officer to be offensive, the Complaint Examiner determines that Subject Officer used language or engaged in conduct that was insulting, demeaning, or humiliating.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER, Narcotics and Special Investigations Division:

| | |
|----------------------|-----------|
| Allegation 1: | Sustained |
|----------------------|-----------|

Submitted on January 30, 2008.

ARTHUR D. SIDNEY
Complaint Examiner