

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	09-0534
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officer(s), Badge No., District:</b>	SUBJECT OFFICER
<b>Allegation 1:</b>	Harassment
<b>Allegation 2:</b>	Insulting, Demeaning or Humiliating Language or Conduct
<b>Complaint Examiner:</b>	Turna R. Lewis
<b>Merits Determination Date:</b>	December 30, 2010

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, Complainant, filed a complaint with the Office of Police Complaints (OPC) on September 17, 2009. Complainant alleges that SUBJECT OFFICER harassed him on September 12, 2009, when she stopped her personal vehicle in front of his after he took a picture of her license tag. Complainant also alleges Subject Officer engaged in language or conduct that violated MPD Orders when she spoke to him in a stern tone and asked him if he wanted her to call for back up.

**II. EVIDENTIARY HEARING**

An evidentiary hearing was conducted regarding this complaint on November 5, 2010. The Complaint Examiner heard the testimony of Complainant COMPLAINANT and SUBJECT OFFICER. The following exhibits were entered into the record:

**Attached Exhibits**

Exhibit 1: OPC Formal Complaint, COMPLAINANT, dated September 17, 2009, and received September 18, 2009

- Exhibit 2: OPC Statement of Complainant COMPLAINANT, dated October 8, 2009
- Exhibit 3: OPC Statement of SUBJECT OFFICER, dated November 4, 2009
- Exhibit 4: Photograph of rear tag, undated
- Exhibit 5: MPD Form PD 119, Complainant/Witness Statement of Officer Rivera, dated October 29, 2009
- Exhibit 6: MPD General Order 120.25, Processing Citizen Complaints
- Exhibit 7: MPD General Order 120.21, Disciplinary Procedures and Processes
- Exhibit 8: MPD General Order 304.10, Police-Citizen Contacts, Stops, and Frisks
- Exhibit 9: MPD General Order 303.1, Traffic Enforcement
- Exhibit 10: MPD General Order 201.26, Duties, Responsibilities, and Conduct of Members of the Department

### **III. FINDINGS OF FACT**

Based on a review of OPC's Report of Investigation, all comments and objections submitted by the Subject Officer, and the evidence presented at the evidentiary hearing conducted on November 5, 2010, the Complaint Examiner finds the material facts regarding this complaint to be as follows:

1. On September 18, 2009, at approximately 4:30 p.m., Complainant was driving his COMPLAINANT'S VEHICLE on Madison Street, N.W. and turned south onto 13<sup>th</sup> Street, N.W. in Washington, DC.
2. On September 18, 2009, at approximately 4:30 p.m., Subject Officer was off-duty and driving her personal vehicle, a SUBJECT OFFICER'S VEHICLE, southbound on 13<sup>th</sup> Street, N.W.
3. Complainant and Subject Officer drove their vehicles along 13<sup>th</sup> Street, N.W. Complainant's car was behind Subject Officer's vehicle.
4. Complainant honked his horn repeatedly at Subject Officer in an effort to get her to increase her speed. At a stop sign, Subject Officer stuck her head out of the window and asked Complainant to stop "riding on my bumper."

5. Complainant continued to drive behind Subject Officer, “riding” or tailgating her bumper. After passing through a few more stop signs, Subject Officer held a placard, approximately four by nine inches outside of the driver’s side of her vehicle, which included the word “police” and the Metropolitan Police Department badge insignia. Both Complainant and Subject Officer continued to drive along 13<sup>th</sup> Street, N.W.
6. As he drove his car, Complainant used his cell phone to take a picture of Subject Officer’s license tag.
7. Upon observing Complainant take a picture of her vehicle, Subject Officer stopped her vehicle in the middle of 13<sup>th</sup> Street, N.W, exited her vehicle, and approached Complainant, identifying herself as a police officer.
8. Subject Officer was wearing MPD uniform police pants and boots, and a non-uniform white t-shirt and jacket.
9. Subject Officer informed Complainant she was a police officer, showing him her official police badge, and informed him that he was tailgating her bumper, which violated District of Columbia law, and that his actions in failing to make complete stops at stop signs, use a cell phone while his to her car was in motion, and aggressive driving also violated District of Columbia law.
10. Complainant stated he did not know she was a police officer and mentioned that individuals impersonate police officers.
11. After Subject Officer informed Complainant that his actions violated the law, Complainant asked Subject Officer if he was free to leave.
12. Subject Officer told Complainant he could leave and returned to her vehicle. Both vehicles continued to drive southbound on 13<sup>th</sup> Street, N.W. until Thomas Circle where Subject Officer exited.

#### **IV. 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].”

The MPD regulations require MPD sworn officers to familiarize themselves with the “...statutes, laws, and regulations in force in the District of Columbia...,” and states that “...failure to do so, or to take action respecting violations of those statutes, laws, and regulations coming to their attention or about which they have knowledge shall be deemed neglect of duty. (Title 6A § 200.13 (D.C.M.R.)).

### **ALLEGATION OF HARASSMENT**

Complainant alleges Subject Officer harassed him when she stopped her personal vehicle resulting in his inability to drive his vehicle. As discussed below, the Complaint Examiner does find that Subject Officer denied or impeded Complaint’s ability to go about lawful business normally, i.e., traveling in his car.

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 (2002)).

Complainant testified that he was driving on Saturday, September 12, 2009 at approximately 4:30 p.m. to attend services at St. Matthew’s Cathedral on Rhode Island Ave, N.W. (TR. at 43). Complainant states that he began driving on Madison Street, N.W. and turned on 13<sup>th</sup> Street, N.W. behind a white SUV driven by Subject Officer. Complainant testified he observed Subject officer “tap her brakes” and drive erratically for blocks. Complainant testified that after some time, Subject Officer held a placard out of the driver’s side window which indicated she was an MPD officer. Complainant testified he did not know the significance of the placard and did not understand it meant Subject Officer was an MPD officer. Complainant stated that Subject Officer stopped her car in front of him on 13<sup>th</sup> Street, N.W. and that he was unable to move because he “would have either had to hit her car or hit her, or you know, back up and there were cars behind us” (TR at 31). Complainant states Subject Officer identified herself as an MPD police officer and told him he was violating the law by tailgating her bumper,

not fully stopping at the stop signs, using his cell phone while his car was moving, and overall engaging in aggressive driving.

Subject Officer testified that on September 12, 2009, she left her work station, the Fourth District office located on 6001 Georgia Avenue, N.W., driving southbound on 13<sup>th</sup> Street N.W. While on 13<sup>th</sup> Street N.W., Subject Officer testified she noticed that a male driver was driving his car “riding her bumper” or tailgating. Subject Officer testified Complainant made rolling stops, failing to come to a complete stop at each stop sign (TR at 67-68). Subject Officer testified that the driver, later identified as Complainant, repeatedly honked his horn at her (TR at 70). Subject Officer testified that after a few blocks she yelled out of her window “Hello, stop riding my bumper” (TR at 70). Subject Officer testified that Complainant continued driving at the same pace and continued to fail to fully stop at the stop signs (TR at 71).

Subject Officer testified that she held her police placard outside of the window to inform Complainant that she was a MPD officer. She described the placard as approximately four by eight inches, containing the words “police,” “official business,” and the MPD police badge insignia (TR at 55 and 73). Subject Officer stated she displayed the placard to convey to Complainant that she was a MPD officer. She also held her head out of the driver’s window and told Complainant she was a police officer as she continued to drive (TR at 73). Subject Officer testified that after displaying the placard she observed Complainant take a picture of her license tag with his cell phone. Subject Officer stated that she waited until she could make a legal stop and then double parked her vehicle and approached Complainant’s car on foot (TR at 74-75).

Complainant denies riding Subject Officer’s bumper, but admitted that he felt that Subject Officer was driving too slowly and was driving erratically. Complainant admits that he was focused on getting to church early for the 5:30 p.m. Mass service (TR at 48).

MPD General Order 303.1 “Traffic Enforcement” prescribes the policies and procedures for traffic enforcement. Part1 (A)(2) states that “members who are not in uniform or are in unmarked vehicles may take enforcement action only in the case of a violation that is so grave as to pose an immediate threat to the safety of others.” There is no discretion in compliance with this provision. Subject Officer’s statements that she felt Complainant’s driving was an immediate threat are inconsistent with her actions. She failed to call for backup at the time the incident occurred. She failed to file a suspicious activity report when she next reported to work. Complainant testified she feared for her safety and for others, but she did not contact MPD for backup, nor did she file a report of the incident. It was not until she was notified of Complainant’s complaint that she stated her belief that Complainant’s driving posed an immediate threat to her and others. Based upon the testimony of the Subject Officer and Complainant, I find that Subject Officer’s actions in stopping Complainant violated MPD General Order 303.1.

Based upon the totality of the circumstances—Subject Officer was off-duty, not in uniform, and driving her personal vehicle, it was reckless to stop and question Complainant. I

find that the stop was motivated by Complainant's taking a picture of her license tag, as she had not stopped or notified MPD that Complainant continued to tailgate her bumper and to perform "rolling stops" at stop signs. I find it more probable than not that Complainant was tailgating Subject Officer's bumper. Under cross-examination Complainant admitted he was in a hurry to get to Mass services and that he believed Subject Officer was driving too slowly. Because there are no witnesses to this incident other than the parties involved, I cannot determine if Subject Officer was driving below the speed limit or driving erratically as described by Complainant. Under the circumstances in this matter—Complainant's rush to get to Mass services early and Subject Officer's desire to go home after her shift, I find it more likely than not that Complainant was tailgating Subject Officer, and that she warned him by displaying the placard. Because Subject Officer did not contact MPD and stopped Complainant while in her personal vehicle and not in uniform, in violation of MPD General Order 303.1, her behavior constituted harassment, as there was no legitimate law enforcement purpose for the stop. I find that the harassment was not knowing or purposeful, but reckless.

#### **ALLEGATION OF INSULTING, DEMEANING OR HUMILIATING LANGUAGE OR CONDUCT**

Complainant alleges Subject Officer engaged in demeaning and/or offensive language when she used a "sharp tone" of voice and told him that she was a police officer and that he [Complainant] should do what I say and asked if she needed to call for backup (TR at 30).

MPD General Order 201.26, "Responsibilities and Conduct of Members of the Department," 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 also provides that 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."

Complainant does not allege that Subject Officer used language toward him that was insulting, demeaning, or humiliating as outlined in MPD General Order 201.26. Nothing in the evidence of record indicates that Subject Officer engaged in conduct or gestures or body language that was offensive or disrespectful. Complainant's allegation focuses on Subject Officer's statement that she said: "I am a police officer and you will do what I say." Subject Officer denies making this statement. Complainant testified that Subject Officer's tone of voice was stern and sharp. Complainant testified he felt Subject Officer was not professional because she said to him "I'm a police officer and you will do what I say," and asked if he wanted her to call for backup. Subject Officer denies making these statements (TR at 82). Complainant testified he felt nervous during the conversation with Subject Officer, but not that he was intimidated or insulted or demeaned. Subject Officer testified that she was from New York City and has a naturally loud raspy voice. She described her tone as firm and professional.

Based on the parties' testimony and the definitions of demeaning or insulting language or conduct, I find that Subject Officer did not violate D.C. Code § 5-1107(a) and MPD Order 201.26. I find credible Subject Officer's testimony that she did not make the statements alleged by Complainant and that she was professional in her interaction with Complainant.

**SUMMARY OF MERITS DETERMINATION.**

**SUBJECT OFFICER**

The Complaint Examiner finds, based on a preponderance of the evidence of record, that the allegation of harassment is sustained and the allegation of language or conduct is unfounded.

<b>Allegation 1: Harassment</b>	Sustained
<b>Allegation 2: Language or Conduct</b>	Unfounded

Submitted on December 30, 2010

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Turna R. Lewis  
Complaint Examiner