

# Memorandum of Understanding

## Providing Police Complaint Mediation Services Between **[NAME OF INDEPENDENT MEDIATION PROVIDER]** and the **[AGENCY NAME]**

### PURPOSE

Mediation is one of the several alternate dispute resolution techniques that are used to settle disagreements or conflicts. It is based on the voluntary participation of the disputing parties who agree to discuss their differences in the presence of a third party, an independent, trained mediator. Mediation calls for a “good faith” conversation between the disputing parties in a safe environment where they can meet and air their views about the events or issues that created the dispute. The mediation process is intended to develop mutual understanding between the conflicting parties with the goal of resolving the dispute.

The **[AGENCY NAME]** will work in conjunction with the **[NAME OF INDEPENDENT MEDIATION PROVIDER]** to provide mediation services for certain minor complaints involving law enforcement officer(s) and members of the community.

This Memorandum of Understanding (MOU) formalizes an agreement between parties to establish a police complaint mediation program consistent with COMAR 12.04.11, which provides an alternative method to address minor, nonviolent police misconduct complaints outside of the standard complaint process.

### OBJECTIVE

The **[AGENCY NAME]** recognizes that the traditional standard investigation and adjudication process used to investigate complaints does not provide opportunities for complainants and police officers to interact in a controlled setting in a way that is calculated to increase mutual understanding and bring closure to minor problem incidents. Some complainants simply want to understand why an officer took a particular action, or want an opportunity to explain their own actions to the officer. Other complainants want to retain some control over how their complaint is handled rather than turning the complaint entirely over to the law enforcement agency or civilian administrative charging committees for decisions and resolution.

The **[AGENCY NAME]** believes that mediation can bridge the communication gap and create greater understanding and appreciation between community members and officers. Thus, **[AGENCY NAME]** proposes to offer a Police Complaint Mediation Program as an alternative to its traditional standard complaint resolution process.

**DEFINITIONS**

I. The following words will have the meanings indicated according to COMAR 12.04.11.03 B.

A. “Confidential material” means any communication occurring during a mediation session that may not be disclosed outside the mediation except as allowed pursuant to Courts and Judicial Proceedings Article, §3-1804, Annotated Code of Maryland.

B. “Impasse” means an outcome of a mediation session in which the parties are unable to resolve the dispute.

C. “Independent mediation provider” means an organization, separate and apart from a law enforcement agency, that can provide mediators to conduct mediation sessions between complainants and law enforcement personnel.

D. “Letter of conclusion” means a document signed by staff of the independent mediation provider that is delivered to a law enforcement agency indicating that a mediation session was held between a complainant and police officer.

E. “Letter of consent to mediate” means a document signed by the parties in mediation indicating each party’s voluntary participation in mediation, and witnessed by the mediator.

F. “Mediation” means a process in which parties in a dispute work with one or more impartial mediators who assist the parties in reaching a voluntary agreement for the resolution of a nonviolent dispute or conflict (COMAR 12.04.10.03B).

G. “Mediator” means a trained, impartial third party, affiliated with an independent mediation provider, who will facilitate a mediation session between parties to assist them in reaching a voluntary resolution to their dispute.

H. “Police misconduct” has the meaning stated in Public Safety Article, §3-101, Annotated Code of Maryland.

I. “Resolution” means a mutual agreement resolving a conflict between two or more disputing parties.

II. The **[NAME OF THE INDEPENDENT MEDIATION PROVIDER]** will serve as the independent mediation provider.

**ELIGIBLE COMPLAINTS**

I. Pursuant to COMAR 12.04.11.06, **[AGENCY NAME]** will carefully review and evaluate each complaint and the circumstances reported in that complaint prior to determining if mediation should/should not be offered to the parties involved in the incident.

II. The **[AGENCY NAME]** has determined that, in general, depending on the particular circumstances surrounding the complaint, mediation may be offered to resolve a complaint that appears to be based on:

- A. A lack of communication or miscommunication between a community member and police officer involved in an incident;
- B. A misunderstanding about an officer's authority to act;
- C. A misunderstanding about an officer's application of an agency standard operation procedure or other professionally accepted practice.

III. When deciding whether to consider any complaint for mediation as an alternative to a traditional investigation, the [AGENCY NAME] will consider, at a minimum, the following:

- A. The type and severity of the alleged violation and the particular circumstances involved in the complaint;
- B. The work history and disciplinary record of the officer involved including previous mediation history;
- C. Whether mediation will potentially:
  - (1) result in greater complainant satisfaction;
  - (2) improve citizen understanding of police procedures and actions;
  - (3) result in improved officer conduct; and
  - (4) contribute to improved citizen-police relations.

D. Even if a complaint is eligible for mediation, any participant may decline to participate in the mediation process. Additionally, if a complaint is eligible for mediation, the agency head or designee has the authority to decide, for any reason, that a case may not be assigned for mediation.

#### IV. COMPLAINT REFERRAL PROCESS

A. Pursuant to COMAR 12.04.11.07A, once a complaint has been initially reviewed by the agency to determine its mediation eligibility, the parties involved in the complaint will be notified of the option to mediate.

B. Notification to Involved Parties.

(1) If the complaint is eligible and conforms to COMAR 12.04.11.06, the law enforcement agency shall notify the police officer who is the subject of the complaint of the mediation option.

(2) If the police officer agrees to mediation, the law enforcement agency shall notify the complainant of the mediation option.

C. If the police officer or complainant decline to participate in mediation, the matter shall be referred back to the administrative complaint process set forth in COMAR 12.04.09.

D. If all parties to the complaint agree to the mediation process, the **[AGENCY NAME]** shall contact the **[NAME OF THE INDEPENDENT MEDIATION PROVIDER]** and proceed with the process pursuant to this MOU.

E. When a case has been referred to the mediation service, the independent mediation provider will manage the case through mediation, and where applicable, resolution.

## V. SCHEDULING A MEDIATION SESSION

A. Mediation sessions should be scheduled within 30 days of the referral to the mediation program.

B. The mediation session shall be scheduled when the officer is on-duty.

C. Once the **[NAME OF THE INDEPENDENT MEDIATION PROVIDER]** has scheduled a mediation session and contacted the officer, the officer is required to appear at the mediation session as scheduled. The **[NAME OF THE INDEPENDENT MEDIATION PROVIDER]** will contact the Mediation Program Administrator as soon as practical if an officer fails to appear at a scheduled mediation session.

D. An officer's failure to appear for a scheduled mediation session without a justifiable reason and/or without contacting the **[NAME OF THE INDEPENDENT MEDIATION PROVIDER]** prior to the session, will constitute the officer's declination to participate, nullify the agreement to mediate, and result in the complaint being investigated and resolved pursuant to procedures set forth in COMAR 12.04.09 and 12.04.10.

## VI. CONFIDENTIALITY OF MEDIATION SESSION

A. Confidentiality is an essential element of mediation both for the complainant and for the officer involved. Therefore, the **[AGENCY NAME]** along with the **[NAME OF THE INDEPENDENT MEDIATION PROVIDER]**, will adhere to confidentiality requirements set forth in the Courts and Judicial Proceedings Article §3-1803.

B. Statements made during mediation cannot be used against a police officer, the complainant, or any other party in mediation in a criminal, civil or administrative matter.

C. The mediator shall keep mediation communication confidential.

D. The participants may share mediation communication as they wish (outside of judicial or administrative proceedings) unless they make a separate agreement indicating that they will keep it confidential.

E. Exceptions to confidentiality exist in certain circumstances, including but not limited to:

- (1) Prevent bodily harm or death – can be reported to law enforcement or the potential victim;
- (2) Assert or defend against allegations of mediator misconduct;

- (3) Assert or defend against allegations of another professional's misconduct, such as an attorney who was in a mediation. A mediator cannot be compelled to testify on this, but participants can break confidentiality as necessary for this reason;
- (4) Make the case that a mediation contract should be rescinded because of fraud, duress, or misrepresentation; or
- (5) As otherwise required by law – currently child abuse and vulnerable adult abuse.

## VII. RESOLUTION

A. When the mediation process has concluded, the outcome shall be determined by the **[NAME OF THE INDEPENDENT MEDIATION PARTIES]** to be:

- (1) A successful resolution if all parties agree with the resolution; or
- (2) An impasse if one or more parties to the complaint cannot agree to a satisfactory resolution.

B. An impasse shall be referred back to the law enforcement agency of the involved police officer for investigation and handled through the administrative complaint process set forth in COMAR 12.04.09.

C. A successful resolution shall be documented by the **[NAME OF THE INDEPENDENT MEDIATION PROVIDER]** in a written statement, signed by both parties and the mediator.

D. The mediator shall send a letter of conclusion to the referring law enforcement agency indicating the results of mediation.

E. Results of the mediation shall be tracked by the **[AGENCY NAME]** and forwarded to the local police accountability board.

F. Complaint mediation statistics shall be included in the **[AGENCY NAME]** annual reporting of complaints involving the public, and the statistics shall include the:

- (1) Total number of complaints handled through mediation;
- (2) Number of successful resolutions; and
- (3) Number of mediation impasses.

G. If the police officer fails to comply with the actions and deadlines identified in the mediation agreement, a new complaint of police misconduct shall be initiated and the actions of the original complaint of police misconduct shall be considered as a potential aggravating factor.