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I. HISTORY:

**Joint Legislative Public Safety and Policing Workgroup:**

In May 2015, the Maryland Senate President and House Speaker created the joint Legislative Public Safety and Policing Workgroup for the purpose of examining police training resources, recruiting and hiring practices, and community engagement policies; considering a statewide oversight panel for certain kinds of investigations; and reviewing the Law Enforcement Officers’ Bill of Rights and its application and practice by law enforcement agencies across the State.

At the conclusion of its research and public hearings and prior to the 2016 Maryland legislative session, the Workgroup issued a report that contained twenty-three (23) recommendations many of which formed the basis for the initial version of House Bill 1016 which was introduced at the beginning of the 2016 legislative session.

Among the twenty-three (23) recommendations made by the Workgroup was RECOMMENDATION 19:

The MPTSC shall develop a Police Complaint MEDIATION Program in which certain non-violent complaints made against police officers are referred out of the standard complaint process and to voluntary mediation to be conducted by an independent mediation service.

In the Background section of its Report, the Legislative Workgroup commented on Recommendation 19 by stating:

Alternative Dispute Resolution:

The workgroup heard testimony from entities that provide mediation services and have done so on a limited basis in certain jurisdictions. Voluntary mediation between police and residents can be used in place of the traditional internal affairs investigation for complaints such as harsh language, unprofessional behavior, or disrespect.

Mediation gives both the resident and the officer a direct voice in a conversation where each can explain their experience of the situation. When appropriate, they can develop agreements for their future interactions and strengthen their relationship so that it can carry through stressful times and events. This process supports direct accountability, dialogue and understanding, and improved relationships between residents and police. The process is currently available in some Maryland jurisdictions and infrastructure exists in others that could be used to develop such a program on a more statewide basis.

**House Bill 1016**

Based on the recommendations made by that Joint Legislative Workgroup, House Bill 1016 was introduced during the 2016 legislative session and, after several amendments to the original version of the bill, was passed by the Maryland State Legislature.

House Bill 1016, in part, amended Public Safety Article § 3 – 207 adding subsection (D) (1-3) which states:

(D) The Commission SHALL:

1. ESTABLISH A POLICE COMPLAINT MEDIATION PROGRAM TO WHICH A LAW ENFORCEMENT AGENCY MAY REFER, SUBJECT TO THE AGREEMENT OF THE COMPLAINANT, A NONVIOLENT COMPLAINT MADE AGAINST A POLICE OFFICER OUT OF THE STANDARD COMPLAINT PROCESS;
2. REFER A COMPLAINT REFERRED TO THE PROGRAM TO VOLUNTARY MEDIATION CONDUCTED BY AN INDEPENDENT MEDIATION SERVICE; AND
3. ADOPT REGULATIONS TO IMPLEMENT THE PROGRAM, INCLUDING CRITERIA CONCERNING ELIGIBILITY FOR REFERRAL OF COMPLAINTS.

Governor Larry Hogan signed House Bill 1016 into law on May 19, 2016 and the above amendment to PS § 3-207 becomes effective October 1, 2016.
II. INTRODUCTION/OVERVIEW – ALTERNATE DISPUTE RESOLUTION - MEDIATION:

**MEDIATION OF COMMUNITY MEMBER COMPLAINTS AGAINST LAW ENFORCEMENT OFFICERS**

**COMMENTARY**

During the intervening months from the end of the 2016 legislative session until October 1, 2016 the staff of the Maryland Police Training Commission conducted research into community member – police complaint mediation programs and the mediation process in general. With the support of the COMMUNITY MEDIATION- MARYLAND staff and input from the Calvert County Sheriff’s Office, which operates the first complaint mediation program in Maryland, it has developed this Reference Guide and sample policy in accordance with PS § 3 – 207 (D). The Commission offers this Guide and Policy template to law enforcement agencies that may be considering offering mediation to its community members and officers as a means to settle non-violent complaints. This Reference Guide includes both the positive aspects as well as some of the limitations of a complaint mediation program. Likewise, it contains several examples of mediation programs that are currently being used by law enforcement agencies from across the country.

The format of this document is similar to other Reference Guides that the Commission has developed and published for other recent policies and procedures[See www.mdle.net] As with any other SAMPLE policy the Commission recognizes that it cannot develop a policy, procedure or, in this case, a program that fits the specific needs of every law enforcement agency in Maryland. Any agency that chooses to implement a Community Member - Police Complaint Mediation Program will need to develop its own policy and procedures to govern its process, one that meets the particular needs of that agency and the community which it serves, in a format that is most useful to its members. The Commission strongly recommends that agencies planning to implement a mediation program consult with COMMUNITY MEDIATION – MARYLAND or a similar mediation provider for advice in developing their programs.

The Commission has chosen to develop and publish this Guide which is illustrative/advisory only. As with Guides, the Commission staff has included the appropriate reference citations/endnotes to allow an agency to conduct its own research/review of mediation material if it chooses to do so.

Appendix A of this document contains a SAMPLE policy and procedure which are illustrative and advisory only!

**REFERENCE MATERIAL**

**GENERAL:**

“Not everyone who has a complaint against a police officer wants to see the officer punished. The goals of some complainants are simply to understand why an officer took a particular action, or to be able to explain their own actions. Others want to retain some control over how the complaint gets handled, rather than turning the complaint entirely over to others for decisions and resolutions. Some believe that taking an adversarial approach is not constructive or ultimately helpful to anyone. When it comes to how to resolve complaints against the police, one size does not fit all, and that is why the IPR [Independent Police Review – Portland, Oregon] offers mediation as an alternative to the traditional complaint process.”  

“Punishment of the officer...may not be the only thing a complainant is after...in response to perceived dissatisfaction with the internal affairs and civilian review process, police departments and some civilian oversight agencies have introduced mediation as an alternative means to resolve certain carefully selected complaints against the police. Mediation is a process in which the complainant and the police officer meet face-to-face in the presence of a neutral mediator in an attempt to resolve the issues underlying the complaint. Mediation does not focus on punishment or a “right-wrong” determination. Mediation is conciliatory in nature, emphasizing resolution of the conflict and focusing on the outcomes sought by the parties. This approach is especially useful in the context of the subset of citizens’ complaints against the police that are based on perceptions of rudeness and discourtesy, or simple misunderstandings, which mediation can often address better than an investigative system.

“The [traditional] investigation and adjudication model [used to investigate citizen complaints] does not provide opportunities for complainants and police officers to interact in a controlled setting calculated to increase mutual understanding and bring closure to painful incidents. The [traditional] model may leave complainants and police officers further alienated from each other.”
III. MEDIATION – GENERAL BACKGROUND:

**COMMENTARY**

“MEDIATION, along with other alternative dispute resolution (ADR) methods, has emerged in America as a popular means of settling disputes. This technique is widely used in divorce cases, employee-employer disputes, small commercial disputes, and many other areas of life where disagreements and conflicts arise. In general, participants have found mediation more satisfying than going to court or enduring some other formal procedure...Mediation has the potential to build understanding and lessen conflict between people. For these reasons, mediation has obvious applications in resolving citizen complaints against police officers...”  

**REFERENCE MATERIAL**

**GENERAL BACKGROUND**

**ALTERNATE DISPUTE RESOLUTION [ADR]:**

“MEDIATION [has been] described as an ‘imperfect process that employs an imperfect third person to help imperfect people come to an imperfect agreement in an imperfect world.’ Mediation is a people-based process, which means it’s as imperfect as the people who employ it. Yet for centuries it has succeeded in resolving differences between humans without violence, without bloodshed, and, more recently, without courtrooms. Today, mediation is the process of choice for resolving disputes and avoiding litigation. It’s faster, cheaper, more flexible, more creative in fashioning solutions that fix the problem, and it keeps the parties in control of the outcome. Mediation is now ubiquitous at all levels of government (not to mention the private sector).

“MEDIATION is just one of many different informal dispute resolution processes under the umbrella of “Alternative Dispute Resolution,” or ADR. Like all ADR processes, mediation is designed to empower people to resolve their differences themselves, without the interference of courts and other adjudicative forums. For mediation, the benefits presume that:

► the dispute is appropriate for mediation;
► the mediation process is conducted in a timely, efficient, and competent manner;
► the participants understand the benefits and limitations of the mediation process;
► they participate in good faith, in a genuine attempt to find a mutually satisfactory outcome; and
► the mediator has appropriate training, skill and experience to conduct the mediation in a competent manner.”

“MEDIATION is a specific form of alternative dispute resolution (ADR). Mediation involves the informal resolution of a complaint or dispute between two parties through a face-to-face meeting in which a professional mediator serves as a neutral facilitator and where both parties ultimately agree that an acceptable resolution has been reached; mediation is “a process in which a mediator facilitates communications and negotiations between parties to assist them in reaching a voluntary agreement regarding their dispute.”

“MEDIATION is a complex enterprise, and many obstacles can arise in the course of establishing a program. For example, a broad consensus of opinion exists among experts in the field that not all citizen complaints should be mediated, especially use of force complaints. In addition, experienced mediators generally find that citizen complaint cases differ from other kinds of cases they have mediated because of the police officer’s inherent power. Moreover, many police officers are not enthusiastic about using mediation to resolve citizen complaints, fearing they may be forced to admit to things they did not do. This misconception is largely due to a lack of understanding of what mediation is and how the process works...Clearly, communities must address these and other issues before establishing a mediation program.”
MEDIATION can be and, is often, confused with other types of ADR techniques including:

“Conciliation [which] involves the informal resolution of a complaint or dispute with a third party serving as a go-between, but without a face-to-face meeting between the disputing parties, and the complainant ultimately agreeing that the matter has been satisfactorily settled.

“Arbitration [which] involves the resolution of a complaint or dispute through a formal non-judicial proceeding before an independent arbitrator, where the final decision is binding on both parties. Hybrid processes combine elements of mediation and other ADR methods. Several hybrid processes exist, for example, court-ordered mediation, which is part voluntary and part involuntary.” 9

MEDIATION vs. ARBITRATION:

Mediation and arbitration are often viewed as the two sides of the same coin, but the two are quite different. MEDIATION is a collaborative process to reach a resolution through mutual agreement. The mediator has no power to decide the outcome. By contrast, arbitration is an adjudicative procedure in which the parties present their positions to the arbitrator, who renders a decision (the award). 10

MEDIATION AS A PROCESS:

“MEDIATION is a process for settling disputes based on the voluntary participation of the disputing parties. It emphasizes dialog between the parties [in] a safe environment where the parties can meet and air their views about the events or issues that created the dispute. The process is intended to develop mutual understanding between the conflicting parties.” 11

“Unlike adjudication, MEDIATION does not attempt to find fault or legal liability, or observe formal rules of procedure or evidence. Rather than a third party deciding the outcome, the parties decide [the outcome]. 12

“...MEDIATION does have a basic structure and process. This structure helps maintain fairness, provides a positive course for possible resolution, and ensures legitimacy of the outcome. Mediation...gives parties the structure they need to pursue a joint solution, without impeding their right to decide what that solution should be.” 13

MEDIATION CORE PRINCIPLES:

“MEDIATION is VOLUNTARY. Its success depends on the parties’ trust and confidence in both the process and the mediator.

“[Three] core principles ensure and reinforce that trust and confidence. The first, voluntariness, is the parties’ right of self-determination, that is, the power to decide for themselves whether to participate in mediation, whether to settle, and on what terms. The mediator has no power to decide the dispute or impose a solution.

“The second principle, NEUTRALITY, means impartiality of the mediator, with no personal interest in the outcome of the case or bias in favor of either side to the dispute. The mediator’s role is solely to assist each party equally.

“The third principle, CONFIDENTIALITY, means that disclosure of matters discussed in mediation is restricted in order to promote candor and open communication.

“All mediation proceedings must adhere to these core principles.” 14
IV. COMMUNITY MEMBER - POLICE COMPLAINT MEDIATION – GENERAL:

**COMMENTARY**

Commission staff research has revealed that, in general, there are three types of community member-police complaint mediation programs in use in the United States. Several are directly administered by the law enforcement agencies themselves with the assistance of a local mediation service; there are others that are administered by an independent citizen police-review/oversight panel established by a local ordinance or by consent decree/other court-ordered agreement; and finally there are others that are co-administered by the law agency and a citizen-review panel.

A number of these programs have been formed in response to the enactment of a local law or in response to recommendations made by the United States Department of Justice during an evaluation of an agency's policies and procedures or in judgments/agreements imposed by the courts or in consent decrees.

Examples of each type of mediation program follow later in this document.

The following section is a brief general overview of community member-police mediation.

**REFERENCE MATERIAL**

**MEDIATION PROGRAM ORIGIN:**

“Most existing mediation programs were authorized by the ordinance that created the local citizen oversight agency. Generally, mediation is one clause in the larger ordinance. A few programs appear to have originated as extensions of pre-existing neighborhood justice centers, with citizen-complaint mediation simply added as one new aspect of an ongoing program. The Portland program, for example, began as a pilot project of the Neighborhood Mediation Center in 1993. Only a few programs appear to have been added as an aspect of an existing complaint procedure administered by a police department or a citizen oversight agency. In some instances, program development has proceeded without the benefit of a key local official who fully understands and is committed to the mediation program. In the absence of any published literature on the subject, local officials have had little guidance in developing criteria for addressing specific citizen complaints.”

**BASIC MEDIATION PROGRAM STRUCTURE:**

“Mediation programs are operated by citizen oversight agencies, community mediation centers, and police departments. Most mediation programs are operated by citizen oversight agencies. Four programs are operated by neighborhood community justice or dispute resolution centers. Only one existing program, in Boulder, Colorado, is clearly operated by the police department, although the San Diego Police Department is [also] developing [such] a program.”

**EXAMPLE:**

32.0 The Role of the Independent Monitor:

32.3 The OIM [Office of the Independent Monitor] has created policies to ensure that the complaint and commendation process is accessible to all members of the community. As such, community members can file complaints and commendations through the OIM. The OIM refers these complaints and commendations, as appropriate, to the Internal Affairs Bureau (IAB) and to Department supervisors. Once complaints are received, the OIM works with IAB command staff to ensure timely and thorough formal investigations by engaging in a triage process. Complaints that do not require a formal investigation are filtered out of the traditional IAB process by declining complaints that do not need further investigation, assigning complaints to the Monitor’s citizen-police mediation program and assigning complaints to be handled informally (without findings or the imposition of discipline).
“...in response to perceived dissatisfaction with the internal affairs and civilian review process, police departments and some
civilian oversight agencies have introduced mediation as an alternative means to resolve certain carefully selected complaints
against the police. MEDIATION is a process in which the complainant and the police officer meet face-to-face in the presence
of a neutral mediator in an attempt to resolve the issues underlying the complaint.

“MEDIATION does not focus on punishment or a “right-wrong” determination. MEDIATION is conciliatory in nature,
emphasizing resolution of the conflict and focusing on the outcomes sought by the parties. This approach is especially useful
in the context of the subset of citizens’ complaints against the police that are based on perceptions of rudeness and
discourtesy, or simple misunderstandings, which mediation can often address better than an investigative system. Traditional
police investigations fail to deal adequately with the most common types of citizens’ complaints against the police involving
discourtesy or attitude. Where there are no witnesses other than the complainant and the officer, these complaints are
difficult to prove, and most often are not sustained. As a result, complainants may conclude that they have not been heard
and that the process failed them. Mediation offers both the officer and the complainant a chance to be heard and an
opportunity to understand why the other person acted as he or she did. Further, a trained and neutral mediator can help the
parties understand the underlying issues, deal with stereotypes and misperceptions, and overcome any perceptual barriers.
These opportunities are not generally realized by traditional police investigations. Using MEDIATION for complaints of
rudeness or discourtesy or similar relatively minor misconduct gives the parties more control over the process and allows for
more creative outcomes, such as an apology, explanation, or an understanding of the officer’s perspective. Then, even if the
officer is not disciplined, complainants may conclude that they got a positive result from making the initial complaint. The
MEDIATION process, therefore, may give complainants a greater sense of ownership and procedural justice, resulting in
higher satisfaction rates overall for complaint procedures.” 18

“Most police complaints are well suited for MEDIATION...because most community-police conflicts are based on
misunderstandings, which the DPD [Denver Police Department] believes mediation can address better than discipline.
Unfortunately, relatively few community-police mediation programs exist in the United States, and those that do exist
traditionally handle only a small number of cases. A national study of community-police mediation programs in 2000 found
that of more than 17,000 U.S. law enforcement agencies, there were only 100 oversight agencies, and just 16 of them had
mediation programs. Thus, mediations accounted for a tiny fraction of complaint resolutions. 19

The following chart reflects the use of mediation in select cities as presented in the 2015 Annual Report of the Office of the
Independent Monitor for Denver, Colorado:

<table>
<thead>
<tr>
<th>CITY</th>
<th>AGENCY/OFFICE OF</th>
<th># OF SWORN OFFICERS</th>
<th>MEDIATIONS COMPLETED</th>
<th>MEDIATIONS PER 1,000 OFFICERS</th>
</tr>
</thead>
<tbody>
<tr>
<td>DENVER</td>
<td>INDEPENDENT MONITOR</td>
<td>1,442</td>
<td>38</td>
<td>26.4</td>
</tr>
<tr>
<td>SAN FRANCISCO</td>
<td>CITIZEN COMPLAINTS</td>
<td>2,208</td>
<td>45</td>
<td>20.4</td>
</tr>
<tr>
<td>WASHINGTON, D.C.</td>
<td>POLICE COMPLAINTS</td>
<td>3,789</td>
<td>42</td>
<td>11.1</td>
</tr>
<tr>
<td>NEW YORK CITY</td>
<td>CIVILIAN COMPLAINT REVIEW BOARD</td>
<td>34,500</td>
<td>205</td>
<td>5.9</td>
</tr>
<tr>
<td>KANSAS CITY</td>
<td>COMMUNITY COMPLAINTS</td>
<td>1,354</td>
<td>6</td>
<td>4.4</td>
</tr>
<tr>
<td>AURORA</td>
<td>COMMUNITY MEDIATION CONCEPTS</td>
<td>682</td>
<td>3</td>
<td>4.4</td>
</tr>
<tr>
<td>MINNEAPOLIS</td>
<td>CIVILIAN POLICE REVIEW AUTHORITY</td>
<td>848</td>
<td>1</td>
<td>1.2</td>
</tr>
<tr>
<td>SEATTLE</td>
<td>PROFESSIONAL ACCOUNTABILITY</td>
<td>1,820</td>
<td>1</td>
<td>0.5</td>
</tr>
</tbody>
</table>
The following chart shows the use of mediation in Denver, Colorado over the past five (5) years as presented in the 2015 Annual Report of the Office of the Independent Monitor:

**COMPLETED MEDIATIONS PER YEAR - DENVER**

<table>
<thead>
<tr>
<th>Year</th>
<th>Mediations</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td>53</td>
</tr>
<tr>
<td>2012</td>
<td>42</td>
</tr>
<tr>
<td>2013</td>
<td>40</td>
</tr>
<tr>
<td>2014</td>
<td>53</td>
</tr>
<tr>
<td>2015</td>
<td>38</td>
</tr>
</tbody>
</table>

**USE OF MEDIATION IN MARYLAND:**

In Maryland, the Calvert County Sheriff’s Office has adopted a community member – police complaint MEDIATION program as part of its complaint investigation procedure under its Professional Standards Office. Since 2010, when it received a grant from the Mediation and Conflict Resolution Office (MACRO) to start a mediation program to resolve certain citizen complaints, the Calvert County Sheriff’s Office has operated its program with the assistance of the Community Mediation Center of Calvert County (CMCC). Called “Operation True Perspectives” the use of mediation program is addressed in the agency’s standard operating procedure entitled *Investigation of Complaints Against Personnel.*

Several other agencies in Maryland are currently considering implementing or are developing/piloting a community member police complaint mediation program including the Annapolis Police Department, the Hagerstown Police Department, the Salisbury Police Department, the Washington County Sheriff’s Office and the Baltimore City Police Department.

COMMUNITY MEDIATION-MARYLAND (301-270-9700) is a state-wide resource for agencies seeking to locate a provider of trained, independent/neutral, experienced mediators or assistance in developing a citizen-police complaint mediation program. Representatives of Community Mediation Maryland provided their valuable insight and experience during the preparation of this document.
V. PURPOSE/OBJECTIVES OF MEDIATION:

**COMMENTARY**

Research indicates that there are a variety of reasons for developing a community member - police complaint mediation program:

► in response to a court ordered agreement;
► in response to a local law mandating mediation for some citizen complaints against law enforcement officers;
► because an agency believes that a mediation program can enhance officer-citizen communication and understanding;
► because mediation is a less expensive alternative to an in-depth investigation into alleged minor complaints of officer misconduct;
► in response to increased pressure from the community/community leaders/local politicians to mediate some citizen complaints.

No matter the reason behind a mediation program, research has shown that the basic goals of a community member-police mediation program are universal. A well-developed mediation program seeks to:

► develop understanding between the accused officer and citizen-complainant;
► build trust between the law enforcement agency, its members and community members;
► problem solve; and
► if possible, reconcile the difference of opinion or perspective between the accused officer and citizen-complainant.

**REFERENCE MATERIAL**

**GOALS OF MEDIATION:**

“The basic goals of mediation differ from those of traditional, formal, and legalistic dispute resolution procedures, including traditional procedures for resolving citizen complaints. Traditional dispute resolution focuses on fact finding, pinpointing responsibility, determining guilt or innocence, and punishing those found guilty. Traditional citizen complaint review procedures, for example, focus on determining whether or not the officer committed the alleged misconduct. In contrast, mediation focuses on understanding, problem solving, and reconciliation.

**UNDERSTANDING:**

Experts on citizen complaints against police believe that many formal complaints, and other problems stemming from police-citizen interactions, are largely the result of misunderstanding or miscommunication...under mediation ‘the issue of guilt or innocence is not mediated”. The point is to build understanding between the two parties involved.

**PROBLEM SOLVING:**

Mediation can be considered a form of problem solving, similar in orientation to other innovative police problem-solving programs. Problem solving through mediation involves identifying the factors that led to the complaint in the first place. These factors might include misunderstanding, failure to communicate, or inappropriate behavior.

**RECONCILIATION:**

Reconciliation involves reaching some agreement that the two parties have listened and gained a better understanding. As previously mentioned, the agreement may include a formal apology by either or both parties. To achieve these goals, the process emphasizes listening and dialogue.”

According to Ms. Lorig Charkoudian, Executive Director of Community Mediation Maryland, an additional benefit to using MEDIATION to resolve community member-officer disputes may be the development of a “formal agreement between the officer and complainant for future action, especially if the officer works regularly in a particular neighborhood.”
VI. TYPES OF MEDIATION:

**COMMENTARY**

*MEDIATION* can be said to be both an informal and formal conflict resolution process. It is said to be INFORMAL because the actual mediation process takes place “outside” an agency’s traditional citizen-complaint resolution process. While a citizen complaint has been filed, no agency investigation into the alleged officer behavior has taken place prior to the mediation process other than gathering routine information and a cursory review of the circumstances involved in the incident as part of the agency’s complaint intake process.

In most mediation programs, community member complaints are given a cursory review to determine if a complaint meets the criteria established by the agency to allow for resolution by mediation. After a complaint’s mediation-eligibility is established both the civilian’s and the officer’s voluntary participation in the mediation process must be agreed to. No records of the mediation session are kept without the agreement of the participants except for a conclusory letter indicating that a mediation session has taken place and been completed. Following mediation, the citizen’s complaint is then removed from the officer’s agency file/record with only a notation that mediation has taken place.

*MEDIATION* can also be said to be a FORMAL process in that it is conducted by an individual who has been trained in and experienced with the mediation process. While the setting/environment in which a mediation session takes place is normally less formal than other types of interviews or administrative hearings there is still a structured process by which the mediation session is conducted. Likewise, while no records of the actual mediation session are kept, a written notification of and written agreement by the two parties consenting to participate in mediation are completed before the mediation session is held and retained in file. A conclusory letter acknowledging that the mediation session occurred is also submitted to the agency by the mediator and kept on file as documentation.

Research has indicated that there are several different mediation techniques that can be used by a mediator. The most commonly used during community member - police complaint resolution by the Community Mediation Maryland are the INCLUSIVE and the TRANSFORMATIVE techniques briefly described in this section.

Several other techniques are briefly described for the benefit of the reader. It is suggested that agencies discuss with the independent mediation service what type of mediation technique will most likely be used during community member - police complaint resolution program and that the technique be explained to agency personnel during training that the agency provides its personnel prior to implementing its mediation program.

**REFERENCE MATERIAL**

**MEDIATION TECHNIQUES:**

*Maryland Program for Mediator Excellence [MPME]*

*Mediation Descriptions* 27

“MEDIATION” is a process for people in conflict which includes two or more participants and one or two mediators. The trained impartial mediator(s) helps people in conflict to communicate with one another, understand each other, explore options for mutual gain, and if possible, reach agreements that satisfy the participants’ needs. A mediator(s) does not provide legal advice or recommend the terms of any agreements. Instead, the mediator(s) helps people reach their own decisions which may include agreements, may rebuild their relationship, and if possible, find lasting solutions to their disputes. Mediation is a process that lets people speak for themselves and make their own decisions.

“There are a variety of mediation frameworks. Below is a description of the predominant frameworks practiced in Maryland.

**INCLUSIVE Mediation Framework:**

“The goal of INCLUSIVE mediation is to support the participants in having difficult conversations and to guide a problem solving process to develop solutions that meet everyone’s needs, with all content decisions made by the participants.”
“In the INCLUSIVE framework, co-mediation is almost always used. INCLUSIVE mediators do not set ground rules. Mediators focus on strategically listening for values, feelings, and topics and reflect these back to the participants using language that captures the intensity the participants expressed. Mediators check to make sure that the participants feel the reflection is accurate. The mediators attempt to understand each participant, thus making it more possible for them to understand each other. Mediators follow a defined process that includes
- time for participants to talk about whatever they chose;
- build clarity as to what is important;
- identify topics participants want to resolve;
- identify the goals each participant has for each topic;
- brainstorm options;
- consider each of the generated options in terms of which would meet all participants’ goals; and
- determine areas of agreement, if any.

INCLUSIVE mediators rarely use caucuses. They might do so in situations where mediators need to check if mediation is a good fit for the conflict.

“If agreement is reached, it can be written by the mediator based on the direction of the participants, and it is reviewed and confirmed by all participants in the mediation.

“INCLUSIVE mediation, the mediators guide the process and the participants are in charge of whether agreement or any other outcome is reached.

“One way to divide mediator techniques is listening, reflecting, reframing, summarizing, providing information, making suggestions, and persuading. INCLUSIVE mediators would use listening, reflecting, and some summarizing, and do not use reframing, providing information, making suggestions, or persuading strategies.”

Other mediation techniques that available for use in Maryland are:

TRANSFORMATIVE Mediation Framework:

“The goal of TRANSFORMATIVE mediation is to work with people in conflict to help them change the quality of their conflict interactions from negative and destructive to positive and constructive as they discuss and explore various topics and possibilities for resolution.

“Transformative mediators look for barriers to effective interactions and assist the participants in dealing with and removing them. The mediators look for and affirm shifts in empowerment (i.e., addressing each other more directly, growing more articulate and fluent, and showing more confidence and self-reliance) and recognition (i.e., talking to rather than about each other, acknowledging new information, and becoming more able to see the other’s point of view), which are achieved by the participants themselves.

“Mediators reflect back, using insofar as possible the same words and emotional expression used by the participants, highlighting differences as well as commonalities between the participants and ask open-ended questions to aid in broader understanding and quality decision making.

“If agreement is reached, it is written by the mediator at the direction of the participants, and then reviewed and confirmed by all participants to the mediation. In transformative mediation, for the most part, mediation occurs with everyone in the same room relying minimally on caucus, which may be requested by the participants or the mediator. In transformative mediation, the participants help shape the process with the mediator. The mediator’s goals are to assist with removing the barriers and fostering quality interaction and decision making from which agreement and other outcomes chosen by the participants emerge.

“One way to divide mediator techniques is listening, reflecting, reframing, summarizing, providing information, making suggestions, and persuading. Transformative mediators rely primarily on listening, reflecting, and summarizing, with minimal providing information and do not rely on reframing, persuading or making suggestions.”
FACILITATIVE Mediation Framework:

“The goal of FACILITATIVE mediation is to support the participants in conversing constructively and reaching a solution acceptable and satisfactory to all.

In facilitative mediation, the mediator helps people in a dispute to communicate with one another, to understand each other, and if it is possible and desired, to reach satisfactory agreements.

Facilitative mediators use a variety of strategies, including reflecting, reframing, asking open-ended questions, focusing on the future, acknowledging feelings, mutualizing and focusing the participants on option building.

Some mediators would talk about ground rules at the beginning of the mediation. For the most part, participants stay all together in session with the mediator, but mediators may use caucus on occasion, for the purpose of supporting each participant to communicate directly with the others.

Facilitative mediators would not give advice or opinions, or pressure the participants to reach agreement.

Facilitative mediators would highlight common ground, and on occasion might offer possible options not already considered by the parties. If agreement is reached, it is written by the mediator at the direction of the participants and reviewed and confirmed by all participants to the mediation.

In facilitative mediation, the mediator manages the process, and the participants are in control of whether agreement or any other outcome is reached.

One way to divide mediator techniques is listening, reflecting, reframing, summarizing, providing information, making suggestions, and persuading. Facilitative mediators would use listening, reflecting, reframing, and summarizing, with minimal providing information, making suggestions, or persuading.

ANALYTICAL Mediation Framework:

“The goal of ANALYTICAL mediation is to support the participants in reaching a solution acceptable and satisfactory to all.

“The analytical mediator will draw on a variety of styles as the circumstances require, including facilitative and evaluative techniques where appropriate.

“The analytical mediator adjusts the process to meet the parties’ needs, even if the needs change during the mediation. Analytical mediators are expected by the parties to analyze the situation and adjust their styles and the process to the needs of the participants at any given time in the process.

“Analytical mediators are expected to understand the substance of the dispute, the legal process, and the risks and rewards each party will face if there is not a settlement. Analytical mediators are frequently knowledgeable about specific areas of law, science and technology, or policy. As circumstances dictate, these mediators may analyze the strength and weaknesses of the law, facts and other circumstances that could affect an outcome of a dispute if it is not resolved.

“Analytical mediators may use reflection, reframing, open- and closed-ended questions. They may attend to the feelings of participants, give multiple suggestions for a particular item, generate options, provide information, engage in reality checking, share how others in similar situations have resolved similar issues, weigh the pros and cons of positions, offers and demands, discuss with participants the consequences of their choices, and may give their evaluation of the case, if asked, and if they feel it would be helpful.

“Analytical mediators frequently use caucuses and often mediate with attorneys present. With the parties’ consent, analytical mediators may meet with just the attorneys for part of the time. They may also meet with the parties without their attorneys. If agreement is reached, often analytical mediators will document points of agreement that will be used by the attorneys to draft the final settlement documents. It is uncommon for mediators to draft the final agreement.”
VII. BENEFITS/LIMITATIONS OF MEDIATION:

COMMENTARY

Research into the use of mediation as a conflict resolution technique indicates that one of the most difficult issues to address when starting any mediation program is to convince the parties that they will benefit from participating in the mediation process. Both law enforcement officers and complainants are highly skeptical of a process that brings them face-to-face with the individual with whom they have had an unpleasant, unprofessional or adversarial experience. There are a variety of reasons why both parties are reluctant to accept mediation as a solution to their differences. Officers often believe that explaining their actions which took place during a specific incident to non-sworn personnel somehow diminishes their authority as a law enforcement officer; they often believe that civilians “just don’t know what police put up with!” On the other hand, citizens often feel intimidated by a police presence. While they may want to vent their feelings about the situation in which they found themselves, they are often reluctant to discuss that situation with the individual officer who was at the center of their dissatisfaction. Some complainants even fear retaliation. Convincing both of these parties, as well as future participants in the mediation process, of the benefits and limitations of mediation as a complaint solving technique is the biggest hurdle that an agency will have to overcome if it chooses to use mediation as part of its complaint resolution strategy.

There are several ways in which this hurdle can be lowered. By including rank and file officers as well as community members in developing a complaint mediation program is the first step. Training agency personnel and conducting a vigorous public information campaign about the benefits and limitations of the program are also keys to an effective program. Both of these strategies will be presented in a later section of this Guide. In this section, it is important to present the benefits and limitations of using mediation as a complaint-resolution technique so that agencies can determine if mediation is a process that can play a part in its complaint resolution strategy.

REFERENCE MATERIALS

The material presented in this section has been gathered from a variety of sources, most notably “Mediating Citizen Complaints Against Police Officers,” a COPS publication authored by Samuel Walker, Carole Archbold and Leigh Herbst. Unless otherwise specifically end-noted the material in this section can be found in that publication.

“Mediation is powerful because both the complainant and the officer can gain an understanding of why the other person acted as he or she did. 28

POTENTIAL BENEFITS OF MEDIATION: 29

Potential Benefits for Police Officers:

1. Better understanding of interactions with citizens [community members]:
   - results from the personal, face-to-face nature of mediation:
     - traditional complaint investigation procedures do not:
       ■ involve a face-to-face meeting between complainant and police officer;
       ■ offer an opportunity for the officer to hear the complainant’s side of the story and gain perspective on how his/her actions affected the complainant;
       ■ [ordinarily allow] the complainant and the officer to meet face-to-face:
         ◆ no opportunity for dialog and understanding;
   - during mediation sessions officers learn how their behavior affected people and how future behavior may affect their interactions with citizens in similar situations;

2. Opportunity to explain actions to citizens:
   - provides officers with an opportunity to explain what they did and why they did it:
     ■ in the traditional complaint review process, officers have no opportunity to talk directly to the complainant and explain the reasons for their actions;
   - quite often officers believe they did nothing wrong in most complaint incidents.
     ■ mediation may help officers understand that, although what they did on the job is proper, how they did it may offend people;
3. Greater satisfaction with complaint process:
   ► traditional complaint investigation procedures often fail to satisfy either officers or complainants;
   ► some research has shown that officers have viewed investigations as biased against them and expressed a strong desire for face-to-face meetings with complainants to explain their actions to citizens;

4. Empowerment:
   ► allows officers to take an active role in shaping the settlement of a complaint:
     ■ empowers each of the parties involved by providing a “safe space,” protected by rules of confidentiality, where they can freely express their feelings and opinions;
   ► by agreeing to participate in mediation, listening, expressing their own views about the events in question, and proposing the terms of a final agreement, officers are empowered to take responsibility for resolving the problem:
     ■ traditional processes disempower officers by rendering them passive subjects of investigation rather than active participants in resolving the underlying dispute;
   ► in traditional complaint procedures, based on a criminal trial model with an emphasis on determining guilt, officers are reluctant to say anything that could be interpreted as an admission of guilt including saying they are sorry:
     ■ mediation creates an opportunity for self-expression and participation;

5. Chance to learn from mistakes:
   ► [in many mediation programs] if a mediation session is conducted the complaint does not appear on the officer’s personnel record:
     ■ mediation functions similarly to a diversion program:
       ■ like traditional diversion programs, mediation gives officers a chance to learn from whatever mistakes they have made and move forward in their careers.

Potential Benefits for Citizen Complainants:

1. Greater opportunity to meet goals:
   ► mediation may meet the goals of many complainants better than traditional complaint review procedures:
     ■ many complainants do not want the officer disciplined but want a conversation:
       ◦ [want an opportunity to] understand the situation and get an explanation from the other side and ...get over what happened;

2. Greater satisfaction with complaint process:
   ► an opportunity to actually participate/play a key role in the complaint resolution process;
   ► an opportunity to find out first-hand if their complaint has been resolved;

3. Better understanding of policing:
   ► mediation offers complainants an opportunity to gain new understanding of the incident about which they had complained, as well as policing in general:
     ■ complainant and officer can gain an understanding of why the other person acted as he/she did;
   ► [may] help citizens penetrate stereotypes about law enforcement officers:
     ■ major part of the police-community relations problem in America is that community members and police officers often stereotype each other, reacting to symbols such as a uniform and badge or certain street clothes or activities;

4. Empowerment:
   ► major benefit is being heard by the opposing party;
   ► self-determination is one of the core ingredients of mediation; both complainants and officers who choose to participate in the [mediation] process may terminate it at any point if they are dissatisfied;
   ► complainants play a direct role in shaping the final resolution, which by definition must be one they are satisfied with;
### Potential Benefits for Police Accountability:

1. **Greater responsibility for one's actions:**
   - **Introduces a new dimension to police accountability:**
     - In traditional complaint procedures, an officer accused of misconduct is directly accountable only to other police officers - internal affairs investigators, an immediate supervisor, and, in some instances, the agency head:
       - Officer never has to directly face or account to the citizen who has filed the complaint.
     - Officer participating in mediation is directly accountable to the community member who filed the complaint.
   - **Mediation may help personalize American policing:**

2. **Positive changes in police subculture:**
   - **May also enhance police accountability by having a long term effect on the police subculture:**
     - *May lessen the "us versus them" perspective* that views community members in a hostile light, which works against building or maintaining a respectful, trusting relationship with citizens.

### Potential Benefits for Community Policing:

1. **Goals consistent with those of community policing:**
   - Consistent with the basic philosophy and goals of community policing that departments should:
     - Develop close working relationships with community residents;
     - Develop partnerships on specific issues or problems;
   - **Overcome the alienation/distrust of police that often manifest themselves in complaints:**
   - Both community policing and mediation emphasize:
     - The values of cooperation/collaboration/the process of problem solving;
   - **Traditional complaint review systems often compound the frustration and anger felt by many complainants for several reasons:**
     - Delay in investigating/resolving the complaint;
     - Lack of information about the status of a complaint;
     - Lack of opportunity to meet face to face with a responsible official;

2. **Involves elements of the problem-solving process:**
   - **Mediation is a form of problem solving in that the officer sits down with the person who has filed the complaint, discusses the events that led to the complaint, and works out a mutually acceptable understanding with the complainant:**

### Potential Benefits for Complaint Process:

1. **More efficient complaint processing:**
   - **Can provide a relatively speedy resolution to a complaint:**
     - Once a complaint is referred for mediation it is simply a matter of scheduling a session at a mutually convenient time;
     - eliminates the time-consuming process of locating/interviewing participants/witnesses and then reviewing all the reports; mediation sessions typically last one - two hours;

2. **Higher success [satisfaction] rate:**
   - **Low "sustained" rates are an inherent aspect of complaints against police because there are usually:**
     - No independent witnesses to the event;
     - No forensic evidence, such as medical records, exist to support the complaints;
   - **Complaints are often characterized as "swearing contests" between the officer and complainant and frequently guilty complaints cannot be sustained;**
   - **Un-sustained complaints generally leave both parties unhappy:**
     - Complainants feel issues were not adequately addressed/officers feel they were falsely accused;
     - Mediation offers an alternative to this situation;
A SPECIAL ROLE FOR MEDIATION – RACIAL/ETHNIC/CULTURAL COMPLAINTS:

“MEDIATION is uniquely suited to help bridge the racial and ethnic divide because it is the only procedure for investigating complaints that brings the disputing parties together in a face-to-face meeting. This characteristic may make mediation more likely than any other program to help both parties understand the dynamics of policing and how police and community members interact. In contrast, the lack of direct contact perpetuated by traditional complaint investigation procedures may aggravate racial and ethnic divisions, leaving both sides angry and suspicious of the other. One important argument for mediating race- and ethnicity-related complaints is the opportunity for empowerment and self-determination of participants on both sides.

Advocates of mediation claim that it empowers participants by giving them control over the dispute process. In contrast, formal legal proceedings, in which laws and lawyers dominate, often make participants feel powerless. Empowerment is especially important in regard to race and ethnicity related complaints, because the core issue in police-community relations for nearly 50 years has been the powerlessness many racial and ethnic minorities feel with respect to local police. By empowering officers and complainants as active participants in the process, mediation could lead to dialog between police and the racial and ethnic minorities in a community.”

POLICE DISCIPLINE AND ACCOUNTABILITY:

“A major issue in the mediation of citizen complaints is whether it undermines police discipline. Some community activists fear that mediation will allow an officer to "beat the rap." As already noted, mediation functions in effect as a diversion program: no formal departmental discipline can be imposed if the officer mediates the complaint, and no record of the complaint appears in his or her disciplinary file. Therefore, some consider mediation a threat to police accountability. They fear that citizens will view mediation as a "slap on the wrist" for police officers, who might then not take the process seriously. In this scenario, the citizen would enter mediation without the mutual good faith that all mediators and police officials interviewed for this report consider important. Experienced police mediators argue that mediation does not undermine formal discipline because few if any of the complaint cases referred for mediation (assuming a properly designed program) are likely to be sustained in the first place. Barbara Attard, director of the Berkeley Police Review Commission, explains, ‘Investigations of police misconduct complaints have limited efficacy in some types of cases, particularly those that are one-on-one and discourtesy/attitude based cases. The majority of such cases result in a finding of ‘not sustained’” Complaints not sustained result in no discipline of the officer and, in fact, tend to leave both the complainant and the officer feeling angry. Insofar as mediation results in a dialog or better understanding between the parties, some positive result is achieved.’ Several mediators and police officials suggested that the disputing parties be informed of the potential outcomes before they participate in mediation. This action could eliminate any misconceptions that community groups or members have about the mediation process. A complainant who really wants the officer punished can then decline to mediate.”

LIMITATIONS of MEDIATION:

Advocates for the use of mediation in resolving community member complaints against law enforcement officers are quick to point out that the use of mediation is not a panacea for addressing inappropriate police behavior. They point out that there are several issues associated with mediation that agency heads may need to consider before deciding whether to implement a complaint-mediation program in their agency. Mediation:

1. may be seen as a means to dilute “formal” action to hold officer accountable for actions;
2. takes away control of agency head in some disciplinary cases;
3. officers are reluctant to voluntarily participate in mediation;
4. officers may “fake” participation in mediation sessions to avoid a complaint;
5. some participants hold an advantage over others when participating in mediation;
6. selection of mediation should/should not allow for further processing of complaint;
7. encourages unrealistic expectations, in particular if inappropriately used.
INSINCERE PARTICIPATION:

“[Another] potential problem is insincere participation by either party. An officer may choose mediation to "make the complaint go away," as one officer explained, and go through the motions of the mediation session, doing only enough to achieve a final resolution but without any genuine commitment to the process. Unfortunately, an officer's true motivations in a mediation session cannot be gauged nor can genuine sincerity be ensured. Perhaps the best measure of an officer’s sincerity is the complainant’s level of satisfaction that the officer has listened and responded appropriately, even if the officer’s response was not an explicit apology. If the complainant feels that the officer is being insincere, the citizen has the option of terminating the session. If an officer feels a citizen is not participating sincerely, he or she also has the option of terminating the mediation session.” 33

DANGER OF UNREALISTIC EXPECTATIONS:

“One of the greatest dangers facing the concept of mediating complaints against police officers involves unrealistic expectations on the part of mediation advocates. Unrealistic expectations may produce disillusionment and a backlash that unfairly labels mediation as a failure. What are reasonable expectations? First, it is reasonable to expect that only a few cases will be mediated, at least initially. There is a broad consensus that certain categories of serious complaints should not be eligible for mediation and that individual officers with bad disciplinary records should not be eligible to mediate their cases. Additionally, many complainants and police officers will decline to choose mediation. Their wishes need to be respected.

Second, no one should expect that mediation itself will solve police-community relation problems or eliminate police misconduct. The potential benefits of mediation described…may be achieved, but they should be viewed as small incremental improvements at best. Third, mediation should be viewed as only one part of a larger commitment to strengthen police accountability and improve police-community relations.” 34

VIII. KEY ISSUES IN MEDIATION OF CITIZEN-POLICE COMPLAINTS:

**COMMENTARY**

*Experts in the field of mediation agree that developing a mediation program requires careful consideration of several key issues. Research has shown that many existing complaint mediation programs do not mediate many cases, and some mediate none at all...this situation is a result of failure to adequately address key issues associated with the mediation of community member complaints against police officers. Among the key issues that need to be addressed prior to beginning a mediation program are:*

- **VOLUNTARY PARTICIPATION IN MEDIATION:**
  - complainant;
  - officer;

- **CASE SCREENING and SELECTION:**
  - complaint-type eligibility;
  - officer eligibility;
  - case selection;

- **SCHEDULING MEDIATION SESSIONS [GETTING BOTH SIDES TO THE TABLE];**

- **CREATING A ‘LEVEL’ PLAYING FIELD DURING MEDIATION:**
  - uniform vs. non-uniform appearance;
  - cultural and language difficulties;
  - juveniles and mediation;

- **SELECTING QUALIFIED MEDIATORS**

- **CONFIDENTIALITY OF THE PROCEEDINGS:**
  - agency notification of completion;
  - resolution/agreement;
VIII - A. VOLUNTARY PARTICIPATION IN MEDIATION:

REFERENCE MATERIAL

**VOLUNTARY PARTICIPATION:**

“Voluntary participation [of both parties] is essential to the mediation process... Participation in mediation is more voluntary for the citizen complainant than for the police officer. The complainant can choose not to file a complaint at all, to withdraw a complaint at any time, and to terminate a mediation process. However, if an officer declines to mediate the complaint or withdraws from the process, the complaint will be investigated in the traditional manner, and the complaint will appear on his or her official record. In short, the officer cannot make the complaint disappear completely.”

“Mediation is a voluntary process involving numerous stakeholders, including community members, police officers, police administration and the Independent Monitor. There is no right to mediation. Even if a complaint is eligible for mediation, any stakeholder may decline to allow a complaint to be resolved through the mediation process for any reason. No stakeholder shall be required to state the reason for declining to participate in mediation or agreeing to assign a case for mediation. Statements made during mediation cannot be used against a police officer in a criminal or civil matter. Furthermore, the decision to mediate a matter or not to mediate a matter cannot be considered during disciplinary proceedings in comparing the discipline issued in previous matters to that issued in a pending matter (i.e., cannot be used for purposes of considering “consistent discipline”). A complaint will be dismissed upon the completion of a mediation session administered by the Monitor’s Office.

“All parties must consent in writing for a mediation to proceed. If any party declines, the case will be sent to the chief investigator for reassignment and investigation, as appropriate.”

“The decision to allow mediation is made after careful consideration of the characteristics of the individual cases. As much as possible, however, we make mediation available as an option in order to allow the involved parties to decide for themselves whether mediation is an appropriate or desirable way to resolve their concerns. After the complainant indicates a desire to mediate, and if the IPR Director and the IAD Captain approve the case for mediation, IAD invites the involved officer(s) to mediate the complaint. If the officer(s) agrees, the complainant is contacted in order to verify that there is still a desire to participate. The case is then assigned to a mediator who schedules the mediation session. If the involved officers decline to participate, the case is returned to the normal complaint handling process.

**REQUIRED OFFICER PARTICIPATION IN MEDIATION:**

Several law enforcement agencies have developed mediation programs that REQUIRE officers who are offered mediation to resolve a complaint participate in the process, some under penalty of disciplinary action if they do not.

For example, the Metropolitan Police Department, District of Columbia, in General Order PER – 120.25 entitled “Processing Citizen Complaints” states, in part:

J. OPC [Office of Police Complaints] Mediation Procedures for Sworn Members:

1. **Members are required to participate in good faith in OPC mediation proceedings.** This does not imply, or require that members must reach an agreement.

2. When a complaint is resolved through mediation, and the settlement is an agreement that requires action by the member after the mediation session is completed:
   a. OPC, or its designee, will provide the MPD with a memorandum that identifies the action(s) and any time frame in which the action must be completed;
   b. Upon reaching a mutually agreed upon settlement in mediation, the member shall complete the terms of the agreement within the time specified in the agreement;
   c. Subject members may be disciplined for failure to comply with the terms of the agreement.
“Another example of mandated participation in citizen complaint mediation can be found in the Minneapolis, Minnesota Police Department. Minneapolis City Code, Chapter 172.10 et al. establishes a Police Conduct Oversight System which includes complaint mediation as an option to resolve community member complaints against police officers. Parts of the ordinance state:

172.30. - Complaint filing, preliminary review and investigation.
(a) Complaint filing. Any person who has personal knowledge of alleged misconduct on the part of a Minneapolis police officer may file a complaint with the office of police conduct review...

(b) Complaint review. All complaints shall be jointly and collaboratively assessed and preliminarily reviewed by supervisory staff of the office from both the civilian unit and the internal affairs unit... in the case of allegations which rise only to a potential "A" level infraction under the police department’s adopted discipline matrix, may be referred to a program of MANDATORY mediation instituted by the office of police conduct review... Such complaints may also, pursuant to the authority and discretion of the office, be referred for formal investigation pursuant to subsection (c).

(c) Complaint investigation. All other qualifying complaints shall be formally investigated by the office through assignment to an investigator or investigators from the civilian unit and/or the internal affairs unit.... Complaints not alleging criminal misconduct may be assigned to the civilian unit at the formal request of a complainant....

(e) Mediation. Upon the joint direction of supervisory staff of the office of police conduct review from both the civilian unit and the internal affairs unit, a complaint may be referred to MANDATORY mediation upon preliminary review of the complaint or at any other time in the course of investigation when deemed to be appropriate. The mediation shall proceed according to procedures adopted and instituted by the office of police conduct review. Mediators shall be neutral trained mediators unaffiliated with the office of police conduct review, the police conduct oversight commission, the civil rights department or any other department of the City of Minneapolis.”

VIII - B. CASE SCREENING and SELECTION:

COMMENTARY

There are widely divergent views about what types of complaints should/should not be mediated. Research indicates that each law enforcement agency has adopted its own criteria for determining which complaints will be eligible for mediation.

Determining what cases are eligible for mediation can be a difficult task for an agency head and command staff. Some community member - police complaint mediation programs limit case eligibility to incidents that involve only allegations of minor officer misconduct such as rudeness, inappropriate language, failure to take action or some other alleged minor indiscretion. Other mediation programs are much broader in scope, allowing mediation of complaints that allege that racially-ethnically-culturally disparaging remarks were used by an officer. Still others allow allegations of inappropriate officer behavior that involves some non-violent [no injury involved] uses of force. Mediation programs universally exclude complaints in which there are allegations that an officer committed a criminal act, where the appropriateness of the officer’s action will be adjudicated in court or in incidents in which an officer actually used a weapon or in which any force used by the officer resulted in an injury or medical treatment to the complainant. In those cases, the complaint is investigated in the traditional manner.

Determining which community member complaints to mediate often involves considerations that are both legal and philosophical. Legal considerations are usually dictated by local and/or state law while philosophical considerations are determined by the philosophy that drives the agency’s complaint resolution process. In some cases, agencies have elected to allow all but the most egregious acts of misconduct; use of force involving injury or the use of a weapon or control device; criminal behavior; blatant discriminatory practices, etc.] to be mediated provided the complainant agrees to the offer. Their
reasoning is based on two points. First, the agency conducts a preliminary examination/review of the complaint before it offers the option of mediation to the complainant and officer. It determines whether the alleged behavior fits the criteria set by its policy for mediation and always reserves the right to investigate any complaint that it believes is in the best interests of the public and agency to investigate. Secondly, the complainant, if he or she believes that the alleged officer misconduct is significant/severe, has the choice of declining mediation as an option to resolve his/her complaint and can choose to file a formal complaint that will be subject to investigation. Likewise, the accused officer has the option of declining to participate in mediation if he/she believes that an investigation will determine that his/her behavior was legitimate or the complaint is unfounded.

On the other hand, some agencies believe that only minor complaints should be mediated. Their belief is prompted by the philosophy that by allowing potentially more serious violations to be mediated and not fully investigated may impact the agency’s fiduciary responsibility regarding overseeing the behavior of its employees.

Research revealed that in a number of mediation programs, the law enforcement agency is not the sole arbiter of what complaints can be mediated. Either because of local ordinances, consent decrees or other agreements with third parties such as local community organizations, law enforcement agency heads receive input/direction from individuals outside the agency about what complaints should be eligible for mediation.

In any case, it is reasonably clear from research that law enforcement agencies are best served when they establish a list of alleged behavior/misconduct that can be used to determine which citizen complaints can be eligible for mediation. This list may not list specific violations but rather describe the types of behavior that are mediation-eligible. Such a description of mediation-eligible complaints will inform not only agency personnel but also the public about their complaint resolution options. When combined with an objective review of an officer’s discipline and work history, an agency has a reasonably objective formula for determining which citizen allegations can be eligible for mediation.

The following REFERENCE MATERIAL highlights several positions about the complaint types that an agency may want to make eligible for mediation when it develops its program.
VIII - C. MEDIATION ELIGIBLE COMPLAINTS:

**REFERENCE MATERIAL**

**DEVELOPMENT OF OBJECTIVE CRITERIA:**

**MEDIATION ELIGIBLE COMPLAINTS:**

The importance of basing the decision to offer mediation to a complainant on “objective” criteria is evident in the words taken from a 2012 report to the Mayor of Portland, Oregon regarding Justice Department’s findings during its investigation into the practices of the Portland Police Bureau. The Assistant Attorney General leading the investigation made several comments regarding Portland’s community member – police complaint mediation program including:

- “PPB [mediation] policy does not contain objective criteria to determine which complaints are appropriate for mediation. Rather, policy requires only that IA make a subjective determination that mediation would ‘meet the needs of’ PPB and the community. If IA [Internal Affairs] so determines, the subject officer and complainant agree, and the officer’s chain of command does not object, then the complaint can be resolved through mediation.

- “As a general proposition, mediation can be an effective tool for a police department to efficiently resolve minor complaints and engender a sense of participatory justice among aggrieved community members.

- “PPB’s mediation policy should contain OBJECTIVE criteria to determine which matters are appropriate for mediation.

- “Complaints of excessive force should always be subject to investigation and a finding. PPB has an interest in making sure its officers comply with use of force policies and training. Permitting mediation in those cases would fail to result in a finding to correct any improper uses of force, if any, and compromise Department-wide statistics regarding uses of excessive force.

- “…mediation, as the name suggests, should be used to reach mutual agreement. PPB, IPR, and others report that mediation is not frequently used. Not surprisingly, then, we received few accounts concerning mediation in practice. One community member with whom we spoke, however, recollected that officers threatened to charge her with a crime in the course of mediation if she would not agree to their resolution of her complaint. She reported having been arrested and released without charge. The gravamen of her complaint was an allegation of false arrest and forced handcuffing. She reported that, during the course of mediation, the officers involved threatened to re-arrest her for the same charge if she would not drop her complaint. This account, which appeared credible, speaks to the potential abuse of mediation rather than its use as an effective conciliatory tool. PPB should ensure that mediation is only used based on objective criteria and that the parties fully understand how mediation will be conducted and the potential outcomes. 41

**TWO EXAMPLES OF OBJECTIVE MEDIATION CRITERIA**

The Denver Police Department, which conducts a community member-police mediation program that has been recognized as being a model for other law enforcement agencies has established the following criteria for determining which types of complaints are eligible for mediation as outlined in its COMMUNITY LAW ENFORCEMENT MEDIATION PROGRAM PROTOCOLS - OFFICE OF THE INDEPENDENT MONITOR - CITY & COUNTY OF DENVER [effective March, 2010] and the Denver Police Department Discipline Handbook: Conduct Principles and Disciplinary Guidelines.

Eligibility criteria for citizen-police mediation for allegations of misconduct are based on the categories of conduct [A thru F] identified by the department as part of its disciplinary matrix now published in the Denver Police Department Discipline Handbook: Conduct Principles and Disciplinary Guidelines first published in 2008 and revised in September, 2012. Examples of behavior as included in the disciplinary matrix are listed after each category included below:

1. Unless a complaint involves an allegation of criminal conduct against an officer, or if sustained could result in the termination or demotion of the subject officer, Denver Police Internal Affairs Command Staff may refer a complaint to the Office of the Independent Monitor for possible mediation.
5. Pursuant to DPD Operations Manual Section 503.01(4)b.4.a:

a. Any allegation of misconduct that falls into one of the following conduct categories as presented in the Discipline Handbook, is **INELIGIBLE** for mediation:

1. **Category E:** Conduct that involves the serious abuse or misuse of authority, unethical behavior, or an act that results in an actual serious and adverse impact on officer or public safety or to the professionalism of the Department:

   Examples:
   - Sexual misconduct;
   - Drinking while on duty or in uniform (E thru F) *
   - Any conduct prohibited by law
   - Discrimination, harassment or retaliation (C thru F) *
   - Careless handling of firearm (C thru F) *

2. **Category F:** Any violation of law, rule or policy which: foreseeably results in death or serious bodily injury; or constitutes a willful and wanton disregard of Department values; or involves any act which demonstrates a serious lack of the integrity, ethics or character related to an officer’s fitness to hold the position of police officer; or involves egregious misconduct substantially contrary to the standards of conduct reasonably expected of one whose sworn duty is to uphold the law; or involves any conduct which constitutes the failure to adhere to any contractual condition of employment or requirement of certification mandated by law:

   Examples:
   - Sexual Misconduct;
   - Drinking on Duty or While in Uniform
   - Under the Influence
   - Conduct Prohibited by Law (A-F) *
   - Conducting and Protecting Fellow Officers - Intentional
   - Soliciting Preferential Treatment
   - Inappropriate Force (D-F) *
   - Careless handling of a Firearm (C-F) *

b. Any allegation of misconduct which, if proven, could constitute a violation of any rule that the Denver Civil Service Commission has designated as making an applicant ineligible to take a promotional examination for, or to be promoted to, the ranks of Sergeant, Lieutenant, or Captain is **INELIGIBLE** for mediation.

c. Any allegation of misconduct that falls into the following conduct category, as presented in the Discipline Handbook, is **ELIGIBLE** for mediation only if the Manager of Safety, the Chief of Police, and the Independent Monitor agree that mediation is appropriate:

1. **Category D:** Conduct substantially contrary to the values of the Department or that substantially interferes with its mission, operations or professional image, or that involves a demonstrable serious risk to officer or public safety;

   Examples:
   - Immoral Conduct
   - Conduct Prejudicial (A-F) *
   - Conduct Prohibited by Law (A-F) *
   - Impartial Attitude – Bias
   - Discrimination, Harassment, Retaliation (C-F) *
   - Verbal Assault and Abuse of the Public (C-D) *
   - Soliciting Preferential Treatment (C-F) *
   - Inappropriate Force (D-F) *
   - Careless handling of a Firearm (C-F) *
   - Destruction of Evidence
d. Any allegation of misconduct that falls into one of the following conduct categories, as presented in the Discipline Handbook, is **ELIGIBLE** for mediation only if the Internal Affairs Bureau and the Independent Monitor agree that mediation is appropriate:

1. **Category A:** Conduct that has a **minimal** negative impact on the operations or professional image of the Department:
   - Examples:
     - Plainclothes Officer – Identification;
     - Giving Name and Badge Number;

2. **Category B:** Conduct that has **more than a minimal negative impact** on the operations or professional image of the department; or that negatively impacts relationships with other officers, agencies or the public:
   - Examples:
     - Responsibilities to Serve Public;
     - Impartial Attitude;
     - Discourtesy;
     - Trivial Offenses;
     - Traffic Enforcement When Not in Uniform;
     - Suggesting Bondsmen or Attorneys;
     - Department Vehicle Operation;
     - Soliciting Business;
     - Failure to Make, File or Complete Official Report;
     - Amusement Places Restrictions;

3. **Category C:** Conduct that has a **pronounced negative impact** on the operations or professional image of the Department, or on relationships with other officers, agencies or the public:
   - Examples:
     - Display of Firearms;
     - Verbal Assault and Abuse of the Public; (C-D) *
     - Careless Handling of Firearms; (C-F) *
     - Discrimination, Harassment and Retaliation; (C-F) *
     - Mistreatment of Prisoners or Suspects;
     - Soliciting, Accepting Gifts or Gratuities;

   e. Even if a complaint is eligible for mediation, the Manager of Safety, the Chief of Police or his/her designee, or the Monitor or his/her designee has the authority to decide for any reason that a case should not be assigned for mediation.

* Violations that appear in multiple categories will require the Department to compare the underlying conduct to the definitions contained in each category in order to identify the appropriate category for the violation.

General Order 1623, *Mediation of Complaints*, [dated 10-27-2010] from the Colorado Springs Police Department includes the following section:

**.22 Criteria for Mediation:**

Cases **APPROPRIATE** for mediation include incidents where:

- a lack of communication/miscommunication between the parties is a substantial factor in the complaint or where such communication resulted in an escalation of the conflict between a department member and a community member.

- Cases involving the attempted, threatened or actual use of force that did not result in bodily injury and/or involve the use of an impact weapon, TASER’s, K-9, deadly force, hard control techniques, or chemical agents may also be appropriate for mediation. Additionally, cases of harassment that are more a matter of perception than substance are appropriate for referral.
Cases where criminal or traffic charges are not resolved through court (a secondary complaint, such as rudeness, may be appropriate for mediation)

Cases that are INAPPROPRIATE for mediation may include, but are not necessarily limited to:

► Allegations of a serious nature that if sustained would likely result in a discipline greater than a 2 year written reprimand;
► Use of force complaints that resulted in bodily injury and/or involve the attempted or threatened use of an impact weapon, TASER, K-9, deadly force, hard control techniques, or chemical agents.
► Law violations for an offense for which a conviction would rise to the level of a felony or a misdemeanor under Colorado statutes; except that, with respect to a misdemeanor for any vehicle or traffic related matter, the only misdemeanor offenses or traffic infractions that shall be inappropriate for mediation are the following:
  ■ an offense for which a conviction would be individually assessed eight (8) or more points under CRS 42-2-127(5);
  ■ driving while license is under suspension or revocation or in violation of a restriction; and
  ■ violation of compulsory insurance provisions.
► Alcohol related traffic violations are not suitable for mediation.
► Under the influence or use of alcohol on duty
► Substance/drug abuse
► Departing from the truth
► Responsibility of supervisory members to investigate all complaints
► Misappropriation of property
► Solicitation or acceptance of gratuities
► Racial or ethnic intimidation
► Sexual harassment

Only if a Deputy Chief and the Director of the mediation firm agree, may a complaint that falls within the categories identified above as inappropriate be designated for mediation.

Even if a complaint is eligible for mediation, the Deputy Chief, Division Commander, or the Executive Director of the mediation firm has the authority to decide for any reason that a case should not be assigned for mediation. 43

COMPLAINT CRITERIA – FINAL THOUGHT:

“Although mediation helps reduce crime by raising community trust and cooperation with the police, not all cases should be mediated. Even under expanded notions of what is amenable to mediation, it will not and, indeed, should not replace internal affairs or external investigations. Cases involving wider issues of police and public policy, excessive force, repeated misconduct by a given officer, discriminatory law enforcement, sexual harassment, retaliation, criminal misconduct, and corruption are not appropriate candidates for mediation. Public policy requires that truly serious cases like these are investigated thoroughly and adjudicated fairly. It is inappropriate to mediate cases where the officer should be given substantial discipline, demoted, or fired. 44

OTHER RELEVANT CRITERIA:

COMMENTARY

Once an agency decides what types of citizen complaints can be mediated the agency must then decide which officers are eligible for mediation. While in theory every officer should be eligible for mediation, dependent on the type of complaint filed by the citizen, a number of agencies with mediation programs have established officer-eligibility criteria which generally revolve around an officer’s prior complaint/discipline and/or performance history. An officer’s recent mediation history is also a factor that agencies may want to consider when determining if an individual officer is eligible for mediation.
OFFICER COMPLAINT/WORK HISTORY:

“Cases involving officers with a history of citizen complaints should be ineligible for mediation, e.g., if officer has been named in three citizen complaints in the past 12 months. The Minneapolis CRA does not mediate a complaint involving an officer who has participated in mediation “for a serious similar misconduct allegation or a similar misconduct allegation within the previous 12 months.” In Washington, DC, officers can mediate only one complaint in a twelve month period (www.oocr.edu.gov). This policy prevents an officer from avoiding departmental discipline for repeated misconduct, which is a valid concern.

Mediation programs could expand on the Minneapolis guidelines by disqualifying officers with a recent history of a specified number of sustained citizen complaints or use-of-force incidents.”

“Cases appropriate for mediation include incidents where a lack of communication or miscommunication between the parties is a substantial factor in the complaint or where such communication resulted in an escalation of the conflict between an officer and a community member.”

The Denver Police Department Discipline Handbook: Conduct Principles and Disciplinary Guidelines [updated 9-6-12] lists a number of factors that it will take into account when it considers what type of administrative action it will initiate including whether to offer mediation as an alternative to a formal investigation of a complaint. This list includes:

- an officer’s complimentary history, including awards/commendations/positive public recognition;
- the severity of the current offense and the lack of or minimal nature of any consequences caused by the current offense;
- an officer’s prior work history, such as positive evaluations and/or work performance, or voluntary, advanced, job-related training; or
- minimal or lack of prior disciplinary history relative to the officer’s years of service:
  - the nature and seriousness of any prior violation;
  - the number of prior violations;
  - the length of time between prior violations and the current case;
  - the relationship between any prior violation and the present misconduct;
  - whether the prior history demonstrates a continuation or pattern of the same or similar misconduct; and
  - whether the prior history demonstrates continuous misconduct, even if minor, evidencing a failure to conform to rules or to correct said behavior.

In addition to the above factors, some agencies with citizen police-complaint mediation programs also set a limit on the number of mediated complaints an officer may participate in during a given time period. “All department personnel, in theory, are eligible for mediation. Additional factors considered in determining specific eligibility include the employees’ previous mediations, if any...department policy allows an employee up to three mediations in a calendar year.”

Others question the wisdom of that policy. In its evaluation of the Pasadena program the Police Assessment Resource Center offered the following opinion by stating: “…PARC personnel wonder whether the rules are too liberal if an officer who has drawn three complaints in a given year remains eligible to mediate. Generally, a mediation program should interact dynamically with an early warning or intervention system so that officers with excessive complaints that go to mediation, or are eligible for mediation, can be identified and appropriate steps can be taken to retrain or address such a pattern of behavior.

The Office of the Independent Monitor in Denver, Colorado voiced the following opinion in a 2008 article in The Police Chief: “Other jurisdictions exclude from mediation any officer who has received more than a certain number of complaints in a specific time period. The reasoning is that such officers may require aggressive corrective action. It remains an open question whether discipline is more likely than mediation to result in improved officer conduct.”

MEDICATION PARTICIPATION OVERULE BY AGENCY HEAD:

Research revealed that nearly every complaint mediation program examined allowed the head of the law enforcement agency to have the final say about whether a particular case will be offered to the parties for mediation. Circumstances may prompt the head of an agency to choose NOT to offer mediation as an option to an officer to settle a community member complaint or to rescind the mediation option before it takes place. Such authority should always be included in the written policy and procedure that governs the mediation program.
For example, the Denver Police Department has included the following wording as part of its program:

f. Even if a complaint is eligible for mediation, the Manager of Safety, the Chief of Police or his/her designee, or the Monitor or his/her designee has the authority to decide for any reason that a case should not be assigned for mediation. 51

The Colorado Springs Police Department includes the following in its General Order, Mediation of Complaints:

“Even if a complaint is eligible for mediation, the Deputy Chief, Division Commander, or the Executive Director of the mediation firm has the authority to decide for any reason that a case should not be assigned for mediation.” 52

USE OF FORCE COMPLAINTS

COMMENTARY

Maryland law, specifically PS § 3 – 207 (D) (1) which states “The Commission shall ESTABLISH A POLICE COMPLAINT MEDIATION PROGRAM TO WHICH A LAW ENFORCEMENT AGENCY MAY REFER, SUBJECT TO THE AGREEMENT OF THE COMPLAINANT, A NONVIOLENT COMPLAINT MADE AGAINST A POLICE OFFICER OUT OF THE STANDARD COMPLAINT PROCESS” seems to address the issue as to whether any complaints involving the use of force may be subject to mediation. However, as most law enforcement executives realize a number of complaints involving unwarranted officer action or discourteous treatment may also include an allegation of some sort of physical action or threat of physical action by the officer such as “the officer kept touching his gun or “Taser” when he was talking to me” or “he had his baton out and kept it by his side” or “the officer forced me sit on the steps” or “the officer wouldn’t let me pass by.” All of these complaints may imply or suggest that some type of physical action by the officer took place or was imminent, at least in the mind of the complainant.

In as much as the Maryland Legislature did not define “nonviolent” complaint in PS § 3 - 207, it appears that agencies have some leeway in determining whether complaints involving a minimal level of physicality, such as touching a complainant in order to guide his/her movement, physically separating disputants, requiring a complainant to be seated, or briefly blocking his/her free passage based on articulable suspicion may be matters that can be mediated. Given that the complainant has the option to accept or not accept the offer of mediation to settle his/her complaint, and, thus, can determine for him/herself whether the “force” alleged used by the officer was violent or non-violent, agencies may want to consider offering mediation in situations where only a de minimis amount of “force” was alleged to have been used during the incident. Agencies may, however, want to exclude from mediation any incident in which injury, however slight, may have occurred or any incident in which “weapons” were used.

REFERENCE MATERIAL

“Some categories of complaints should be ineligible for mediation. Experienced complaint mediation officials generally agree that use-of force allegations should be ineligible for mediation. [Most] Police officials support this position...most mediation programs (Washington, DC; San Francisco; Minneapolis, others) do not mediate use of force complaints (www.occr.dc.gov). However, the Minneapolis Civilian Review Authority (CRA) has made exceptions for cases in which the citizen was not injured. In contrast, the New York City Civilian Complaint Review Board (CCRB) mediates complaints involving officer threats to use force (as long as no injury occurred), to seize property or damage property, to stop and frisk someone, and to notify children's services agency...few programs mediate use-of-force complaints. We support the policy that complaints involving use of force and threats to use force should NOT be mediated.” 53

“Based on conversations with experienced mediators, we do NOT endorse the mediation of complaints involving threats by police officers. People in the mediation field agree that no complaint involving potential criminal charges against the officer should be eligible for mediation.” 54

“Unless the complaint involves particularly egregious allegations, use of force, possible violations of law or appears to be otherwise inappropriate for mediation, the mediation alternative should be briefly discussed during intake.” 55
DENVER POLICE DEPARTMENT MEDIATION PROGRAM:

"The OIM [Office of Independent Monitor] considers and encourages mediation in a wider range of cases than most community-police mediation programs. For example, in many jurisdictions, programs categorically exclude certain types of cases from mediation as a matter of policy. Ineligible allegations may include excessive force, racial discrimination, or disparate treatment. The OIM’s philosophy, however, is that categorical exclusion of cases means losing valuable opportunities for community members and police to better understand each other’s perspective, to explore how they might prevent similar problems in the future, and to reach a satisfying resolution.

The OIM recognizes the value in using mediation to address the issues underlying community-initiated complaints. For example, use-of-force complaints often result from a failure of communication and are usually difficult to sustain. Mediation is effective at facilitating communication; therefore, the OIM considers mediation appropriate in some use-of-force cases. Due to concerns regarding use-of-force issues, however, the DPD policy excludes use-of-force cases involving actual injury or the use of impact weapons from mediation without the consent of the chief of police, the manager of safety (who supervises the police and sheriff’s departments), and the independent monitor. 56

...in Portland, Oregon, and Seattle, Washington, force complaints are mediated on the theory that the force often results from failed communications. Mediation, then, according to officials in Portland and Seattle, is ideal for providing the citizens and police with the opportunity to understand each other and the incident and to prevent future problems. 57

RACIAL/ETHNIC/CULTURAL RELATED COMPLAINTS

COMMENTARY

The decision about whether or not to categorically exclude complaints alleging racial/ethnic/cultural insensitivity by agency personnel from the possibility of mediation is often a difficult one for many agency heads to make. Many agency executives have struggled with this dilemma since the early days when mediation was first introduced to resolve complaints against agency personnel. Even with the passage of time, it is a dilemma that has not offered an easy, ready answer.

During the early developmental stages of community member-police complaint mediation programs in the early 1990's there were some individuals who voiced the opinion that complaints involving racial and ethnic issues should not be mediated. As recent as the late 2000's the Police Assessment Resource Center, a national nonprofit organization based in Los Angeles that advances effective, respectful, and constitutional policing, in its assessment of the mediation program developed by the Pasadena, California Police Department, offered the opinion that “not all cases should be mediated” including those involving racial/ethnic elements. 58

However, since those early days of complaint mediation program development, opinions have changed. A number of individuals, including minority community members as well as law enforcement officials, now believe and embrace the use of good faith mediation to resolve many types of community members’ complaints, even those that contain racial, ethnic or cultural components. They believe that mediation can be a positive step to lessen the tension between law enforcement officers and people of color. Likewise, they believe that such complaints provide an opportunity for community members and officers to share their perspectives on these sensitive topics with each other. Because allegations of harassment or other racial/ethnic/cultural disparagement may be a matter of perception rather than substance [name calling, derogatory language, etc.] such complaints MAY be appropriate for mediation pending the consent of the complainant.

As law enforcement executives know a number of agencies have developed formal policies and procedures that address the issues of racial profiling, bias-based police tactics, fair and impartial policing and procedural justice. These policies and procedures are often the platform on which a number of community member complaints involving racial/ethnic/cultural elements are made. In many such complaints, a community member perceives that an officer’s comments and/or behavior are based on an officer's bias towards minorities. Miscommunication and/or misunderstanding are, however, frequently found to be the reasons why community members perceive that an officer is engaging in biased behavior. Some agencies with mediation programs have found that to automatically and categorically exclude these types of complaints from mediation may be a mistake. A good faith discussion between the community-member complainant and the involved officer, in the presence of an impartial mediator, may go a long way in resolving some long-held misconception about the motives of each of the parties involved in the dispute.
Research reveals, however, that some complaints alleging bias-based policing or disparate treatment may include officer actions that, if true, may be unconstitutional. When allegations by a complainant indicate that an officer’s conduct goes beyond mere discourtesy and involves the use of racial epithets or contains more serious indications of bias-based/disparate treatment/unconstitutional policing, law enforcement executives may view the use of mediation to resolve the complaint as problematic. Such behavior may indicate more serious problems either with the individual officer or with an agency’s training, an agency’s approach to policing or its development and use of law enforcement tactics. Executives may believe that such incidents warrant a formal agency investigation in order to determine if and where the weakness lies. If, in cases where enforcement tactics are misapplied or there is a misinterpretation of existing agency policy and procedures or legal precedents and the allegation is sustained, they may determine that retraining either for the individual officer or for all agency personnel is required. In other cases, where an officer has intentionally and/or repeatedly violated a community member’s rights disciplinary action may be the appropriate response. When given complaints involving these circumstances law enforcement executives are often left to ponder what their best course of action may be.

A review of the mediation policies and procedures of several agencies which do not categorically exclude the mediation of complaints involving racial/ethnic/cultural components shows that those policies and procedures focus on the complaint review/screening/evaluation procedures that take place prior to a decision being made to offer mediation to the involved parties. Many agencies, in consultation with their mediation providers, have developed complaint screening/review/evaluation protocols that allow them to determine if a complaint may be more satisfactorily resolved through mediation than through its traditional internal investigation process. In instances where the law enforcement agency itself makes the final decision as to whether a particular complaint should be mediated or not, the agency retains the right to make the final decision as to whether or not to offer mediation to the complaint and officer involved in the incident.

It is after the agency’s screening, review and evaluation of a complainant’s allegation that a decision is made by the agency about whether or not to offer mediation to the parties involved. If the agency concludes that an allegation is such that an officer’s behavior appears to have been an intentional and/or a malicious act of bias-based policing or a violation of a complainant’s constitutional rights then a number of agencies begin a formal investigation into the officer’s behavior. Additionally, as with all complaints that are eligible to be resolved by mediation, the complainant and the officer involved in the incident make the final decision as to whether or not to accept the agency’s offer of mediation and to participate in the mediation process.

ARGUMENTS FOR MEDIATION OF RACIAL/ETHNIC COMPLAINTS:

Just as research indicates that there are those who are against the use of mediation to resolve complaints alleging racial/ethnic/cultural officer misconduct, it also reveals that others support mediation’s use as a bridge between the community and law enforcement.

The use of complaint mediation has often been cited as one potential way to strengthen community-police relationships which may be strained in some communities and to reinforce those ties in communities where police-community member relationships are generally perceived to be strong. The U. S. Department of Justice frequently proposes the adoption and use of community member-police complaint mediation as one of several recommendations to law enforcement agencies when completing either a voluntary or required investigation into the policies and practices of agencies.

For example, in its 2015 “Investigative Report of the Ferguson [Missouri] Police Department” the Justice Department stated:

“Responding to allegations of officer misconduct is critical not only to correct officer behavior and identify policy, training, or tactical concerns, but also to build community confidence and police legitimacy. FPD should:

i. Develop and implement a community-centered mediation program to resolve, as appropriate, allegations of officer misconduct. 59

In the ensuing consent decree, agreed to by Ferguson, Missouri city officials, one of the agreed to provisions of the decree was to implement a community-centered mediation of officer misconduct complaints as described below:

“Within one year of the effective date the City agrees to affiliate with the Community Mediation Services of St. Louis to provide a community-centered mediation program to act as an alternative to the misconduct investigation process...for
certain civilian allegations of officer misconduct. The misconduct complaint mediation program will be designed to increase understanding and trust between community members and FPD officers, and to prevent future misconduct and complaints of misconduct. The program will be developed and administered consistent with best practices and will specifically provide that:

a. Misconduct complaints will only be resolved through mediation where both the complainant (or his or her designee) and the subject employee agree to participate in the mediation process;

b. Only certain misconduct complaints will be eligible for mediation, as set out in FPD policy;

c. Officers who have participated in two or more mediation sessions within the previous 12-month period will not be eligible to have misconduct complaints made against them resolved through mediation; and

d. Where the mediator determines that the officer is not participating in the mediation program in good faith, the mediation shall end and the complaint investigation shall resume.

“The City will provide appropriate resources to ensure that the misconduct mediation program is effective and operating in a way that is consistent with best practices. The program will be administered by an individual with experience in police mediation or the administration of mediation programs, including the selection and training of mediators. This individual may also be used to develop and administer the community mediation program...Mediators conducting misconduct mediations will reflect the diversity of and come from the communities served by the program and will be trained consistently with best practices. 60

Police complaint mediation programs have also been developed or re-instituted in a number of jurisdictions that have been subject to a Department of Justice investigation and/or a resulting consent decree/agreement or at the initiative of an independent monitor given the latitude to develop such programs. Denver, Colorado, Seattle, Washington, Portland, Oregon, and New Orleans, Louisiana are examples of law enforcement agencies that have adopted complaint mediation programs. In response to several “investigations” into the patterns and practices of its police department by outside entities, the City of New Orleans, Louisiana enacted a local ordinance that created the Office of the Independent Police Monitor. By ordinance that Office was mandated to “establish and administer a mediation program for civilian complaints, guided by best practices identified in other jurisdictions with such mediation programs. Consent of the civilian complainant, the police officer involved, and the NOPD shall be required before a case can be scheduled for mediation by a trained neutral mediator from outside the NOPD.” A written consent decree entered into by the New Orleans Police Department and the Office of the Independent Police Monitor requires a “community-based restorative justice project . . . to help remedy mistrust between NOPD and the broader New Orleans community and create an environment for successful problem-solving partnerships.” As part of this restorative justice approach the Community-Police Mediation Program was begun “to resolve conflict and improve trust and confidence between the NOPD and members of the community.” 61

In its first annual report about its program, the Office of the Independent Police Monitor states “Mediation offers a way to resolve police complaints to alleviate misunderstanding, fear, mistrust, anger, trauma, and resentment and contribute to the larger goal of enhancing neighborhood safety.” That report also includes the following comments of community member participants, New Orleans’ officers and mediators who participated in mediation sessions in 2014:

FEEDBACK FROM COMMUNITY MEMBERS:

“More than anything in the world, I wanted to sit down at a table with this officer and tell him how I felt. This Program helped me do that. It felt so different and I was glad my case was referred to mediation. I was able to confront the officer in a respectful way that helped us get down to the root of what was going on. It wasn’t just about me and him but about this city, public safety, and how what he does can contribute to whether this city will survive, if local people will continue moving away, or if locally-owned businesses like mine will stay in business.”

“I feel so much better after talking to the officer in mediation. Really, we just had different perceptions about what was happening and now we are able to see each other’s sides rather than get mad about it. I really feel like she [the officer] understood me and cares about me.”

“I never thought I’d say it, but maybe New Orleans cops aren’t that bad. Officer B____ really took the time to hear me out and I truly appreciated the chance to speak eye to eye with him.”
FEEDBACK FROM OFFICERS:

“After the mediation, I became more aware of community needs. I got a better understanding of how people view the police. I would encourage others to take advantage of the opportunity.”

“It opened my eyes that I should treat the public better and communicate with residents in a new way... even though I might be having a bad day. I should remember that they are the victim and that no matter how bad my day is going I should take them into consideration because they are the victim of a crime or something else they wouldn’t be calling the police.”

“I valued being able to hear each other and establish common ground. I also appreciate that there is an option for handling complaints in a non-punitive way.”

“I liked getting to have both participants sit down and work through things to find out how we can better things in the future, whether it be something that I made a mistake in or whether it’s something that they can do differently.”

“It was helpful getting the average person who’s not the police to understand your side as a police officer as well as get you to understand their feelings because a lot of times when you’re interacting with people on the street, they don’t really express how they’re feeling until after. It’s like they want to say so much but everything doesn’t come out and I guess because people’s emotions are all over the place so it [mediation] just gives you a chance to really understand.”

“We were able to sit down face to face and talk about our perceptions of each other, how she perceived me as an older white officer and how I perceived her as a young, black activist even to the detail of what the symbols on her jewelry make me think of her. We had a good lengthy discussion about race in a safe space we couldn’t have during our first encounter. I didn’t want to go into it but she brought up race so the mediators invited us to talk about it since it was important to her. Although I was uncomfortable at first, I realized how important it was to her. It was eye-opening for me as I’ve never had these conversations with someone of color. I was able to tell her what the policy was and why I acted the way I did and she also shared how she felt about how I treated her. Please tell anyone in the community or in the police they can contact me if they want to know more about mediation. This is good for our city.”

FEEDBACK FROM MEDIATORS:

“I am awestruck by the ability and willingness of mediation participants to confront some of the most contentious issues affecting community-police relations in New Orleans and around the country, from issues of race and aggression, to notions of service, courtesy, and shared responsibility.”

“Every time I mediate, I am impressed by the commitment of both officers and civilians to making New Orleans better and amazed at the solutions they come up with to do so. It’s amazing to see so much positive change, especially since much of what you see and hear about police is negative. The officers and civilians who I see in mediations are heroes and I hope everyone in New Orleans takes advantage of opportunities to mediate!”

“It’s hard to explain how incredible it is to witness the transformations that happen during mediation. It is truly humbling and inspiring to watch officers and civilians hash out deep, hard problems like violence, crime, racism, and equality and really work together to find common ground and solutions. It is so rare for people to have a space and a process for solving conflict in a healthy way and it’s really incredible to see it working and making changes in people’s lives and their relationships with the police and with our city.”

“The racial and ethnic aspect of complaints is often broader than the formal allegations. Although few complaints involve specific allegations of offensive racist language, many complaints involve underlying racial/ethnic issues. As Vivian Berger, an experienced mediator in New York City puts it, ‘While many complaints are not officially about race, they are really about race.’ That is, the formal complaint may involve an allegation of discourtesy or failure to provide adequate service, but the underlying dynamics of the incident come from misunderstandings or misperceptions based on race or ethnicity.”

“Mediation is uniquely suited to help bridge the racial and ethnic divide because it is the only procedure for investigating complaints that brings the disputing parties together in a face-to-face meeting. This characteristic may make mediation more likely than any other program to help both parties understand the dynamics of policing and how police and citizens interact. In contrast, the lack of direct contact perpetuated by traditional complaint investigation procedures may aggravate racial and
ethnic divisions, leaving both sides angry and suspicious of the other. One important argument for mediating race- and ethnicity-related complaints is the opportunity for empowerment and self-determination of participants on both sides. Advocates of mediation claim that it empowers participants by giving them control over the dispute process. In contrast, formal legal proceedings, in which laws and lawyers dominate, often make participants feel powerless. Empowerment is especially important in regard to race and ethnicity related complaints, because the core issue in police-community relations for nearly 50 years has been the powerlessness many racial and ethnic minorities feel with respect to local police. By empowering officers and complainants as active participants in the process, mediation could lead to dialog between police and the racial and ethnic minorities in a community.” 64

“Mediation is particularly beneficial in resolving complaints of police racial bias. Many agencies insist on conducting formal investigations of all complaints of racial bias, because they do not want to be accused of failing to address adequately such serious allegations. Investigations into such complaints, however, rarely result in sustained findings because the allegations are usually impossible to prove without a factual basis. Rather, these complaints often come about not because the officer said or did something explicitly racist but because the complainant interpreted the officer’s words, attitudes, or behavior as stemming from racist beliefs. Historically, in these cases, both parties have been dissatisfied with the resolution of these complaints. Complainants believe that the agency covered up officers’ racism in a questionable investigation, and officers are generally offended that they have been labeled as racist.

“The OIM [Office of the Independent Monitor] has successfully mediated several racial-bias complaints by enabling both sides to address this allegation directly with the assistance of one or two professional mediators. Beyond the direct benefits of the mediation session, this discussion can increase officer sensitivity to and community member understanding of racial issues and perceptions. Mediation allows both sides to see each other as individuals, which contributes to better relations between police and community complainants, as well as the community.” 65

“[Other] experts, however, believe that mediation is particularly well-suited for racial and ethnic-related complaints against police officers. Berger, who has mediated citizen complaint cases in New York City, writes, “I have found that these complaints lend themselves extremely well to non-evaluative, purely facilitative mediation.”

“…critics of mediation misrepresent the nature of internal police complaint mediation programs….that citizens who file complaints involving issues of race ‘will find that their cases are referred to mediation.’ This is not correct. Except for court-ordered programs, mediation is voluntary; both the complainant and the officer must agree to participate. Moreover, a complainant is free to end the mediation session at any time and for any reason (e.g., if he or she feels victimized by a power imbalance). Refusal to participate or termination of a mediation session by either party leaves the complaint subject to the traditional investigation process.

“Although some mediation critics allege that mediation will prevent important issues from being properly adjudicated, most mediation programs prohibit mediation in use-of-force complaints. An officer accused of using excessive force must face a formal investigation and possible discipline. Moreover, large-scale police abuses such as systematic harassment (e.g., racial profiling) are best addressed through litigation or policy changes effected through political action (e.g., a statute mandating arrest in domestic violence cases or data collection on traffic stops).” 66

ARGUMENTS AGAINST MEDIATION OF RACIAL/ETHNIC COMPLAINTS:

While the benefits of mediating some complaints that include a racial/ethnic/cultural component are justifiably argued by those who support mediation’s use to resolve complaints, there are others who have argued that racial/ethnic/cultural complaints should not be mediated or should be mediated sparingly. Their position is presented in this Guide to provide law enforcement executives with both viewpoints as they prepare to develop and launch their agency’s mediation program.

More recently [in 2008], the Police Assessment Resource Center, in its evaluation of the Pasadena, California mediation program offered the opinion: “...not all cases should be mediated. Even under expanded notions of what is amenable to mediation, it will not and, indeed, should not replace internal affairs or external investigations. Cases involving wider issues
of police and public policy, excessive force, repeated misconduct by a given officer, discriminatory law enforcement, sexual harassment, retaliation, criminal misconduct, and corruption are not appropriate candidates for mediation. Public policy requires that truly serious cases like these are investigated thoroughly and adjudicated fairly. It is inappropriate to mediate cases where the officer should be given substantial discipline, demoted, or fired.”  67

“On paper, Pasadena does not mediate allegations of racial discrimination or racial slurs. Race nonetheless played a prominent role in two of the three cases mediated in the pilot year. Allegations of racial slurs or profiling are often difficult to prove unless there are witnesses or the officer admits pulling an individual over because of his race. Under traditional practice where complaints are investigated by the PSU, an allegation that cannot be proven often means complainants’ concerns are left unresolved. Mediation, on the other hand, is particularly suited for those kinds of cases. The Police Assessment Resource Center (PARC) authors do not favor mediation for most such cases.

“Race often is the unspoken, tacit topic in social debate in America. The differential effects of the criminal justice system and policing on African-Americans and other persons of color is chronic and a source of deep discontent to all Americans of good conscience. While clearing perceptions or misperceptions of race-based policing between a given complainant and a given officer is of value, it is less important than squarely confronting the differential effect. An officer who has a record of racial insensitivity should be retrained or disciplined. A police department whose practices differentially affect persons of color requires thorough and sensitive internal and external examination. Accordingly, police departments implementing or managing mediation programs may reasonably determine that public policy concerns outweigh the benefits of mediation in a racial context.” 68

COMPLAINTS FROM THIRD PARTIES - PARENTS/GUARDIANS OF MINORS/INDIVIDUALS WITH MENTAL HEALTH ISSUES:

Most law enforcement agencies typically handle complaints against officers which originate from minors or individuals with special needs because of mental health issues by requiring the parents/guardians of those individuals to file a complaint on behalf of the complainant. Research into community member - police complaint mediation programs has been unable to find any program that specifically mentions the participation of/exclusion of minors or individuals with special needs because of mental health issues from a mediation program. The question of whether minors or individuals with special needs because of mental health issues can knowingly consent to participate in mediation and/or have the maturity and understanding to participate in a mediation session with an adult law enforcement officer are issues that should be considered by agency heads as they develop their program.

In as much as some minors have been exposed to peer mediation or similar programs in schools it may be reasonable to expect that a number of minors may be able to effectively participate in a mediation session if the minor is of a maturity level so as to understand and be able to actively participate in a discussion of the incident and the issues that are part of it. Because there is no absolute right to mediation, unless required by law, it is suggested that agencies consult with the mediation provider prior to deciding whether to offer mediation to a minor or individual with special needs because of mental health issues. Likewise, because mediation is voluntary, if the parents or guardians believe that the minor or the individual with special needs because of mental health issues will be better served by a traditional investigation into the complaint they can choose that alternative.

Several mediation programs allow third parties to attend a mediation session between an officer and a complainant, provided the third party agrees to and signs a confidentiality agreement. Thus, the attendance of parents and/or guardians during a mediation session appears to be workable solution.

It is suggested that an agency’s written policy and procedure regarding its mediation program specifically include mention of how mediation sessions with minors and individuals with special needs because of mental health issues will be conducted.
VIII - D. CASE SCREENING:

**COMMENTARY**

After an agency has established its complaint mediation-eligible criteria the agency must have in place a process by which complaints are screened to ensure that a particular case should be selected for mediation. Research indicates that an individual or unit should be designated as responsible for completing this process. Depending on an agency’s complaint reception (intake) and investigation process, case screening [triage] can be handled by various individuals. In some cases, agency personnel are assigned to receive, categorize and ultimately determine how a particular complaint will be resolved; in others, various individuals are authorized to accept a complaint but are then required to forward it to other agency personnel who review it and determine if and who will investigate it. In other instances, citizen complaints may be received by any sworn member of the agency but must be forwarded to a citizen complaint board/panel which will determine how a complaint will be investigated and resolved. In any case, each complaint should be screened to determine whether it fits the criteria established by policy and/or local law for mediation.

Research has indicated that it is essential that a position(s) within the complaint screening process be identified as responsible for maintaining administrative oversight when a complaint is selected for mediation. Duties for that position include but are not limited to:

► determining the mediation-eligibility of a particular complaint;
► determining the officer’s eligibility for mediation;
► forwarding recommendations regarding mediation through the agency’s chain of command, if necessary;
► in some cases, contacting the citizen-complainant to determine if he/she agrees to mediation;
► maintaining liaison with the independent mediation provider;
► notifying any civilian oversight board, if necessary; and
► maintaining any correspondence associated with the mediation program.

While the decision to mediate or investigate a complaint may end up being a joint decision by a number of individuals, nonetheless the responsibility for following through with the proper notifications and documentation that mediation will be offered and has taken place should be clearly defined and assigned.

**REFERENCE MATERIAL**

**MEDIATION - INITIAL NOTIFICATION OF COMPLAINANT:**

Research has indicated that most complainants are unaware that an agency may have a mediation alternative to resolve their complaint. Even if they do know that the mediation option exists they may be unfamiliar with how a mediation process works:

“Lack of understanding of mediation. The second most important factor inhibiting the development of mediation programs is a lack of understanding of mediation among police officers and citizens. To a great extent, this lack of understanding reflects the novel aspect of mediation in the context of policing.” 69

Thus, it is critical that the individual who is first responsible for accepting/documenting the community member’s complaint notify the complainant of the possibility that after his/her complaint is processed and reviewed he/she may be offered the opportunity to voluntarily mediate the complaint with the officer in the presence of neutral, trained mediator. To this end, many agencies require that the individual who first receives a community member’s complaint alert/inform the complainant to the fact that the agency has a complaint mediation process and that someone will be in contact to discuss the possibility of mediation with the complainant. In addition, many agencies have developed a brochure that explains the mediation option as well as the agency’s traditional complaint investigation process. That brochure is given to or mailed to a complainant when/after a complaint has been received and the mediation has been explained to the complainant. They have also posted this brochure on their agency websites. 70

“To get complainants to mediation, communities must address several issues. First, good informational material that explains mediation is extremely important. In one city, a key official conceded that the form letter sent to complainants is not customer friendly and needs to be revised. Second, communities must decide who will contact citizen complainants.” In Minneapolis, the initial contact is made by CRA, an agency independent of the police department. Officials in both Rochester and Portland...
conceded that mediation caseloads may be low because the initial contact is made by a police officer, and complainants may be suspicious. Third, continuity in personnel responsible for mediation is also vital. The number of cases mediated in Rochester has fallen in recent years, possibly because of turnover among officers in the police department's internal affairs unit and the fact that newly assigned officers are neither fully aware of nor committed to mediation. 71

CASE SCREENING:

“Even among cases that are formally eligible for mediation, not all [cases] are good candidates for mediation. Program officials must evaluate individual cases for eligibility. The mediation program staff person responsible for selecting and referring cases must ask, ‘Are [the parties] capable of dealing fairly with each other?’... program staff and mediators [should] use discretion by asking themselves at each step in the process whether the particular case is suited for and should proceed to mediation.

“The Minneapolis CRA director explained that some complainants are so angry and upset that they would not be able to listen to the other side. Similarly, some police officers who have been subject to prior complaints are known by staff to have attitudes that make them poor candidates for mediation. In either case, such complaints are not referred for mediation because of the low probability of success. Note that unsuccessful mediation would probably be counterproductive, leaving both sides angrier and more alienated than they were originally. The careful screening that occurs in most programs (which also includes self-selection by potential participants) is probably why we did not hear about a single mediation session getting out of control— that is, we found no reports of cases in which a participant yelled, screamed, or otherwise behaved in an inappropriate manner.” 72

“The Monitor and Internal Affairs Bureau (IAB) Command Staff approve cases for potential mediation. No case is assigned to mediation without the approval of the complainant, the involved police officer(s), the Monitor and the IAB Command Staff. In cases involving a use-of-force resulting in an injury or the use of an impact weapon, or a violation that could result in the disqualification of an officer from being promoted to a higher rank, or dismissal or demotion, the Chief of Police and the Manager of Safety must approve the mediation as well. Should all of these parties approve mediation, the Monitor’s staff shall refer the complaint to the mediation vendor to facilitate a successful mediation between the involved parties.” 73

“The only cases categorically excluded by IPR from consideration for mediation are those involving allegations of police corruption, those with evidence of criminal conduct on the part of an involved officer, or where an officer is a witness against a complainant in a pending criminal case.

“Because IPR has opted for greater inclusiveness of cases for mediation, all cases are reviewed for mediation suitability as part of the intake process. Two preliminary questions are asked before a case is referred for mediation:

1) is the complainant willing to mediate; and

2) is mediation an appropriate and constructive way to address the complaint?

“When deciding whether to approve mediation as an alternative, IPR and IAD must consider whether mediation is likely to:

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 community policing goals of improved citizen-police relations.” 74

CASE MEDIATION-APPROPRIATENESS OVERULE BY AGENCY HEAD:

Research revealed that nearly every citizen police complaint mediation program examined allowed the head of the law enforcement agency to have a final say in whether a particular case be offered for mediation. Circumstances may prompt the head of an agency to choose NOT to offer mediation as an option to an officer to settle a citizen complaint or to rescind the mediation option before it takes place. Such authority should always be included in the written policy and procedure that governs the mediation program.
VIII – E. CASE SCHEDULING – “GETTING PEOPLE TO THE TABLE”:

**COMMENTARY**

Research indicates that encouraging, persuading, or otherwise convincing individuals to participate in a citizen-police complaint mediation program is not solely focused on the need to convince law enforcement personnel to accept a face-to-face meeting with a complainant. Complainants often need reassurance before participating in, what for some, is a novel approach to resolving a complaint against an officer, i.e., actually confronting the officer with whom they have had a difference outside the immediate moment of the incident. “Selling” mediation to both officers and community members is critical if a mediation program is to be appropriately utilized and effective as a complaint resolution technique. As the literature reveals, convincing both parties to participate can be a “tall” order for an agency. The decision as to who will contact the complainant to explain the process, invite them to participate and to schedule the mediation session may be critical to the success of the process.

Additionally there are other issues involved in “getting people to the table” such as who will be responsible for making the initial contact with both the complainant and the officer and how this contact will be documented. Likewise, there are several attendant questions such as “what are the remedies when either one of the participants fail to appear for a scheduled mediation session?”

**REFERENCE MATERIAL**

**GETTING BOTH SIDES TO THE TABLE:**

“One of the greatest obstacles facing mediation programs is getting both sides to the table. The few cases mediated in most existing programs testifies [testify] to the seriousness of this issue... It is difficult to convince parties in police misconduct cases that mediation is a good idea because they do not have an ongoing relationship with each other.’ In contrast, child custody or employee grievance cases involve individuals who will have to deal with each other in the future and therefore have considerable incentive to resolve their problems successfully and maintain a good relationship.

“Getting both sides to the table also involves a combination of incentives and persuasion. Mediation programs offer officers a tangible incentive because a ‘successfully’ mediated complaint does not appear on an officer’s record. Officers are also usually being paid for the time they spend in mediation. For this reason, the police unions in Rochester, Minneapolis, and San Francisco urge their officers to choose mediation (Minneapolis Police Federation 1998). No equivalent incentives are available for citizens, however. In fact, mediation poses some significant disincentives for citizens. They must take time off from work or sacrifice family time to participate in a mediation session. One complainant told officials in Portland, for example, ‘I’m getting married soon, and I just don’t want to put any time into this.’

“In the absence of tangible incentives, many citizen complainants need to be persuaded to choose mediation. Mediation officials in New York City explained that many complainants get ‘cold feet’ at the prospect of the session and that it takes a lot of courage to face a police officer or the specific officer in question. (This point is generally not well understood by police officers; many think citizens are too eager to file complaints and confront them.)

“To get complainants to mediation, communities must address several issues. First, good informational material that explains mediation is extremely important... Second, communities must decide who will contact citizen complainants. In Minneapolis, the initial contact is made by CRA, an agency independent of the police department. Officials in both Rochester and Portland conceded that mediation caseloads may be low because the initial contact is made by a police officer, and complainants may be suspicious. Third, continuity in personnel responsible for mediation is also vital. The number of cases mediated in Rochester has fallen in recent years, possibly because of turnover among officers in the police department’s internal affairs unit and the fact that newly assigned officers are neither fully aware of nor committed to mediation.” 75

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75 Reference to a page number, indicating a footnote or further reading.
COMMUNITY MEMBER - POLICE COMPLAINT MEDIATION PROGRAM
REFERENCE GUIDE (ILLUSTRATIVE ONLY)

COMMENTARY

The decision about what sequence an agency should use to offer the complainant and officer mediation may seem relatively insignificant in the process. However, Ms. Lorrig Charkoudian, Executive Director Community Mediation Maryland, has recommended that agencies carefully consider the sequence in which mediation offers are made. As a rule, Ms. Charkoudian recommends that officers be offered the mediation option FIRST, before the offer of mediation is extended to the complaint. She offers that the reason for this is reduce the likelihood that complainants will become more frustrated and dissatisfied with an agency’s complaint resolution process if they accept an offer to mediate the complaint and the officer then turns it down. It has been her experience in dealing with law enforcement agencies that this offer-to-mediate suggestion causes little difference in an agency’s process but eliminates one potentially negative complainant reaction to an agency’s complaint resolution policy and procedure.

OFFICER NOTIFICATION/OFFER TO MEDIATE:

Once a complaint has been determined to be mediation eligible, the officer should be offered mediation as an alternative to the traditional complaint investigation process. The offer to mediate can be extended by the investigator from the agency, by a supervisor/member of the command staff or by the mediation provider as established by agency policy and procedure.

The Denver Police Department has developed the following administrative process to notify its personnel about an offer to mediate a complaint in its Community Law Enforcement Mediation Protocols [revised 3/22/10]:

III. Officer’s consent to mediate (given by mediation vendor):
   a. Via Email (copy to officer’s Commander, the Independent Monitor and Internal Affairs command staff):
      i. Explaining the nature of the complaint that was received (including the name of the complainant, the date of the incident and the a short summary of the complainant’s allegations);
      ii. Including a copy of the mediation brochure and a reference if necessary to additional information;
      iii. Explaining the use of professional mediators and the likelihood of increased satisfaction rates;
      iv. Requesting that the officer contact the mediation vendor within five working days;
      v. Explaining the complaint will be dismissed upon officers’ agreement to mediate;
      vi. Advising of need to know contact information and shift information as well as any upcoming vacation time;
      vii. Advising if there is a request from the complainant for a support person.

   b. With the exception of extenuating circumstances, attempts to obtain the officer’s consent to mediate should be completed within a one-week period.

   d. If any of the involved officers decline to participate in mediation, the complaint shall be returned to the intake process in accordance with normal IAB policies and procedures. 76

FOLLOW-UP NOTIFICATION OF COMPLAINANT/OFFER TO MEDIATE:

Research has shown that a number of agencies that utilize mediation to resolve complaints require their independent mediator provider to contact the complainant with an offer-to-mediate after the agency has determined that a particular complaint is mediation-eligible and the officer has agreed to mediation. Complainant contact information is provided to the mediation provider at that time and the mediation provider will contact the complainant, explain the mediation option in more detail and determine if the complainant is willing to voluntarily participate in a mediation session. The mediation provider will then notify the agency whether or not the complainant is willing to mediate the complaint. If mediation has been agreed to the officer will be instructed to contact the mediation provider within a specified time frame in order to schedule a mediation session as appropriate. If either party declines to mediate the complaint is referred back to the agency for a traditional investigation.

CONSENT TO MEDIATE AGREEMENT:

Agencies that have adopted a community member-police complaint mediation program, with the assistance of the mediation provider, have developed a Letter of Agreement to Mediate which must be signed by the individuals prior to participation in the mediation session. The following is an example of Letter of Agreement to Mediate provided by Community Mediation Maryland. 77
LETTER OF CONSENT TO MEDIATE

By signing below, I agree to participate in mediation conducted by this Community Mediation Center. I understand:

- The discussions in this mediation and those with the mediation program staff will remain confidential. This means that the mediators and staff will not share information gathered during intake or during this mediation session with anyone outside of the program.

- All participants [parties] in the mediation, other than the mediator, are free to talk about what was said in mediation with others (other than in a judicial, administrative, or other hearing), unless they agree otherwise in writing.

- The mediators and program staff will not voluntarily share any information from the mediation in any judicial, administrative, or other hearing. We (mediation participants) will not voluntarily share this information in a judicial, administrative, or other hearing. It is our intention to comply with annotated Code of Maryland Section 3-1802 and Judiciary Rule Title 17, which state that mediators and mediation participants “may not disclose or be compelled to disclose mediation communication in any judicial, administrative, or other proceeding.”

- Information regarding child abuse, abuse of vulnerable adults or credible threats to do bodily harm are exceptions to confidentiality, and may be disclosed.

- Unless we agree otherwise in writing, any written agreement which comes out of mediation is not considered confidential.

- The mediators signing below have read and, consistent with state law, will abide by the Maryland Standards of Conduct for Mediators during this mediation session. Participants are welcome to request a copy of these standards and a copy can be found at www.mdmediation.org.

- Mediation is a voluntary process and each participant may withdraw from the mediation process at any point during the mediation.

- In the mediation process, I will be responsible for making my own decisions. The mediators will facilitate the process and are prohibited from giving advice or suggestions. Because the decisions made here are mine, I will not hold CMC liable for any decisions made here.

We, the undersigned, consent to mediate. We understand that agreements reached in mediation may be enforceable contracts.

Name: __________________________
Signature: __________________________ Date: __________

Name: __________________________
Signature: __________________________ Date: __________

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TIMELINESS OF THE MEDIATION SESSION:

“Because the ultimate success of mediation efforts may be partly dependent on the timeliness with which mediations are carried out, assigned mediators shall make reasonable efforts to conduct mediations within 2 weeks of accepting a case. The target goal is to mediate within 30 days of selecting a case for mediation, but not to exceed 60 days. 78

FAILURE TO APPEAR AT MEDIATION:

“If a COMPLAINANT fails to appear for a scheduled mediation session, without good cause, the involved officer(s) will be provided with the choice of either rescheduling the mediation or having the case dismissed by IAB.

“If any of the INVOLVED OFFICER(S) fails to appear for a previously scheduled mediation, without good cause, the Monitor will notify IAB so that appropriate action can be taken. The complaint may then be processed by IAB as per normal policies and procedures.

“If either the complainant or the involved officer(s) fail(s) to appear for verifiable good cause, the party failing to appear is expected to reschedule upon the request of the other party. Failure to reschedule by the complainant may result in dismissal of the complaint by IAB. Failure to reschedule by the involved officer(s) may result in the return of the complaint to IAB to be processed as per normal policies and procedure. 79

VIII – F. CREATING A ‘LEVEL’ PLAYING FIELD DURING MEDIATION

COMMENATARY

It is understandable why some civilians may be reluctant to participate in a police complaint mediation program. In many instances, they often see their complaint against an officer as stemming from an encounter in which they believe the officer used his/her official authority to impose an arbitrary, unnecessary or unlawful restriction on their behavior, or in which an officer was discourteous, rude or otherwise less than respectful towards him/her during the encounter. While undoubtedly many of these situations result from a misunderstanding or miscommunication between the officer and the complainant, many civilians believe that the offending officer used his/her official law enforcement authority and standing illegitimately during their initial encounter. Many will wonder why things will be different during a mediation session in which the officer will still appear as a law enforcement official. Research has shown that civilian complainants often believe that the “deck is stacked against them” and that the word of the officer will carry more weight during the mediation session than will their point of view.

Thus, creating a level playing field can be a challenge both for the law enforcement agency that is attempting to resolve complaints using mediation and for the mediator who is given the task of overseeing the mediation session. Literature dealing with mediation lists several issues that agencies should consider when setting up their mediation program including whether:

► officers should be in uniform when participating in a mediation session;
► cultural or language barriers need to be addressed before a mediation session begins;
► individuals other than the complainant and officer should participate in the mediation session.

This section will address those issues.
REFERENCE MATERIALS

CREATING A “LEVEL” PLAYING FIELD DURING MEDIATION:

“One of the major concerns regarding the mediation of citizen complaints against police officers is the need for a level playing field in mediation and an atmosphere of equality among the parties. Many mediators stated that citizen-police mediation cases are different from other kinds of mediation cases largely because of power differences between police and citizen complainants. The unique power of police officers derives from two sources: an officer’s formal authority within the criminal justice system and an officer’s sanction power to inflict harm on or limit the freedom of another person.

“Other power imbalances exist between the police and community member complainants. For example, officers are more likely to be ‘repeat players,’ whereas citizens are likely to be ‘one-shotters.’ Some officers may have been the subject of complaints (although not necessarily mediation) and developed strategies for handling themselves. Most complainants are new to the process and therefore more likely to be uncertain and perhaps even fearful. Establishing a level playing field is particularly important for mediating racial, ethnic or gender-related complaints, because the power imbalance is likely to be accentuated by cultural misunderstandings. A complainant of color may feel powerless when confronting a white officer because of feelings of alienation from a white-dominated police department and a white-dominated society, which are not related to the officer’s actions. An officer might subtly invoke his or her role as an officer or status as a member of the dominant white society to control the process. A mediator needs to be fully cognizant of both manifest and latent racial dynamics in any mediation session, especially when they are not overtly expressed, and make a special effort to level the playing field, to get both parties to meet each other as individuals, and to address whatever racial or ethnic issues are at work. The Mediator Handbook advises that the effective mediator neutralize these power imbalances so that the disputants may mediate fairly and equally. For example, in Minneapolis, mediators address participants by their first names. They do not address participants, for example, as Officer Jones or Dr. Smith. By eliminating reference to professional status, mediators level the playing field. 80

WEARING THE UNIFORM:

“One of the most important issues uncovered in interviews for this report is the question of police officers should wear a uniform in a mediation session. Many community representatives are concerned about this issue. The uniform symbolizes the unique power of the police officer, which tends to create a power imbalance in mediation. In every mediation program studied for this report, officers are on duty and being paid during mediation. As a result he/she cannot be barred from wearing the uniform. In New York City, however, officers are instructed to appear in civilian attire. On the other hand, a few people interviewed feel that the uniform may actually increase the significance of a satisfactory outcome in that the complainant and officer first made contact in these status positions, so the outcome may give the complainant a sense of power and control. In the end, if a complainant feels the officer is using the uniform to wield power in a mediation session the best response is to terminate the session. Before taking this step, of course, the complainant should say to the officer “you are not treating me with respect.” If such efforts do not work and the complainant is unhappy with the officer’s behavior, he or she can terminate the session. 81

In an email to Commission staff, Ms. Charkoudian, Community Mediation Maryland, recommends that whenever practical officers attend mediation sessions IN UNIFORM. It has been her experience that appearance in uniform “can help transform the way that symbol is perceived.” 82

ATTENDANCE OF OTHERS:

The question whether to allow others not directly involved in the initial incident involving the complainant and officer to attend a mediation session is one which agency heads should carefully consider with the mediation provider when developing their agencies’ mediation program. Research indicates that there is no universal agreement about whether “others” should be allowed to attend a mediation session although confidentiality issues seem to suggest that “others” normally be excluded. In keeping with the theme of mediation, i.e. that the participants determine what will happen during the mediation session, members of the Community Mediation Maryland suggest that the participants be allowed to determine if third parties be allowed to attend the mediation session.

The question of third party attendance is significant when the complainant is a juvenile or an individual with special needs because of intellectual challenges, instances when agencies normally allow parents and/or guardians to attend
meetings/interviews involving a juvenile or an individual with intellectual challenges who is under their care. This should be clearly expressed in agency policy.

The presence of others during a mediation session always compounds the confidentiality of the mediation proceedings. While most citizen police-complaint mediation programs require that mediation participants sign a confidentiality agreement it stands to reason that the greater the number of individuals attending the mediation session the greater the possibility that confidentiality may be breached. In Mediating Citizen Complaints Against Police Officers the need for confidentiality is critical:

“Confidentiality is an essential element of mediation. For mediation to succeed, both sides must feel free to speak candidly. Confidentiality has special relevance for citizen complaints because the officer must be assured that any apology or acknowledgment of wrongdoing will not be used against him or her, either by the police department or by a private attorney in some other legal proceeding. Confidentiality is protected by a wide range of Federal and State statutes, along with professional standards for mediators….. In developing new mediation programs local officials should carefully research the applicable State statutes.”

The Denver Police Department has addressed the issue of whether “others” may attend a mediation session in its Community Law Enforcement Mediation Protocols [revised 3/22/10]:

II. c. Determine if there are other individuals who were involved in the incident that need to be at mediation.
   d. Consider possible support people and appropriate guidelines.
      i. A support person is someone who was not present during the initial incident between the officer and community member; however, a party would like to bring this person to the mediation for emotional support.
      ii. The support person may not speak during the mediation and must sign a confidentiality agreement.
      iii. Having a support person is not a right; it is subject to the consent of all parties.

III. b. Support person’s presence must be acceptable to the opposite party. It is the mediator’s decision as to where the support person will be located during the mediation session.

Additionally, the issue whether a complainant’s attorney should be allowed to attend a mediation session is questionable. As stated in Mediating Citizen Complaints Against Police Officers that question is answered as follows:

“Much of the literature on mediation and ADR involves the roles and professional responsibilities of lawyers because divorce mediation and commercial dispute mediation, alternatives to formal court proceedings, typically involve lawyers. Citizen complaint mediation does not involve lawyers, so the lawyer related issues do not arise. Citizen complaint mediation is an alternative to a formal investigation by a police internal affairs unit or citizen oversight agency. Most experts in the field argue that the involvement of lawyers conflicts with the basic goals of mediation, which include building understanding and not fact finding and determination of guilt.”

Likewise, it stands to reason that an officer is not entitled to have an attorney or union representative present during a mediation session for the same reasons.

POTENTIAL LANGUAGE AND CULTURAL BARRIERS:

Another issue that may affect the mediation “playing field” is the language and cultural differences that may exist between the complainant and the officer.

“Potential language barriers represent an important mediation issue. Because demographic trends indicate increased immigration to the United States, an increasing number of complaints against police officers will probably involve people who either have limited command of the English language or do not speak English at all. Given the expected increase, mediation programs should be able to provide bilingual mediators or translators. At the same time, mediation program managers should consider and explore ways to better explain the concept of mediation to complainants who do not speak English or are not familiar with the nature of mediation as a means of resolving problems. The more active citizen oversight agencies have adopted community outreach programs to explain the citizen complaint process to people who are new to this country and not familiar with the American criminal justice system and its procedures for handling citizen complaints against police officers. Those developing a mediation program must ensure that the mediation program manager and the mediation vendor are equipped to deal with these differences to “better explain the concept of mediation to complainants who do not speak English or are not familiar with the nature of mediation as a means of resolving problems. The more active citizen oversight agencies

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have adopted community outreach programs to explain the citizen complaint process to people who are new to this country and not familiar with the American criminal justice system and its procedures for handling citizen complaints against police officers.” 86

Law enforcement agencies should insist that mediators supplied by their mediation provider reflect the diversity of the community. According to Ms. Charkoudian, “research shows when participants see a mediator reflecting their gender or race, it improves their experience of mediation.” 87

IX. SELECTION/USE OF MEDIATORS:

SELECTING QUALIFIED, TRAINED AND EXPERIENCED MEDIATORS IS ESSENTIAL TO THE EFFECTIVENESS OF A MEDIATION PROGRAM. WITHIN MARYLAND THERE ARE A NUMBER OF ENTITIES THAT PROVIDE PROFESSIONAL, TRAINED, AND EXPERIENCED MEDIATORS. THE CALVERT COUNTY SHERIFF’S OFFICE, WHICH BEGAN THE FIRST CITIZEN/POLICE COMPLAINT MEDIATION PROGRAM IN MARYLAND IN 2010, CALLED “OPERATION TRUE PERSPECTIVES,” PARTNERS WITH THE COMMUNITY MEDIATION CENTER OF CALVERT COUNTY TO PROVIDE MEDIATION SERVICES TO RESOLVE COMMUNITY MEMBER COMPLAINTS. THE COMMUNITY MEDIATION CENTER OF CALVERT COUNTY FALLS UNDER THE UMBRELLA OF COMMUNITY MEDIATION MARYLAND WHICH CAN REFER AGENCIES TO MEDIATION PROVIDERS IN THEIR JURISDICTIONS TO HELP WITH THE DEVELOPMENT OF A COMMUNITY MEMBER-POLICE COMPLAINT MEDIATION PROGRAM, STAFF TRAINING AND PROVIDING QUALIFIED, TRAINED MEDIATORS.

MARYLAND RULES, TITLE 17, ALTERNATE DISPUTE RESOLUTION [ADR], DEFINES AND GOVERNS ENTITIES THAT OFFER ADR SERVICES TO THE STATE’S VARIOUS COURTS. BECAUSE COMMUNITY MEMBER-POLICE COMPLAINT MEDIATION IS NOT COURT ORDERED TITLE 17 DOES NOT SPECIFICALLY APPLY TO THIS TYPE OF MEDIATION; HOWEVER, BONA-FIDE ORGANIZATIONS THAT PROVIDE MEDIATION SERVICES ADHERE TO THE RULES CONTAINED IN TITLE 17 INCLUDING THE MEDIATOR QUALIFICATION AND TRAINING REQUIREMENTS OUTLINED IN THE LAW. THEY CONDUCT MEDIATION SESSIONS ACCORDING TO PROFESSIONALLY ACCEPTED MEDIATION STANDARDS AND PRACTICES. THE MARYLAND COURTS OVERSEE THE VARIOUS ADR ORGANIZATIONS PROVIDING ADR SERVICES THROUGH THE MEDIATION AND CONFLICT RESOLUTION OFFICE (MACRO); THE WEBSITE CAN BE FOUND AT WWW.COURTS.STATE.MD.US/MACRO.

THE FOLLOWING REFERENCE MATERIAL IS INTENDED TO HIGHLIGHT THE MINIMUM REQUIREMENTS FOR A CITIZEN POLICE COMPLAINT MEDIATOR THAT HAVE BEEN IDENTIFIED FROM A VARIETY OF SOURCES.

REFERENCE MATERIAL

OVERVIEW – MEDIATOR SKILLS:

“Mediation programs should only use professional, trained, experienced mediators. Mediation is an important and complex undertaking, and it should not involve amateurs. Professional standards for mediators have been developed and approved by the American Arbitration Association, the Association for Conflict Resolution (formerly known as the Society for Professionals in Dispute Resolution), and the American Bar Association Section on Dispute Resolution. Because complex issues may arise during the mediation process, mediators must possess a combination of human relations and mediation skills. Two experts explain that the ability to be professional, sensitive, street smart, and a good communicator increases the chances that an individual will be effective in mediation. Mediators must also be able to work with recalcitrant parties who are reluctant to work toward a satisfactory end.” 88
MEDIATOR – BASIC QUALIFICATIONS:

Maryland Rule § 17-205, Qualifications of Court-Designated Mediators, outlines the basic qualifications for a court appointed mediator as follows:

1. at least 21 years old, unless waived by both parties;
2. have completed at least 40 hours of basic mediation training in a program meeting the requirements of Rule 17-104 (outlined below), or for individuals trained prior to January 1, 2013, former rule 17-106;
3. be familiar with the rules, statutes and practices governing mediation in circuit courts;
4. have mediated or co-mediated at least two civil cases;
5. complete in each calendar year four (4) hours of continuing mediation-related education in one or more of the topics set forth in Rule 17-104;
6. abide by the mediation standards adopted by the Court of Appeals;
7. submit to periodic monitoring of court-ordered mediations by a qualified mediator designated by the county administrative judge; and
8. comply with procedures and requirements prescribed in the court’s case management plan filed under Rule 16-202b relating to diligence, quality assurance and a willingness to accept, upon the request of the court, a reasonable number of referrals at a reduced fee or pro bono.

MEDIATOR – BASIC TRAINING:

Maryland Rule 17-104, Basic Mediation Training Programs, outlines the training requirements in a basic mediation training program as follows:

To qualify under Rule 17-205 (above) or 17-304, a basic mediation training program shall include the following:

a. conflict resolution and mediation theory, including causes of conflict, interest-based versus positional bargaining, and models of conflict resolution;
b. mediation skills and techniques, including information gathering skills; communication skills; problem-solving skills; interaction skills; conflict management skills; negotiation techniques; caucusing; cultural, ethnic and gender issues; and strategies to:
   1) identify and respond to power imbalances, intimidation, and the presence and effects of domestic violence, and
   2) safely terminate a mediation when such action is warranted;
c. mediator conduct, including conflicts of interest, confidentiality, neutrality, ethics and standards of practice;
d. simulations and role-playing, monitored and critiqued by experienced mediator trainers.

SPECIALIZED MEDIATOR TRAINING:

COMMENTARY

In addition to outlining the basic qualifications for court-designated mediators, Maryland Rule 17-205 also sets out additional requirements for individuals who are conducting mediation sessions in several specialized cases. Individuals who are mediating business and technology cases (17-205 (b)), economic issues in divorce and annulment cases (17-205 (c)), health care and malpractice claims (17-205 (d)) and foreclosure cases (17-205 (e)) for the courts are required to have additional training and/or experience dealing with these issues.

Some agency heads considering development of citizen police complaint mediation program may question whether individuals with little or no law enforcement background can effectively mediate disputes between community members and officers. Personnel within the agency may also raise this question if they participate in the development of the program or during training given to familiarize them with the program.

Given that the role of the mediator during a session is to facilitate discussion between the complainant and the officer knowledge about agency policies, practices and procedures is not necessary to effectively mediate a citizen police dispute.

When asked about orientation to or specialized training about certain law enforcement agency policies and procedures for mediators Ms. Lorig Charkoudian, Community Mediation Maryland, stated that mediators would not need any content
knowledge training in police operations to effectively mediate citizen police complaints. She explained that the focus of the mediator is on facilitating a dialogue between the complainant and the officer and not about explaining, evaluating or justifying law enforcement procedures. She added that over the past several years the training Community Mediation Maryland provides “has been influenced by law enforcement, community groups and civil rights groups. One unique feature of our training is that it includes officers who participate in the training. They share their perspectives during the discussions and they play officers in the role-play. This helps mediators [to] work through their biases (positive and negative) and it ensures that we get realistic role-playing and good feedback.”

As an example, when the Calvert County Sheriff’s Office prepared to kick-off Operation True Perspectives, the mediators from the Community Mediation Center of Calvert County participated in joint mediation training with the Sheriff’s that included citizen complaint mediation role playing. This training provided potential mediators with examples of the types of citizen complaints that they find themselves mediating. Feedback from the Sheriff’s Office indicates that this role playing exercise was beneficial to both the Community Mediation Center and the Sheriff’s Office in terms of identifying potential issues when mediating citizen complaints.

It is suggested that agency heads discuss the need for orientation or specialized mediator training/familiarization with the mediation provider as they develop their agency’s program.

MEDIATOR NEUTRALITY:

“Some mediators have strong feelings about police that affect their neutrality. Mediation officials in one city explained that some of their mediators have strong feelings of hostility toward police and therefore do not accept police-related cases. At the same time, other mediators have very positive feelings about police or have family members or close friends who are police officers and therefore decline police related cases. The Standards of Conduct for Mediators specify that ‘a mediator shall disclose all actual and potential conflicts of interest reasonably known to the mediator’...conflicts arising from political attitudes and personal associations may [arise].”
IX – A. STANDARDS OF CONDUCT FOR MEDIATORS:

**COMMENTARY**

The Maryland Judiciary and the Maryland State Legislature have encouraged the use of Alternate Dispute Resolution methods as bona fide methods for settling differences outside the confines of a courtroom or an administrative hearing. They have expressed their support by creating the Mediation and Conflict Resolution Office (MACRO) within the Administrative Office of the Courts. Likewise they have participated in the adoption of standards of conduct for both individuals who act as mediators as well as organizations who supply those mediators. These standards of conduct govern the professional behavior of those individuals who act as “neutrals” during the conduct of ADR procedure including mediation. These standards of conduct are presented in a publication entitled “Maryland Standards of Conduct for Mediators, Arbitrators and Other ADR Practitioners” (updated in June 2012).

In addition to the revision of these standards of conduct, the Maryland Judiciary was also instrumental in developing the Maryland Program for Mediator Excellence (MPME) which has as its major goal “to assist Maryland mediators in providing high quality mediation services to their clients...by providing participating mediators with choices for continued learning and improvement...” Additionally, MPME has also published “Standards of Conduct for Mediators” which closely mirrors the above cited MACRO publication. Together both of these publications establish the standards of conduct that govern mediators and organizations which supply professional, trained and experienced mediators throughout Maryland.

In addition, numerous articles on the subject of mediation typically reflect these standards of conduct and list the following characteristics of an effective mediator:

► Impartial [no conflict of interest]
► Trained in the Art of Mediation [certified] *
► Experienced and Competent
► Able to Maintain Procedural Fairness during Mediation Sessions
► Able to Maintain Confidentiality
► Culturally Neutral

* National/state certification is NOT required in Maryland but is offered as a voluntary, performance based certification by Community Mediation Maryland and the Maryland Committee for Dispute Resolution.

Agencies that are considering developing a police complaint resolution program that includes mediation as an element should consider reviewing these standards of conduct as they develop their program. Agency representatives should find that presenting these standards of conduct to both agency personnel and members of the community may go a long way to satisfying reluctance to participate in mediation if it is offered as complaint resolution technique. These standards, while not enjoying the force of law, are intended to guide the professional, trained and experienced mediators selected for the community member-police complaint mediation program.

**REFERENCE MATERIAL**

The Reference Material that follows is taken directly from the “Maryland Standards of Conduct for Mediators, Arbitrators, and Other ADR Practitioners.” The information presented below has been edited to focus on mediation and mediators. 91

**Standards of Conduct for Mediators:**

**Preface:**

These Standards of Conduct for ADR practitioners are intended to perform three major functions:

► to serve as a guide for the conduct of ADR practitioners;
► to inform the participants involved in ADR processes; and
► to promote public confidence in ADR processes as a means for resolving disputes or addressing issues.
Standards of Conduct:

I. SELF-DETERMINATION:

A Neutral shall Recognize that...Mediation [is] Based on the Principle of Self-Determination by the Parties.

► Self-determination is the fundamental principle of mediation...In mediation, this principle requires that the mediation process rely upon the ability of the participants to reach their own voluntary, un-coerced agreement. Any party may withdraw from mediation at any time...

Comments:

The primary role of the mediator is to facilitate a voluntary resolution of a dispute...the mediator is responsible for explaining the process to the participants... may provide information without giving legal or other professional advice, ask questions, identify issues, and help parties explore options.

A mediator should be aware of power dynamics and assess whether a party may be experiencing coercion. When mediators perceive that coercion may exist, they should explore the issue in private with the party who may be experiencing coercion or end the mediation if there is an imminent safety concern.

“Standards of Conduct for Mediators”
by Maryland Program for Mediator Excellence 92

I. SELF-DETERMINATION:

A. A mediator shall conduct a mediation based on the principle of party self-determination. Self-determination is the act of coming to a voluntary, un-coerced decision in which each party makes free and informed choices as to process and outcome. Parties may exercise self-determination at any stage of mediation, including mediator selection, process design, participation in or withdrawal from the process, and outcomes.

1. Although party self-determination for process design is a fundamental principle of mediation practice, a mediator may need to balance such party self-determination with a mediator’s duty to conduct a quality process in accordance with these Standards.

2. A mediator cannot personally ensure that each party has made free and informed choices to reach particular decisions, but, where appropriate, a mediator should make the parties aware of the importance of consulting other professionals to help them make informed choices.

B. A mediator shall not undermine party self-determination by any party for reasons such as higher settlement rates, egos, increased fees, or outside pressures from court personnel, program administrators, provider organizations, the media or others.
II. IMPARTIALITY:

A Neutral shall Conduct the ADR Process in an Impartial Manner.

 ► impartiality is central to all ADR processes. Neutrals shall handle only those matters in which they can remain impartial. If at any time neutrals are unable to conduct the process in an impartial manner, they are obligated to withdraw.

Comments:
A neutral shall avoid conduct that gives the appearance of partiality toward one of the parties...the process is enhanced when the parties have confidence in the impartiality of the neutral.

A neutral should guard against partiality or prejudice based on the parties' personal characteristics, background or behavior during the ADR process...

“Standards of Conduct for Mediators”
by Maryland Program for Mediator Excellence

II. IMPARTIALITY:

A. A mediator shall decline a mediation [session] if the mediator cannot conduct it in an impartial manner. Impartiality means freedom from favoritism, bias or prejudice.

B. A mediator shall conduct a mediation in an impartial manner and avoid conduct that gives the appearance of partiality.
   1. A mediator should not act with partiality or prejudice based on any participant’s personal characteristics, background, values and beliefs, or performance at a mediation, or any other reason.
   2. A mediator should neither give nor accept a gift, favor, loan or other item of value that raises a question as to the mediator’s actual or perceived impartiality.
   3. A mediator may accept or give de minimis gifts or incidental items or services that are provided to facilitate a mediation or respect cultural norms so long as such practices do not raise questions as to a mediator’s actual or perceived impartiality.

C. If at any time a mediator is unable to conduct a mediation [session] in an impartial manner, the mediator shall withdraw.

III. CONFLICTS OF INTEREST:

Neutrals shall Disclose all Actual and Potential Conflicts of Interest Reasonably Known to Them...neutrals shall decline to participate unless all parties choose to retain them. The need to protect against conflicts of interest also governs conduct that occurs during and after the ADR proceeding.

A conflict of interest is a dealing/relationship that creates/might create an impression of possible bias...Neutrals have a responsibility to disclose all actual and potential conflicts that are reasonably known to them and could reasonably be seen as raising questions about impartiality. If all parties agree to participate in the ADR process after being informed of conflicts, the neutral may proceed. If, however, the conflict of interest casts serious doubt on the integrity of the process, the neutral shall decline to proceed.

Comments:
Potential conflicts of interest may arise between administrators of ADR programs and neutrals, and there may be strong pressures on the neutrals to settle a particular case or cases. A neutral’s commitment must be to...
the participants and the process. Pressure from outside of the process should never influence the neutral to coerce parties to settle.

III. CONFLICTS OF INTEREST:

A. A mediator shall avoid a conflict of interest or the appearance of a conflict of interest during and after a mediation. A conflict of interest can arise from involvement by a mediator with the subject matter of the dispute or from any relationship between a mediator and any mediation participant, whether past or present, personal or professional, that reasonably raises a question of a mediator’s impartiality.

B. A mediator shall make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest for a mediator. A mediator’s actions necessary to accomplish a reasonable inquiry into potential conflicts of interest may vary based on practice context.

C. If a mediator learns or knows of any fact or circumstance that reasonably could be seen as creating a potential or actual conflict of interest, the mediator shall, as quickly as possible:

   (1) decline to accept the mediation, either with or without disclosure if the mediation has not begun; or
   (2) withdraw from the mediation, either with or without disclosure, if the mediation has begun; or
   (3) disclose the conflict to the parties and if all parties and the mediator agree, proceed with the mediation.

D. If a mediator’s conflict of interest might reasonably be viewed as undermining the integrity of the mediation, a mediator shall withdraw from or decline to proceed with the mediation regardless of the expressed desire or agreement of the parties to the contrary.

E. Subsequent to a mediation, a mediator shall not establish another relationship with any of the participants in any matter that would raise questions about the integrity of the mediation. When a mediator develops personal or professional relationships with parties, other individuals or organizations following a mediation in which they were involved, the mediator should consider factors such as time elapsed following the mediation, the nature of the relationships established, and services offered when determining whether the relationships might create a perceived or actual conflict of interest.

IV. COMPETENCE:

Neutrals shall Provide Services Only When They have the Necessary Qualifications to Satisfy the Reasonable Expectations of the Parties.

   ▶ Subject to the requirements of any statute or Maryland rule, any person may be selected as a neutral, provided that the parties are satisfied with their qualifications. Training and experience, however, are often necessary. Persons who offer themselves as neutrals give parties and the public an expectation that they have the competency to conduct their ADR processes effectively...it is essential that neutrals assigned to the parties have the requisite training and experience.

Comments:

   Neutrals should have information available for the parties regarding their relevant training, education and experience.

   When neutrals are appointed by a court or institution, the appointing agency shall make reasonable efforts to
ensure that each neutral is qualified for the particular ADR process.

“Standards of Conduct for Mediators”
by Maryland Program for Mediator Excellence

IV. COMPETENCE:

A. A mediator shall mediate only when the mediator has the necessary competence to satisfy the reasonable expectations of the parties.
1. Any person may be selected as a mediator, provided that the parties are satisfied with the mediator’s competence and qualifications. Training, experience in mediation, skills, cultural understandings and other qualities are often necessary for mediator competence. A person who offers to serve as a mediator creates the expectation that the person is competent to mediate effectively.
2. A mediator should attend educational programs and related activities to maintain and enhance the mediator’s knowledge and skills related to mediation.
3. A mediator should have available for the parties information relevant to the mediator’s training, education, experience and approach to conducting a mediation.

B. If a mediator, during the course of a mediation determines that he or she cannot conduct the mediation competently, the mediator shall, as soon as is practicable, do one of the following:
   (1) discuss that determination with the parties and take appropriate steps to address the situation, including, but not limited to, withdrawing or requesting appropriate assistance; or
   (2) withdraw from the mediation without disclosing the reason.

C. If a mediator’s ability to conduct a mediation is impaired by drugs, alcohol, medication or otherwise, the mediator shall not conduct the mediation.

V. CONFIDENTIALITY:

A neutral shall maintain confidentiality with certain limited exceptions.

A neutral shall maintain confidentiality...As required by Maryland Rule 17-109, a mediator, and anyone attending the mediation at the request of a mediator, shall maintain the confidentiality of all mediation communications, which include speech, writing, or conduct made as part of a mediation, including those communications made for the purpose of considering, initiating, continuing, or reconvening a mediation or retaining a mediator.

A mediator, and anyone attending the mediation at the request of a mediator, may not disclose or be compelled to disclose mediation communications in any judicial, administrative or other proceedings.

In addition to any disclosures required by law, mediators may disclose or report mediation communications to a potential victim or to the appropriate authorities to the extent that they believe it necessary to help:
   (1) Prevent serious bodily harm or death; or
   (2) Allege mediator misconduct or defend a mediator against allegations of misconduct.

A mediator may report, if required by a court or other referral source, whether the mediation session took place and whether an agreement was reached.
Mediation communications are not subject to discovery but information otherwise admissible or subject to discovery does not become inadmissible or protected from disclosure solely by reason of its use in mediation.

A document that reduces to writing an agreement signed by the parties as a result of mediation is not confidential, unless the parties agree in writing otherwise.

Comments:
Since the parties’ expectations regarding confidentiality of the process and the written results of the process are important, the neutral should discuss these expectations with the parties at the beginning of the process.

If the neutral holds private sessions with a party, the nature of these sessions with regard to confidentiality should be discussed prior to undertaking such sessions.

In order to protect the integrity of the ADR process, a neutral should not communicate information about the parties, their behavior, the merits of their case or settlement offers to the court or other referral source.

Confidentiality should not be construed to prohibit the effective monitoring, research, or evaluation of ADR programs by responsible persons. Under appropriate circumstances, researchers may be permitted to obtain access to statistical data and, with the permission of the parties, to individual case files, observations, and interviews with participants.

A neutral cannot ensure the confidentiality of statements parties make to each other or to third persons.

“Standards of Conduct for Mediators”
by Maryland Program for Mediator Excellence

V. CONFIDENTIALITY:
A. A mediator shall maintain the confidentiality of all information obtained by the mediator in mediation, unless otherwise agreed to by the parties and the mediator or required by applicable law.
   1. If the parties to a mediation and the mediator all agree that the mediator may disclose information obtained during the mediation, the mediator may do so.
   2. A mediator should not communicate to any non-participant information about how the parties acted in the mediation. A mediator may report, if required, whether parties appeared at a scheduled mediation and whether or not the parties reached a resolution.
   3. If a mediator participates in teaching, research or evaluation of mediation, the mediator should protect the anonymity of the parties and abide by their reasonable expectations regarding confidentiality.
B. A mediator who meets with any persons in private session during a mediation shall not convey directly or indirectly to any other person, any information that was obtained during that private session without the consent of the disclosing person.
C. A mediator shall promote understanding among the parties of the extent to which the parties will maintain confidentiality of information they obtain in a mediation.
D. Depending on the circumstance of a mediation, the parties may have varying expectations regarding confidentiality that a mediator should address. The parties and the mediator may make their own rules with respect to confidentiality, or the accepted practice of an individual mediator or institution may dictate a particular set of expectations.
CONFIDENTIALITY:

“Confidentiality is an essential element of mediation. For mediation to succeed, both sides must feel free to speak candidly. Confidentiality has special relevance for citizen complaints because the officer must be assured that any apology or acknowledgment of wrongdoing will not be used against him or her, either by the police department or by a private attorney in some other legal proceeding.

“Confidentiality is protected by a wide range of Federal and State statutes, along with professional standards for mediators. In Portland, for example, mediators are bound by the Oregon Mediation Association’s Standards of Practice. The interviews and site visits for this report revealed no breaches attempted breaches of confidentiality (e.g., a private attorney seeking to obtain mediation records). In developing new mediation programs, however, local officials should carefully research the applicable State statutes. Although concern about confidentiality exists, we could not find a single violation of confidentiality in a citizen complaint mediation case.”

“The mediation file is confidential and shall not be reproduced, duplicated or made public in any way. Any violation of this rule will result in an end of the mediation and prosecution by the proper authorities.”

“Before the mediation begins, the parties are required to sign a consent-to mediate form, which includes a confidentiality agreement.”

“Statements made during mediation cannot be used against a police officer in a criminal or civil matter.”

“the decision to mediate a matter or not to mediate a matter cannot be considered during disciplinary proceedings in comparing the discipline issued in previous matters to that issued in a pending matter (i.e., cannot be used for purposes of considering “consistent discipline”).

Md. COURTS AND JUDICIAL PROCEEDINGS
Maryland Mediation and Confidentiality Act
Code Ann. § 3-1801 (2012)

§ 3-1803. Duties of mediator and participants
(a) Mediator and participants requested by mediator. -- Except as provided in § 3-1804 of this subtitle, a mediator or any person present or otherwise participating in a mediation at the request of a mediator:
(1) Shall maintain the confidentiality of all mediation communications; and
(2) May not disclose or be compelled to disclose mediation communications in any judicial, administrative, or other proceeding.
(b) Parties or participants requested by parties. -- Except as provided in § 3-1804 of this subtitle:
(1) A party to a mediation and any person present or otherwise participating in the mediation at the request of a party may not disclose or be compelled to disclose mediation communications in any judicial, administrative, or other proceeding; and
(2) The parties may enter into a written agreement to maintain the confidentiality of all mediation communications and may require any person present or otherwise participating in the mediation at the request of a party to maintain the confidentiality of all mediation communications.

§ 3-1804. Requirements and exceptions
(a) Written agreement of confidentiality required. -- A document signed by the parties that records points of agreement expressed by the parties or that constitutes an agreement reached by the parties as a result of mediation is not confidential unless the parties agree otherwise in writing.
(b) Disclosures allowed. -- In addition to any other disclosure required by law, a mediator, a party, or a person who was present or who otherwise participated in a mediation at the request of the mediator or a party may disclose mediation communications:
(1) To a potential victim or to the appropriate law enforcement authority to the extent that the mediator, party, or person reasonably believes the disclosure is necessary to prevent bodily harm or death to the
potential victim; (2) To the extent necessary to assert or defend against allegations of mediator misconduct or negligence; (3) To the extent necessary to assert or defend against allegations of professional misconduct or malpractice by a party or any person who was present or who otherwise participated in the mediation at the request of a party, except that a mediator may not be compelled to participate in a proceeding arising out of the disclosure; or (4) To the extent necessary to assert or defend against a claim or defense that, because of fraud, duress, or misrepresentation, a contract arising out of a mediation should be rescinded or damages should be awarded.

(c) Disclosure by court order; limitations. -- A court may order mediation communications to be disclosed only to the extent that the court determines that the disclosure is necessary to prevent an injustice or harm to the public interest that is of sufficient magnitude in the particular case to outweigh the integrity of mediation proceedings.

§ 3-1805. When communications subject to discovery:

Mediation communications that are confidential under this subtitle are not subject to discovery, but information that is otherwise admissible or subject to discovery does not become inadmissible or protected from disclosure solely by reason of its use in mediation.

VI. QUALITY OF PROCESS:

A Neutral shall Conduct the Process Fairly, Diligently, and in a Manner Consistent with the Principle of Self-Determination by the Parties.

► A neutral shall work to ensure a quality process and to encourage mutual respect among the participants. A quality process requires a commitment by the neutral to diligence and procedural fairness. There should be adequate opportunity for each party to participate in the discussions. The parties decide when and under what conditions they will reach an agreement, be bound by an arbitration award or terminate a neutral.

Comments:

One of the primary purposes of mediation is to facilitate the parties' voluntary agreement. This role differs substantially from other professional-client relationships. Mixing the role of a mediator and the role of a professional advising a client is problematic, so mediators must distinguish between the roles. A mediator should, therefore, refrain from providing professional advice.

A mediator may withdraw from a mediation that will result in an illegal or unconscionable agreement.

Mediators...should not be guided by a desire for a high settlement rate.

Neutrals may agree to conduct an ADR process only when they are prepared to commit the attention essential to an effective process.

Neutrals accepting matters for an ADR process should satisfy the reasonable expectations of the parties concerning the timing of the process. A neutral should not allow a process to be unduly delayed by parties or their representatives.

The presence or absence of persons depends on the agreement of the parties and the neutral. The parties and neutral may agree that others may be excluded from particular sessions or from the entire process.
A neutral shall withdraw from an ADR process when incapable of serving or when unable to remain impartial.

A neutral may withdraw from an ADR process or postpone a session if the process is being used to further illegal or unconscionable conduct, or if a party is unable to participate due to drug, alcohol, or other physical or mental incapacity.

“Standards of Conduct for Mediators”
by Maryland Program for Mediator Excellence

VI. QUALITY OF THE PROCESS:

A. A mediator shall conduct mediation in accordance with these Standards.
   1. A mediator should agree to mediate only when the mediator is prepared to commit the attention essential to an effective mediation.
   2. A mediator should only accept cases when the mediator can satisfy the reasonable expectation of the parties concerning the timing of a mediation [session].
   3. The presence or absence of persons at a mediation depends on the agreement of the parties and the mediator. The parties and mediator may agree that others may be excluded from particular sessions or from all sessions.
   4. A mediator should promote honesty and candor between and among all participants, and a mediator shall not knowingly misrepresent any material fact or circumstance in the course of a mediation.
   5. The role of a mediator differs substantially from other professional roles. Mixing the role of a mediator and the role of another profession is problematic and thus, a mediator shall distinguish between the roles. A mediator may provide information that the mediator is qualified by training or experience to provide, only if the mediator can do so consistent with these Standards.
   6. A mediator shall not conduct a dispute resolution procedure other than mediation and label it mediation.
   7. A mediator may recommend, when appropriate, that parties consider resolving their dispute through arbitration, counseling, neutral evaluation or other processes.
   8. A mediator shall not undertake an additional dispute resolution role in the same matter without the consent of the parties. Before providing such service, a mediator shall inform the parties of the implications of the change in process and obtain their consent to the change. A mediator who undertakes such role assumes different duties and responsibilities that may be governed by other standards.
   9. If a mediation is being used to further criminal conduct, a mediator should take appropriate steps, if necessary, including postponing, withdrawing from or terminating the mediation.
   10. If a party appears to have difficulty comprehending the process, issues, or settlement options, or difficulty participating in a mediation, the mediator should explore the circumstances and potential accommodations, modifications or adjustments that would make possible the party’s capacity to comprehend, participate and exercise self-determination.

B. If a mediator is made aware of domestic abuse or violence among the parties, the mediator shall, if necessary, take appropriate steps including postponing, withdrawing from or terminating the mediation.

C. If a mediator believes that participant conduct, including that of the mediator, jeopardizes conducting a mediation consistent with these Standards, a mediator shall take appropriate steps including, if necessary, postponing, withdrawing from or terminating the mediation.
VII. ADVERTISING AND SOLICITATION:

A Neutral shall be Truthful in Advertising and Solicitation.

► Advertising or any other communication with the public concerning services offered or regarding the education, training, and expertise of the neutral shall be truthful.

Neutrals shall refrain from promises and guarantees of results.

Comments:
It is imperative that communications with the public educate and instill confidence in ADR processes.

In an advertisement or other communication to the public, a neutral may make reference to meeting state, national, or private organizations’ qualifications, only if the entity referred to has a procedure for qualifying neutrals and the neutral has been duly granted the requisite status.

“Standards of Conduct for Mediators”
by Maryland Program for Mediator Excellence

VII. ADVERTISING AND SOLICITATION:

A. A mediator shall be truthful and not misleading when advertising, soliciting or otherwise communicating the mediator’s qualifications, experience, services and fees.
   1. A mediator should not include any promises as to outcome in communications, including business cards, stationery, or computer-based communications.
   2. A mediator should only claim to meet the mediator qualifications of a governmental entity or private organization if that entity or organization has a recognized procedure for qualifying mediators and it grants such status to the mediator.
B. A mediator shall not solicit in a manner that gives an appearance of partiality for or against a party or otherwise undermines the integrity of the process.
C. A mediator shall not communicate to others, in promotional materials or through other forms of communication, the names of persons served without their permission.

VIII. FEES:

A Neutral shall fully Disclose and Explain the Basis of Compensation, Fees, and Charges to the Parties.

► The parties should be provided sufficient information about fees at the outset of an ADR process to determine if they wish to retain the services of a neutral. If a neutral charges fees the fees shall be reasonable, considering among other things, the service provided, the type and complexity of the matter, the expertise of the neutral, the time required, and the rates customary in the community...For clarity, a neutral should set down the fee arrangements in a written agreement.
Comments:
A neutral who withdraws from an ADR process should return any unearned fees to the parties. A neutral should not enter into a fee agreement which is contingent upon the result of the process or amount of the settlement.

Co-neutrals who share a fee should hold to standards of reasonableness in determining the allocation of fees.

While neutrals may refer cases to other ADR practitioners and to other types of service providers, a neutral should not accept a fee for referral of a matter to another neutral or to any other person. This prohibition does not apply to ADR service providers who subcontract with other ADR practitioners or who employ other ADR practitioners.

“Standards of Conduct for Mediators”
by Maryland Program for Mediator Excellence

VIII. FEES AND OTHER CHARGES:
A. A mediator shall provide each party or each party’s representative true and complete information about mediation fees, expenses and any other actual or potential charges that may be incurred in connection with a mediation.
1. If a mediator charges fees, the mediator should develop them in light of all relevant factors, including the type and complexity of the matter, the qualifications of the mediator, the time required and the rates customary for such mediation services.
2. A mediator’s fee arrangement should be in writing unless the parties request otherwise.

B. A mediator shall not charge fees in a manner that impairs a mediator’s impartiality.
1. A mediator should not enter into a fee agreement which is contingent upon the result of the mediation or amount of the settlement.
2. While a mediator may accept unequal fee payments from the parties, a mediator should not allow such a fee arrangement to adversely impact the mediator’s ability to conduct a mediation in an impartial manner.

X. OBLIGATIONS TO THE PROCESS:

Neutrals have a Duty to Improve their Skills and Advance the ADR Field.

Comment:
Neutrals are regarded as knowledgeable in the ADR field, and they have an obligation to use their knowledge to help educate the public about ADR, to make ADR accessible to those who would like to use it, to correct abuses, and to improve their professional skills and abilities.

“Standards of Conduct for Mediators”
by Maryland Program for Mediator Excellence

X. ADVANCEMENT OF MEDIATION PRACTICE:
A. A mediator should act in a manner that advances the practice of mediation...by engaging:
1. Fostering diversity within the field of mediation.
2. Striving to make mediation accessible to those who elect to use it, including providing services at a reduced
rate or on a pro bono basis as appropriate.

3. Participating in research when given the opportunity, including obtaining participant feedback when appropriate.

4. Participating in outreach and education efforts to assist the public in developing an improved understanding of, and appreciation for, mediation.

5. Assisting newer mediators through training, mentoring and networking.

B. A mediator should demonstrate respect for differing points of view within the field, seek to learn from other mediators and work together with other mediators to improve the profession and better serve people in conflict.

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PRACTICAL APPLICATION OF MEDIATOR STANDARDS

COMMUNITY-LAW ENFORCEMENT MEDIATION PROGRAM GUIDELINES
OFFICE OF THE INDEPENDENT MONITOR
CITY & COUNTY OF DENVER

Mediators are expected to adhere to standards of ethical practice that are embodied in “standards of mediation practice,” excerpted below:

**Self Determination:** Mediators shall respect and encourage the self-determination of participants in decisions regarding what process to use and regarding whether, and on what terms, to resolve their dispute.

**Informed Consent:** The mediator shall provide mediation services only with the informed consent of participants to participate in the specific mediation process offered by the mediator. The mediator shall explain the mediation process (including the dismissal of the Internal Affairs complaint upon an agreement to mediate), the roles of the participants, and confidentiality.

**Impartial Regard:** The mediator shall demonstrate and maintain a commitment to impartial regard by serving all participants at all times. A mediator shall withdraw from the mediation process if there are conflicts of interest or prior or present relationships with participants that may appear to compromise their impartiality, or continue only with the informed consent of all parties.

**Confidentiality:** The mediator and the parties to the mediation shall maintain the confidentiality of all information and communications provided in confidence during the mediation, pursuant to C.R.S. Section 13-22-207, and as specified in an “Agreement to Mediate” signed by the participants prior to mediating.

**Competence:** A mediator shall exercise his/her judgment and discretion as to whether s/he is competent to mediate a particular dispute, including in such judgment factors such as style of mediation, subject matter or the dispute, issues and participants involved. The mediator shall request appropriate assistance, withdraw or decline to serve if the necessary knowledge, skills and ability to mediate a particular dispute are lacking. The Monitor’s Office may arrange additional training for mediators relevant to community/law enforcement mediations.

**Encourage Good Faith Participation:** The mediator shall encourage participants to participate in good faith, lay ground rules for acceptable, respectful conduct, and to terminate any mediation in which one or both of the parties refuse to adhere to those rules or the fairness and integrity of mediation cannot be maintained. Neither party shall be permitted to use a mediation session as an opportunity to demean, insult or intimidate the other party.

**Fees:** The mediator shall not solicit or accept payment from participants additional to the fee paid by the City &
Dual-Role Limitations: The mediator shall not engage in any non-mediative, advocacy role during mediation.

XI. DEVELOPING CITIZEN POLICE-COMPLAINT MEDIATION PROGRAM:

COMMENTARY

Research has indicated that implementing a citizen police-complaint mediation program requires careful planning and preparation.

The word “mediation” itself is often misunderstood. Despite their regular use of some form of conflict resolution on the street, including some hybrid techniques that they may refer to as “mediation,” law enforcement officers frequently do not fully understand the mediation process. They often mistakenly believe that if they participate in mediation to resolve a complaint against themselves they will be required to apologize for something they did even when they did nothing wrong. They often mistakenly believe that they will be subjected to being berated by some irate complainant during a mediation session.

Likewise, complainants feel intimidated by meeting with the very officer that they had difficulty with in the recent past. Some genuinely believe that the only motive prompting the officer to participate in mediation is to “make the complaint go away.” Simply put, they doubt the officer’s sincerity. It is against this backdrop of doubts and misunderstanding that agency heads are called to plan and implement a citizen police-complaint mediation program.

Research indicates that much of this misinformation, and ultimately the under-utilization of mediation as a complaint resolution strategy, may be reduced or eliminated if both rank and file officers [labor organization] and community members are included in the development of the agency’s mediation program with the agency and the mediation provider.

There are a number of difficult questions that agency heads must answer when developing a complaint mediation program such as which types of complaints can and should be eligible for mediation; what criteria will be used to make this selection; and who will make this designation. In some instances, local ordinances may dictate these decisions; in others, an agency head may have the latitude to decide these matters. Having the input of individuals who are potential users of a complaint mediation program in which they both must VOLUNTARILY agree to participate seems to indicate that their input at the development stage can only increase the likelihood that they will willingly use the program.

The following reference material documents some of the concerns that agencies have encountered when developing their programs. It is hoped that by highlighting the issues faced by some pioneer mediation programs other agency heads will be better prepared as they develop and implement their agencies’ programs.

REFERENCE MATERIAL

DEVELOPING A CITIZEN POLICE-COMPLAINT MEDIATION PROGRAM:

“Establishing a successful mediation program requires careful consideration of several key issues.” 98

“Although mediation is widely used in many areas of American life, few programs offer mediation for citizen complaints..."
against police officers. Mediation is a complex enterprise, and many obstacles can arise in the course of establishing a program. For example, a broad consensus of opinion exists among experts in the field that not all citizen complaints should be mediated, especially use of force complaints. In addition, experienced mediators generally find that citizen complaint cases differ from other kinds of cases they have mediated because of the police officer’s inherent power. Moreover, many police officers are unenthusiastic about using mediation to resolve citizen complaints, fearing they may be forced to admit to things they did not do. This misconception is largely due to a lack of understanding of what mediation is and how the process works. Clearly, communities must address these and other issues before establishing a mediation program.”

In its evaluation of the Pasadena, California Police Department’s community member-police complaint mediation program PARC [the Police Assessment Resource Center] stated the following:

“The particular strength of the project was that its planning, design, and implementation used the very techniques that the Pasadena Program itself was intended to inculcate: dialog, inclusiveness, reconciliation, and consensus building. This open process sent a powerful message throughout the community and among the officers that the Pasadena Program would be fair and acceptable to all those involved.”

“In brief, at all stages of planning and implementing the project, Chief Melekian brought a wide spectrum of interested parties to the table. Notably, he invited the Pasadena police unions and community members into the planning and design process, thereby assuring the cooperation and support of groups and individuals who otherwise could have scuttled the project. The chief also included outside experts at the planning stage, including the WJCF[Western Justice Center Foundation] for its expertise in all areas of conflict resolution and community reconciliation.”

“...the planning and design process itself was an exercise in community-based dialog and mediation, signaling to the public at large the police department’s commitment to inclusiveness and power-sharing. The inclusion of the unions—whom other police chiefs might have deemed too adversarial and obstructive—proved to be a wise choice in Pasadena. It signaled to rank-and file officers and their representatives that there was great sensitivity to the concerns and fears of officers that mediation would simply prove to be an exercise in humiliation and forced apologies. The planners of the Pasadena Program carefully calibrated the carrots and sticks so that the officers, on balance, had more incentives to participate than reasons not to.”

“Why should planners take so much time? First, developing "layers of partnership" is important. A mediation program will bring together agencies that have not necessarily worked together in the past. The police department and the local mediation center, for example, may not have had a prior relationship. It takes time to develop trust and good working relationships. A mediation program may involve agencies that have had negative interactions (e.g., conflict or distrust) in the past. The police department and the independent citizen complaint agency, for example, may have inherited a legacy of conflict and distrust typically associated with the issue of citizen complaints. A good working relationship is essential because, in those jurisdictions where an independent complaint review agency exists, the agency serves as the intake point for complaints. The failure of many mediation programs to handle very many cases is due, in part, to distrust or even active opposition from the local police union. A good planning process includes union representatives and allows time to address concerns and build understanding and trust.

“A second important reason for proceeding slowly is that a number of issues need to be thought through and resolved in advance. For example, specific provisions in the union collective bargaining agreement may need to be addressed in the mediation process. Moreover, some states may have provisions in their open meetings or public records laws that have potential implications for a mediation program. As one official explained, it is far better to deal with problems in the initial planning stages and reach consensus than to have a crisis after a program has officially begun.”

One issue that needs to be addressed by all communities is the racial and ethnic composition of the local population. The planning committee needs to determine whether sizeable groups do not speak English, whether the complaint process is accessible to them, and whether the mediation program will be able to accommodate them.

“The PPD [Pasadena Police Department] itself addressed chronic fears and misconceptions of line officers about mediation of citizens’ complaints. Many officers mistakenly believed that they would be compelled to apologize or admit wrongdoing in mediation. Others thought that the complainant would be unreasonable or unpleasant, that they would be subject to a complainant’s verbal attack, or that their words would be twisted in a later legal proceeding. The program planners confronted these fears directly in trainings of all sworn personnel and intensive orientation for union officials and
“Union opposition is typically one of the main obstacles to successful mediation programs. The mediation program in Pasadena was not presented as a fully formed, settled program; rather, the union was involved in the project from the beginning, which allowed their concerns and issues to be heard, considered, and incorporated into the project. The union in Pasadena ensured that the concerns and interests of line officers were heard and considered, and the union’s cooperation in, and strong support of, the program resulted in high levels of cooperation by individual officers and helped build a foundation for long-term program success, as well.”

IDENTIFY LOCAL MEDIATION RESOURCES:

“...planning committee identified the local resources necessary for a successfully functioning mediation program, the most important of these being the source of program mediators. During the planning process, the planning committee should identify local mediation centers that might want to be affiliated with the program. If no formal mediation center exists, other sources of mediators (e.g., the local bar association) should be identified.

“Once a source of mediators has been identified, the planning committee should discuss financial arrangements that would be acceptable to prospective mediators. Some mediation programs pay individual mediators a fixed fee per case. Other programs rely on unpaid mediators but pay an administrative fee to a mediation center. The planning committee should also identify the prospective location or locations for mediation sessions. These locations need to be convenient for participants and neutral.

“Planning is crucial to the success of a mediation program... most existing citizen complaint mediation programs have extremely low caseloads. To a great extent this is due to a lack of understanding or opposition to the mediation of citizen complaints... there are many complex issues involved in the mediation of citizen complaints... these issues need to be planned for in advance. Careful planning can help to overcome potential problems. The most important lesson...is taking the time to plan and address all of the key issues in advance.”

COMMENTARY

As with any new agency program, especially one that can affect an officer’s career as much as complaint resolution can, adequate training for agency personnel is also essential if a new program such as complaint mediation is to be used to resolve community member complaints effectively. In as much as other agencies that have introduced a complaint mediation program to their personnel have experienced a great deal of misunderstanding, apprehension and reluctance by personnel to participate in the program, a well-thought out training program has helped to reduce officer apprehension and reluctance to participate. Experience has shown that many officers simply don’t know what to expect during a mediation session. They are unsure as to whether the mediator will, in fact, be impartial and neutral; whether they will be forced to apologize to the complainant; whether anything they say during the mediation session will be used against them by the agency or the complainant; what happens when a mediation session does not result in the complainant’s satisfaction or ends in an impasse; whether the complaint will show on their record even though they agreed to mediation; and similar questions. A well-developed agency training program can resolve all of those questions and others that may arise.

Training has been shown to be particularly important for those individuals at the complaint intake level as well as investigators and supervisors who may be in first contact with a complainant. Those individuals should be trained to adequately explain the agency’s complaint mediation program to a complainant. Supervisors should also be able to adequately explain the program and process to their employees so as to lessen the misunderstanding that may surround the program.

Likewise, agencies have found that a public information campaign which includes the publication and distribution of informational brochures as well as media coverage of the program and included on the agency’s website can promote participation by community members.
**REFERENCE MATERIAL**

**SUPPORT FROM OFFICERS:**

Support from police, including commanders, rank-and-file officers, and the local police union, is crucial to successfully creating and operating a mediation program that refers a significant number of cases for mediation.

“The most frequently cited obstacle to the creation of mediation programs was opposition from rank-and-file police officers and their unions...Officers oppose mediation for various reasons, the most common being that they oppose any process in which they might have to admit guilt or apologize. This opposition stems from two factors. First, despite the promised strict confidentiality of statements made during mediation, some officers fear that any admission might subsequently be used against them in a formal proceeding. A leading text on mediation explains that ‘reluctance to apologize may also be the product of rules of evidence that treat an apology as an admission of fault that can be used to prove wrongdoing.’

**LACK OF UNDERSTANDING OF MEDIATION:**

“The second most important factor inhibiting the development of mediation programs is a lack of understanding of mediation among police officers and citizens. To a great extent, this lack of understanding reflects the novel aspect of mediation in the context of policing...Of the vast body of literature on mediation and other ADR procedures, none addresses citizen complaints against police.”

“The PPD [Pasadena, Californian Police Department] itself addressed chronic fears and misconceptions of line officers about mediation of citizens’ complaints. Many officers mistakenly believed that they would be compelled to apologize or admit wrongdoing in mediation. Others thought that the complainant would be unreasonable or unpleasant, that they would be subject to a complainant’s verbal attack, or that their words would be twisted in a later legal proceeding. The program planners confronted these fears directly in trainings of all sworn personnel and intensive orientation for union officials and department executives. Officers could attend all training sessions, including those principally directed at other groups.”

“Prior to beginning the mediations and public dialogs, the program planners conducted four comprehensive, in-depth orientations and training for Pasadena Police Department (PPD) officers and executives, the union hierarchy, community members, and potential mediators.

The training addressed the following:
- the mediation process in general;
- all elements of the Pasadena Program;
- the use of two mediators functioning together (co-mediation) in each mediation
- role-play with scenarios geared toward police-community issues
- opportunities to hear from and interact with Pasadena residents and police officers
- assessment of volunteers’ readiness and appropriateness to mediate in the program, including the ability to maintain neutrality with respect to law enforcement
- an assessment of potential mediators’ ability to handle highly emotionally charged interactions and conflicts.”
...all Pasadena police officers received training in the mediation program in 90-minute sessions.” 113

TRAINING – AN OPPORTUNITY TO EXPLAIN OFFICER INCENTIVES TO MEDIATE:

An agency’s mediation training provides an ideal opportunity to present officer incentives to agree to mediate as set by agency policy such as:

• Complaints resolved through mediation are deemed withdrawn and cannot be appealed.
• Complaints that ultimately are mediated may not be used for purposes of promotion, transfer, or discipline.
• Mediations are protected by confidentiality laws that prohibit statements made during mediation to be used in future legal proceedings. Any notes taken during mediation must be destroyed.
• If at any point officers wish to disengage from the process, they may, and the complaint will be referred back to internal affairs for a formal investigation. In that case, the complaint will proceed through the regular investigation as if mediation never existed.

“...mediation program is offered as an alternative to the traditional complaint process. If an officer mediates, there is no Internal Affairs investigation, no disciplinary action, and no record of the complaint on the officer’s service record.” 114

“...complaint will be dismissed upon the completion of a mediation session administered by the Monitor’s Office.” 115

COMMENTARY

A number of proponents of mediation suggest that since community members will be one of the chief participants in a complaint mediation program they have a vested interest in helping to develop a successful program. Likewise, since the mediation provider is the recognized “expert” in mediation, representatives should also assist the law enforcement agency in developing the agency’s program. As research has indicated, in a significant number of police complaint mediation programs nationwide the inclusion of both community members and representatives from the mediation provider strengthens and adds credibility to the complaint mediation programs adopted by law enforcement agencies.

REFERENCE MATERIAL

Participation of Independent Mediation Provider and Community Representatives:

In its evaluation of the Pasadena, California Complaint Mediation Program for COPS, the Police Resource Assessment Center commented about the participation of the community in the following words:

“In brief, at all stages of planning and implementing the project, [Pasadena, California Police Department] brought a wide spectrum of interested parties to the table. Notably, [the Department] invited the Pasadena police unions and community members into the planning and design process, thereby assuring the cooperation and support of groups and individuals who otherwise could have scuttled the project...[the Pasadena Police Department] also included outside experts at the planning stage, including the WJCF [the Western Justice Center] for its expertise in all areas of conflict resolution and community reconciliation.

“...the planning and design process itself was an exercise in community-based dialog and mediation, signaling to the public at large the police department’s commitment to inclusiveness and power-sharing.” 116

Many Pasadena stakeholders were invited to participate in the planning process. In addition to the PPD, its internal affairs unit, and its chief, the police unions—the Pasadena Police Officers Association and the Pasadena Police Sergeants Association—were included in the planning process, as were the Los Angeles County Bar Association and the City Attorney’s Office. The importance of having everyone at the table was emphasized by one program official:

‘I think each one of the organizations brings its own expertise into the process. Collaboration like this is complicated and requires strong and open communication. Sometimes, during the process, it’s been more challenging and sometimes it’s worked better, but I do think that it’s been a useful and positive collaboration...What was good about [the discussions] was that you had everybody in the room... 117 In “Mediating Citizens’ Complaints” the authors made the following comments about involving various stakeholders in the complaint mediation program planning process:

“In developing new mediation programs, communities need to plan carefully. Lack of planning is probably one of the main
reasons so many existing mediation programs handle so few cases. Good planning includes identifying and resolving key issues in advance, securing adequate funding, and developing full and accurate public understanding of the mediation process. 118

“Why should planners take so much time? ... developing ‘layers of partnership’ is important. A mediation program will bring together agencies [and individuals] that have not necessarily worked together in the past. The police department and the local mediation center, for example, may not have had a prior relationship. It takes time to develop trust and good working relationships...” 119

“One of the key elements in the SDPD [San Diego Police Department] planning process was involvement of all relevant stakeholders in the citizen complaint process...members of the mediation planning committee included:

- SDPD command officers, including commanders responsible for the Internal Affairs Unit.
- Rank and file officers and a representative of the police officer’s collective bargaining organization.
- The head of the SDPD EEO office who had successful experience with mediating internal employee disputes.
- The director of the local mediation center.
- The director of the local citizen oversight agency.
- Representatives of the community. 120

XII. MEDIATION PROCESS:

COMMENTARY

The following pages offer a general overview of the mediation process as gathered from a variety of sources. It is not intended to be a detailed explanation of how particular mediation sessions will evolve. It is intended to show that the mediation process is reasonably straightforward—bringing two differing parties together in a safe environment, in the presence of a third party whose job it is to facilitate discussion, and let them talk through their differences. Hopefully, that discussion will lead to a resolution of the parties’ differences. However, in the event there is not a mutual agreement reached, both parties have had the opportunity to voice their opinion and concerns. The mediation process itself needs only be fairly and impartially conducted.

Both agency personnel and community members may be more willing to accept mediation as a complaint resolution technique when they understand the techniques that are used to implement the process.

REFERENCE MATERIAL

THE MEDIATION PROCESS:

“Mediation is a process for settling disputes based on the voluntary participation of the disputing parties. It emphasizes dialog between the parties and is a safe environment where the parties can meet and air their views about the events or issues that created the dispute. The process is intended to develop mutual understanding between the conflicting parties...mediation gives the participants control over the final resolution of the problem.

“A neutral third party, a trained professional mediator, facilitates the mediation process. The mediator does not try to influence or pressure either party to reach an agreement or resolve the dispute in any particular way. The disputing parties own the process.

“Mediation is a confidential process. Statements made by any of the parties may not be subsequently used in a formal legal proceeding. Thus, each side can freely discuss the issue at hand.” 121

“The basic goals of mediation differ from those of traditional, formal, and legalistic dispute resolution procedures, including traditional procedures for resolving citizen complaints. Traditional dispute resolution focuses on fact finding, pinpointing responsibility, determining guilt or innocence, and punishing those found guilty. Traditional citizen complaint review procedures, for example, focus on determining whether or not the officer committed the alleged misconduct. In contrast, mediation focuses on understanding, problem solving, and reconciliation.” 122
“Mediation does not focus on punishment or a “right-wrong” determination. Mediation is conciliatory in nature, emphasizing resolution of the conflict and focusing on the outcomes sought by the parties. This approach is especially useful in the context of the subset of citizens’ complaints against the police that are based on perceptions of rudeness and discourtesy, or simple misunderstandings, which mediation can often address better than an investigative system.” 123

“Mediation of citizens’ complaints is in its infancy, making it difficult to determine long-term program effects. Research is sparse because few mediation programs exist and few cases are mediated. Anecdotal evidence shows that participants in these programs are generally satisfied with the process and feel that it gave them a chance to explain themselves and better understand the other’s perspective.” 124

“The procedures for mediation of citizens’ complaints are no different than those used in other mediations. The mediators welcome the parties and allow the parties to set mutually agreed on ground rules, such as those regarding courtesy and mutual respect. The parties must sign a mediation consent and confidentiality agreement. Complainants are asked to speak first and explain why they requested mediation and what happened from their perspective; the officers then explain the incident from their perspective. Next, the mediators facilitate a constructive dialog, analyzing why the incident happened, why the parties behaved as they did, and what, if anything, could have been done in a better way. This discussion continues until the parties feel that their concerns have been addressed and they come to a mutually agreed-on resolution. An example of a mutually agreed-on resolution is when both parties agree that they now have a better understanding of the other’s perspective. Either party is free to terminate the mediation before a resolution is reached…” 125

**INCLUSIVE MEDIATION:**

As was mentioned previously in this Guide Community Mediation Maryland uses both the INCLUSIVE MEDIATION FRAMEWORK and the TRANSFORMATIVE MEDIATION FRAMEWORK as the primary techniques in mediating citizen police complaints. To reiterate:

“The goal of INCLUSIVE mediation is to support the participants in having difficult conversations and to guide a problem solving process to develop solutions that meet everyone’s needs, with all content decisions made by the participants.

“In the INCLUSIVE framework, co-mediation is almost always used. INCLUSIVE mediators do not set ground rules. Mediators focus on strategically listening for values, feelings, and topics and reflect these back to the participants using language that captures the intensity the participants expressed. Mediators check to make sure that the participants feel the reflection is accurate. The mediators attempt to understand each participant, thus making it more possible for them to understand each other. Mediators follow a defined process that includes

► time for participants to talk about whatever they chose;
► build clarity as to what is important;
► identify topics participants want to resolve;
► identify the goals each participant has for each topic;
► brainstorm options;
► consider each of the generated options in terms of which would meet all participants’ goals; and
► determine areas of agreement, if any.

“INCLUSIVE mediators rarely use caucuses. They might do so in situations where mediators need to check if mediation is a good fit for the conflict.

“If agreement is reached, it can be written by the mediator based on the direction of the participants, and it is reviewed and confirmed by all participants in the mediation.

“In INCLUSIVE mediation, the mediators guide the process and the participants are in charge of whether agreement or any other outcome is reached.

“One way to divide mediator techniques is listening, reflecting, reframing, summarizing, providing information, making suggestions, and persuading. INCLUSIVE mediators would use listening, reflecting, and some summarizing, and do not use reframing, providing information, making suggestions, or persuading strategies.” 126

**TRANSFORMATIVE MEDIATION:**
“The goal of TRANSFORMATIVE mediation is to work with people who are in conflict in order to help them change the quality of their interactions from negative and destructive to positive and constructive as they discuss and explore various topics and possibilities for resolution.”

Transformative mediators look for barriers to effective interactions and assist the participants in dealing with and removing them. The mediators look for and affirm shifts in empowerment (i.e., addressing each other more directly, growing more articulate and fluent, and showing more confidence and self-reliance) and recognition (i.e., talking to rather than about each other, acknowledging new information, and becoming more able to see the other’s point of view), which are achieved by the participants themselves.

Mediators reflect back, using insofar as possible the same words and emotional expression used by the participants, highlighting differences as well as commonalities between the participants and ask open-ended questions to aid in broader understanding and quality decision making.

If agreement is reached, it is written by the mediator at the direction of the participants, and then reviewed and confirmed by all participants to the mediation. In transformative mediation, for the most part, mediation occurs with everyone in the same room relying minimally on caucus, which may be requested by the participants or the mediator. In transformative mediation, the participants help shape the process with the mediator. The mediator’s goals are to assist with removing the barriers and fostering quality interaction and decision making from which agreement and other outcomes chosen by the participants emerge.

One way to divide mediator techniques is listening, reflecting, reframing, summarizing, providing information, making suggestions, and persuading. Transformative mediators rely primarily on listening, reflecting, and summarizing, with minimal providing information and do not rely on reframing, persuading or making suggestions.”

MEDIATION SESSION:

STRUCTURE AND PROCESS:

Though referred to as an informal process, mediation is structured in that it focuses the parties on generating options for resolving their differences. A mediation session is not always a linear event; It can occasionally “bounce” back and forth between a joint session and caucus, or between caucuses, as required by circumstances and the mediator’s discretion. Most mediators use a fairly standard procedure similar to the one outlined below that has been developed from a variety of sources:

1. Introduction/mediator’s opening remarks:

“The mediator introduces the parties, explains the mediation process, and sets forth ground rules for the session.”

“The mediator’s opening remarks formally initiate the mediation session. This is probably the mediator’s first in-person contact with the parties together, focused on the process that is about to unfold. It is, therefore, a crucial part of the proceedings. Aside from establishing the ground rules and general procedures for the mediation session, a good opening should set the tone for the mediation, establish the mediator’s authority, and build trust and confidence in the mediator as a credible and impartial facilitator. Some mediators use a prepared opening statement and/or check list to ensure that they cover all appropriate points.”

During the mediator’s introduction/opening remarks he/she will, in all likelihood:

► Introduce all participants/attendees to one another;
► Qualify self as mediator:
  ■ specialized training; ■ part of mediation/conflict resolution organization; ■ experience;
► Explain role as mediator:
  ■ facilitate discussion between participants;
  ■ does not judge/take sides/evaluate participant’s claims;
  ■ no power/authority/intention to impose a settlement/agreement;
► Assert neutrality/impartiality:
  ■ disclose any personal or professional conflicts of interest issues, if any;
► Explain the goal of the mediation session;
► Explain that mediation is NOT a legal proceeding, i.e. is not bound by rules of evidence, etc.
2. Problem determination/opening participant statements:

“Each party has the opportunity to present an opening statement. The party asserting the claim being mediated (the complainant) goes first. The mediator should allow the party to give his or her side of the dispute, uninterrupted by the other side. This may be the first time that each party hears the other side’s view on the issues. Because of this, the mediator should allow both parties to fully explain their side even if they become emotional. Venting by parties often is the first step in moving toward resolution. Sometimes a party may want to use charts or graphs or other exhibits [electronic video of event/encounter] during their opening; their use can be helpful, but this is the mediator’s discretionary call.

“Many times the issues as defined by the parties in their openings are different from those articulated in the complaint or grievance. Often the mediator can learn from a party’s opening statement the hidden concerns or interests motivating the dispute and sometimes can even discover the real source of the problem. Parties’ opening statements can provide a clue as to how far apart the parties are at the outset. This will give the mediator an initial view of the challenge ahead... the attitudes of the parties and the ability of each party to articulate their positions will also be evident. This information will assist the mediator in determining...how much the mediator will need to assist the parties in understanding the other party’s views on the issues.

3. Summary/issue identification/beginning of discussion:

“The mediator summarizes the problem in a neutral and evenhanded manner.”

“The mediator helps the two parties identify specific issues that need to be mediated. The mediator must not introduce his or her interpretation of the dispute. In mediation, dialog between the two parties is the most important part of the process.”

“The mediator might start the joint session by summarizing the parties’ opening statements to ensure accurate understanding of the issues as they see them, and asking each side what they hope to achieve in mediation. Clarifying questions can be asked of each party if necessary to identify or isolate the issues and interests. This is also an opportunity to begin assisting the parties in shifting the focus from their positions to a discussion of their underlying interests.

“The mediator may prefer that the parties direct their comments to each other rather than the mediator. The amount and speed of the mediator’s withdrawal from the conversation is case-specific and depends on how the parties are able to interact, and whether the emotions or communication abilities of the parties make unassisted, face-to-face discussion possible...
productive, or even possible. If the parties are unable to communicate with each other, the mediator should consider serving as a buffer between the two, even if that means moving between caucuses rather than presiding over increasingly contentious joint sessions.” 129

5. Development of alternatives:

The mediator helps the two parties discuss alternative ways to resolve the dispute. Again, the mediator should not impose a solution (e.g., "Joe, why don’t you apologize to Jack"). The emphasis should be on dialog and not on a quick settlement (e.g., "It’s getting late; we need to wrap this thing up").

Resolution does NOT require an apology:

Research has shown that one of the most re-occurring objections from law enforcement officers to the use of mediation as a complaint resolution option is the mistaken belief that participating in mediation is nothing more than a catalyst for having an officer “apologize” to a complainant for his/her actions. In a study of the Pasadena [California] Police-Community Mediation and Dialog Program researchers from the Police Assessment Resource Center stated:

The PPD [Pasadena Police Department] itself addressed chronic fears and misconceptions of line officers about mediation of citizens’ complaints. Many officers mistakenly believed that they would be compelled to apologize or admit wrong doing in mediation. Others thought that the complainant would be unreasonable or unpleasant, that they would be subject to a complainant’s verbal attack, or that their words would be twisted in a later legal proceeding. The program planners confronted these fears directly in trainings of all sworn personnel and intensive orientation for union officials and department executives

Program leaders were surprised by how sensitive officers were about the perception that they would have to apologize. As one mediator noted during early training sessions with officers:

One of the very first things that the police were saying is that they wouldn’t be apologizing for their actions. They were very clear that this was a situation where they were learning to communicate about their jobs and roles, but they were only going to take cases where their behavior was already, in their minds, appropriate. This was especially the impression from command, who didn’t seem like they expected to have their police officers to run around apologizing.

“As a sergeant similarly noted, ‘officers were concerned that resolution could [only] be achieved by patronizing the complainant with an apology’ because of an ‘expectation [that] the officers would apologize’ during the mediation session. Consequently, the leaders took steps to emphasize to police officers that apologies are only one of several successful outcomes—that a mediator does not try to push for an apology for its own sake or try to influence the choice of the parties about how best to resolve the dispute. A lesson, therefore, from this process is that officers will not invest fully in a mediation program unless they accept that a mediation session does not require an apology if the discussion between officer and community member does not warrant or proceed naturally to such a resolution. As has occurred in similar programs in Portland and Denver, successful mediations build momentum; as more cases are mediated successfully and officers discuss their general experiences with one another, officers feel less threatened by the process and embrace mediation as a tool for personal and professional growth. 130

6. Selection of appropriate alternatives/mediation agreements.

“The mediator helps the two parties agree on an appropriate resolution.

“In cases that settle, the mediator works with the parties to refine the terms of the settlement to ensure common understanding and agreement. Research indicates that settlement during citizen police complaint mediation sessions frequently is simply an acknowledgement by one or both sides that they understand why the other party acted the way that they did during the incident that provoked the complaint. In other instances there have been more creative agreements that include a citizen-complainant’s willingness to attend a citizen-police academy or to participate in a “ride-along” program or
similar law enforcement outreach program and officers agreeing to engage in some type of community sponsored activity with the complainant.

“The typical outcome of a successful mediation session is an understanding that the complaint is resolved to the satisfaction of both parties. This may involve an apology from the officer. Experienced mediators report that officers are reluctant to offer explicit apologies. Several mediators in New York explained that on several occasions, police officers have indirectly apologized to citizens. For example, instead of an officer saying he or she is sorry, the officer might state that he or she is having a bad day or that he or she is sorry the complainant felt (or experienced the incident) that way. In many cases, the result may be that the two parties agree that they have had a chance to express themselves and hear the other's response. In effect, they agree to disagree about the events. Because one of the major goals of mediation is to build understanding, the process of hearing and agreeing to disagree is often sufficient.

Once the mediator is satisfied that the terms accurately reflect the parties’ actual intent and that all issues have been resolved to the parties’ mutual satisfaction, the terms may be reduced to a written settlement statement for review and signature by both parties. In the case of citizen police complaint mediation sessions this written agreement, while not binding as is the case with court-ordered mediation, is intended to remind the participants of their commitment to complete the mediation process by honoring their agreement. In citizen police-complaint mediation the final outcome does not involve the exchange of tangible resources such as the payment of child support in a divorce settlement or the transfer of assets in the settlement of a commercial dispute. Instead, the agreement involves an understanding that both sides are satisfied with what has been said. However, when a creative outcome such as the ones described above are agreed to it is important to document an understanding of what activity will occur and that it was satisfactory. Failure of one side or the other to fulfill the terms of the agreement would be considered unsuccessful mediation.” This written understanding may be sealed and remain confidential once the activity occurs and the case is closed as a successful mediation.”

7. Conclusion/Closure:

At some point, the mediation process will come to a close. This can occur in one of two ways: with an agreement and settlement, or with no agreement (impasse).

When settlement no longer seems possible, i.e. the parties are in stalemate and no further movement appears likely, or one or both parties have removed themselves from the mediation altogether, the mediator should declare an impasse and terminate the session. Despite the failure to reach a resolution, the mediator should thank the parties for availing themselves of the process and encourage them by recounting any progress that was made during the mediation (including perhaps the mere fact that they actually talked to each other).

“The mediation session concludes with a clear statement of an agreement on the terms of the resolution.”

SESSION LENGTH:

There is no fixed length for a mediation session. Nonetheless, most programs plan on sessions lasting one (1) to two (2) hours. “The mediation session should not be so short that participants feel forced into an agreement, but it should also not drag on too long. The mediator should balance keeping the parties focused on reaching an agreement without forcing them into one. If the session is unfocused, with the two parties not addressing the real issues related to the complaint, everyone is likely to be unhappy with the process.”

Community Mediation Maryland normally schedules mediation sessions to last two (2) hours with the mediator being given the options of ending the session early or asking the participants to continue the session as appropriate.

THE USE OF VIDEO RECORDINGS DURING MEDIATION:

COMMENTARY
With the implementation of body-worn camera programs by various law enforcement agencies and the almost universal presence of cell phones with video recording capability the availability of video footage of a community member-police encounter, in particular an encounter that leads to a community member complaint has increased significantly. The question as to whether that footage should or should not be used during a mediation session is still being considered. Research indicates that the mediator should control whether or not video recordings should be played during mediation sessions. The current opinion is that if a video recording will assist the parties in resolving a complaint then the mediator should allow the parties to view it if they both agree to do so. If, however, one party wants to use a video-recording to “prove that he/she is right about the incident” then the mediator should not allow a video to be played. In any case, because mediation should be controlled by the parties involved in the incident, the mediator should require that both parties agree to the viewing of the video recording during the mediation session.  

Agency heads should clarify this point with the mediation provider during the planning stage of the mediation program.

DOCUMENTATION OF MEDIATION SESSION:

“A successful mediation session should be documented with a statement to that effect, signed by both parties and the mediator. Because of confidentiality requirements, the document must not contain details about either the nature of the complaint or the final agreement. Documentation is necessary to prevent either side from attempting to reopen the case at some later date and to formally notify the police department that the complaint was successfully mediated.”

XIII. COMPLETED MEDIATION SESSION:

COMMENTARY

The questions “what constitutes an unsuccessful mediation” and “how to handle that event if it occurs” are two issues that create a dilemma for agency heads considering implementing a mediation program as part of the agency’s complaint resolution process. Some agencies hold the opinion that a mediation session must be successfully completed before a complaint can be considered resolved, i.e. the parties must come to some type of mutual agreement about the situation. Other agencies believe that once a mediation session has begun and the mediator determines that both parties have acted in good faith during the session, even though a mutually agreed upon agreement/settlement has not been reached, the mediation has been a success. Still others believe that if a complainant agrees to an offer of mediation and signs an agreement-to-mediate the complaint should no longer be subject to investigation; they hold to the position that despite the fact that an agreement/settlement has not been agreed to does not diminish the fact that the two parties exchanged their perspectives and attempted to meet a mutual agreement; in this case, an impasse is not viewed as a failure. Likewise, the question arises as to “what happens to a complaint if the complainant fails to appear for a scheduled mediation session without cause?” Research has shown that the answers to both concerns have a significant impact on the willingness of officers to voluntarily participate in a mediation program and need to be addressed in an agency’s policy and procedure.

Agency heads will have to carefully consider whether citizen complaints will be further investigated once mediation has been offered and accepted by both parties, a session has been scheduled and sometimes completed with no agreement being made, or the complainant fails to appear as scheduled. This decision should be clearly stated in the agency’s mediation policy and made clear to the citizen-complainant during the initial notification and offer of mediation. Some agencies include this information in any public information brochure that explains their citizen police-complaint mediation program and/or on their website. They also include the appropriate wording in their agreement to mediate document which complainants who chose mediation are asked to sign.

The following section provides several points of view for consideration.

UNRESOLVED DIFFERENCES/IMPASSE:
In “Mediating Citizen Complaints Against Police Officers,” one of the first COPS publications to examine mediation as a citizen police-complaint resolution tool in 1990 the authors stated:

“If the two parties cannot reach a satisfactory agreement, the mediation is officially unsuccessful. Mediation may fail because one or both sides decide that no satisfactory resolution has been reached. The option of terminating a mediation session is the most important safeguard for ensuring that both sides make a sincere effort. The officer cannot stonewall and refuse to acknowledge what the complainant is saying. Equally important, the complainant cannot use the session simply to berate the officer. When a mediation session appears to be failing, the mediator should try to help the parties reach an understanding but should not coerce a settlement... when the mediation is unsuccessful the complaint is returned to the police department or citizen oversight agency for investigation in the traditional manner.

“At least one important exception to the standard case outcome process is found in Portland, Oregon. There a complaint is "closed" once it is referred for mediation, regardless of the outcome. Program officials are instructed to explain in advance to complainants that "once the mediation begins, the Internal Affairs Division will not continue with the investigation of the complaint." Thus, the initial Consent to Mediate form constitutes completion of a "successful" mediation.

"Considerable disagreement exists over the wisdom of the Portland approach. Many experts think that it undermines the basic purpose of mediation, which is to get both parties to discuss the issue at hand, listen to each other and reach an acceptable agreement. In theory, an officer in Portland could refuse to participate meaningfully (e.g. "stonewall") and yet still have the complaint officially recorded as a successful mediation. Similarly, a citizen could refuse to engage in meaningful participation and/or get angry and yell at the officer, and the complaint would be recorded as successfully mediated. After much discussion with experts in the field, we conclude that this aspect of the Portland program is not advisable. The process not only undermines the basic goals of mediation but also jeopardizes police accountability.”

In a later COPS study entitled, Evaluation of a Pilot Community Policing Program: The Pasadena Police-Community Mediation and Dialog Program, conducted by the Police Assessment Resource Center in 2006, the authors concluded:

“Pasadena police officers have a strong incentive to agree to mediation. If the complaint is successfully resolved through mediation, there will be no further investigation and no adverse entries in the officer’s personnel file. After mediation, the case is closed and is not subject to appeal. 138

In 2010, the Denver Police Department, whose complaint investigation and disciplinary processes are overseen by the Office of Independent Monitor which was created by local law, revised the standard operating procedures by which its Community Law Enforcement Mediation Program is governed to include the following:

The Mediation Program is defined in that SOP as:

II. Complainant’s consent to Mediate (by mediation vendor):
   iv. The program uses a mediation style often referred to as “facilitated conversations” in which there is not a requirement to reach an agreement, to make any promises, or to change behavior. Rather, a facilitated conversation style of mediation gives both parties the opportunity to explain their perspectives and to better understand the perspective of the other person(s).

II. Mediation Procedures:
   e. If a complainant fails to appear for a scheduled mediation, without good cause as determined by the Chief of Police or his designee, the involved officer(s) will be provided with the choice of either rescheduling the mediation or having the case dismissed by IAB.
   f. If any of the involved officers fail to appear for a previously scheduled mediation, without good cause, the Monitor will notify IAB so that appropriate action can be taken. The complaint may then be processed by IAB as per normal policies and procedures.
   g. "Upon completion of the mediation, the complaint will be dismissed. No new complaint shall be accepted based on the conduct of an officer during mediation. The mediation session shall be confidential...and there shall be no
Case Closeout (by OIM staff):
1. If a mediation session is conducted, OIM staff forwards the mediation vendor’s closing letter to IAB with a request to close out the complaint in the police database...No further communication with the complainant(s) or the involved officer(s) is necessary.
2. If mediation fallout (complainant failure to appear):
   i. OIM writes declination letter to the complainant based on the information provided by the mediation vendor close-out letter.
   ii. A copy of the OIM declination letter is sent to IAB, advising that the case should be closed in the police database as “decline – complainant withdrawal.”
   iii. All correspondence and actions will be archived and/or documented.
   iv. If the mediation fallout is due to an action or failure to act by an involved officer, the complaint will be referred back to IAB for any appropriate personnel action.

The Calvert County Sheriff’s Office, which developed the first Citizen Police-Complaint Mediation Program in Maryland, states, in part, in its Standard Operating Procedure entitled “Investigation of Complaints Against Personnel:”

3.3 Mediation:

The OPS [Office of Professional Standards] will identify those cases during the assessment phase where the citizen/police officer may benefit from a face-to-face dialogue that will enable them to voice their different perspectives based on their interaction with one another.

Identified mediation cases will then be forwarded to the mediation center for referral. Mediation is a voluntary, confidential process in which both parties must agree to attend. If either party does not agree attend mediation, then the complaint will be assigned for investigation and the traditional process will take place. If both parties agree to mediation, then there will be no further investigation. The case will be closed with mediation being the resolution. Mediated cases will not be made part of the respondent’s file.

Note: If both parties agree to mediation the officer must make a concerted effort and participate during the process. If it is found that the officer did not make a concerted effort during the process, then the case will be sent back to OPS, at which time the case will be assigned for investigation.

COMPLAINT FILE NOTATION:

A case which has been mediated will be sealed and a finding of “mediation” will be entered into the officers file. Both parties will receive a letter stating mediation had been held and the issue fully resolved. No other investigation will occur involving those events covered by mediation.

MAINTAINING MEDIATION RECORDS:

“A successful mediation session should be documented with a statement to that effect signed by both parties and the mediator. Because of confidentiality requirements, the document must not contain details about either the nature of the complaint or the final agreement. Documentation is necessary to prevent either side from attempting to reopen the case at some later date and to formally notify the police department that the complaint was successfully mediated.”

It is suggested that both the mediator provider and the law enforcement agency retain a copy of the Letter of Agreement to Mediate/Confidentiality Agreement and the mediator’s letter of conclusion to document the mediation session. Because there should be no other notes or other records generated from the mediation session these two documents should suffice to
document the mediation session and the resolution of the complaint.

**APPEALS OF MEDIATION:**

The mediation session is a self-providing process, i.e. the participants decide the outcome of the mediation effort and resolve the complaint. While it highly unlikely that a participant would consider appealing the outcome of a mediation session it should be stated in agency policy and in an agency’s public informational material that the outcome of mediation is final and the complaint is resolved. It is suggested that an agency consider wording in its mediation policy and procedure that as long as the mediator believes that the officer participated in “good faith” in the session the officer’s participation in the mediation session is sufficient to resolve the complaint and no further investigation is required.

If the citizen withdraws from the mediation session or fails to show for the scheduled session without good cause, the agency should reserve the right to determine whether the complaint has been resolved by the willingness of the officer to mediate the complaint or whether the complaint should be investigated. While it is highly unlikely that an individual will withdraw from mediation once he/she has appeared for the session, that possibility does exist and an agency should consider its response to that action. **Agency personnel should also be aware of the agency’s planned response in the event that a complainant withdraws from a mediation session without cause.**

**XIV. MEDIATION PROGRAM EVALUATION AND REVIEW:**

**COMMENTARY**

*The question as to whether mediation can effectively resolve community member complaints against law enforcement officers has not been clearly established. While the number of community member-police complaint mediation programs is increasing, there have not been a sufficient number of mediated complaints to determine if the mediation process is effective. Therefore, it is recommended that agencies that implement a community member-police complaint mediation program evaluate the outcomes of their mediation programs.*

*The following section provides a series of questions that can be asked of mediation participants in follow-up surveys.*

**REFERENCE MATERIAL**

“Ongoing monitoring and evaluation is necessary to ensure that the program is working properly and meeting its objectives. Formal program evaluation can help document successes and identify problems that need attention. Unfortunately, little is known about the actual effect of mediating citizen complaints against police officers. Only a few programs have mediated enough cases to enable even modest evaluations.”

**MEDIATION SATISFACTION FOLLOW-UP SURVEY:**

**EFFECT ON PARTICIPANTS:**

**CITIZEN COMPLAINANTS:**

1. Does mediation provide a more satisfactory experience for citizen complainants than traditional complaint investigation
procedures? Specifically:
- Are complainants more satisfied with the process?
- Are complainants more satisfied with the outcomes of mediation?

2. Does mediation provide citizen complainants with a better understanding of policing and police officers than traditional complaint investigation procedures?

POLICE OFFICERS:
3. Does mediation offer police officers with a more satisfactory experience than traditional complaint investigation procedures? Specifically:
- Are officers more satisfied with the process?
- Are officers more satisfied with the outcomes?

4. Do officers gain a better understanding of citizens and citizen complaints through mediation than through traditional complaint investigation procedures?

POLICE ACCOUNTABILITY:
5. Do individual officers who resolve complaints through mediation have fewer complaints filed against them?
6. Do officers experienced in mediation have measurably different attitudes about citizens, citizen complaints, and complaint procedures than officers inexperienced in mediation?

POLICE-COMMUNITY RELATIONS:
7. Does mediation help to lessen conflict between the police and racial/ethnic minority communities? Specifically:
  - Do citizen complainants who experience mediation have a more positive attitude toward police than complainants who do not choose mediation or citizens in the general population?
  - Do police officers experienced in mediation have a more positive attitude toward citizens of different racial/ethnic groups than officers inexperienced in mediation?

8. Does the existence of a mediation program enhance trust and confidence in police among racial/ethnic minority group leaders?

COMMUNITY POLICING:
9. Does a mediation program contribute positively to community policing? Specifically:
  - Do citizen complainants perceive a connection between the goals of mediation and the goals of community policing?
  - Do police officers perceive a connection between the goals of mediation and the goals of community policing?

CITIZEN COMPLAINT PROCESS:
10. Are mediated complaints resolved more quickly than investigated complaints?
11. Is mediating complaints less expensive than investigating complaints?
12. Assuming evidence shows that mediation provides a more satisfactory experience for complainants, does the existence of a mediation program lead to an increase in the number of complaints filed?

CREATION OF MEDIATION PROGRAMS:
13. What factors contributed to the creation of a citizen complaint mediation program in your local community? What were the most important factors?
  - Community leadership?
  - Police department leadership?
14. What factors inhibit the creation of a citizen complaint mediation program?

- Opposition from police department leadership?
- Opposition from the rank and file and the police union?
- A lack of support from elected officials?
- A lack of financial resources?
- The absence of a supportive ADR culture in the local community?
- A lack of support from the local community?
- A misunderstanding/mistrust of the mediation process?

DEVELOPING A SIGNIFICANT CASELoad:

15. What factors contribute to or inhibit the development and maintenance of a reasonable mediation caseload?

- The quality of informational materials available to the public and to agency personnel?
- Support from police department leadership?
- Support from the police rank and file or union?
- Adequate and dependable financial support?
- Location of and accessibility to mediation sessions?

16. What factors account for a significant change in caseloads over time (increase or decrease)?

- Increased public awareness of and satisfaction with the mediation program?
- Increase in police misconduct?
- Problems with administration of the mediation program (e.g. staff shortages, client dissatisfaction with services, etc.)?
- Decrease in police misconduct? 145

PARTICIPANT EXIT SATISFACTION SURVEY:

Several agencies with mediation programs ask participants to complete a brief survey immediately following the mediation session while the experience is fresh in their minds:

“Upon the completion of the mediation, the parties and the mediator are given exit surveys, to permit effective management and evaluation of the mediation program... the special mediation survey is filled out by mediation participants immediately after they complete the mediation (which result in almost a 100% response rate), while general IPR satisfaction surveys are mailed out in quarterly batches (this results in roughly a 30% response rate)... the special mediation satisfaction survey demonstrates that a relatively high satisfaction rate exists for both complainants and officers who participated in mediation. Even people who were not satisfied with the outcome of their mediations reported satisfaction with the mediation process itself. Specifically, 97% of all complainants and 86% of officers who participated in mediation reported they would recommend mediation to others as a way to resolve citizen-police complaints. Four respondents (one citizen and three officers) said they were not sure if they would recommend mediation to others that it would depend upon the case in question.

“Only one person (an officer) who participated in mediation in 2003 said he would not recommend mediation as a means of resolving complaints.” 146

“...outcome surveys are given to all mediation session participants, including the mediators at the conclusion of the mediation. Participation in the survey is voluntary for the mediating parties, but timely participation is required of contracted mediators. 147

PROGRAM EVALUATION - MARYLAND:

Community Mediation Maryland has developed both a PRE-mediation survey for the complaint to fill out and POST-mediation satisfaction surveys for all participants to complete both immediately following each mediation session and again
a month after the mediation session is completed. It recommends that each of its affiliated mediation providers conduct the evaluation using these forms so as to provide a uniform response that can be used to evaluate the effectiveness of mediation both locally and statewide. Copies of those evaluation surveys are included in this Guide. 148

MEDIATOR REACTION TO MEDIATION SESSION:

As part of its program evaluation, an agency should consider input from its mediation provider. Without compromising the confidentiality of the participants, it is suggested that a mediator be asked to assess the effectiveness of the mediation session from a process perspective. An Agency should consider consulting with its mediation provider to determine the best way to obtain this input. 149

PRE-MEDIATION SURVEY - COMMUNITY MEMBER

Please evaluate the mediation process by rating the following items in terms of whether you strongly agree, agree, neither agree nor disagree, disagree, or strongly disagree. Your answers will help us to improve our services. Thank you.

BIRTHDATE: ______________

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<th>Strongly Disagree</th>
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I have respect for the officer with whom I am about to mediate.
I have respect for the police, in general.

I trust the police officer with whom I am about to mediate.

I trust police, in general.

Police officers generally respect the communities they serve.

The officer involved in this incident respects the community they serve.

If I knew about a crime or incident in the neighborhood, I would share it with the officer with whom I am about to mediate.

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4) I was able to express myself, my thoughts, and my concerns during the mediation process.

5) Through this process, I think I understand the other people involved in the conflict better.

6) Through this process, I think the other people involved in the conflict understand me better.

7) I would bring other conflicts to mediation in the future.

8) I would recommend mediation to others involved in conflicts.

9) As of today, I am satisfied with the process of mediation.

10) As of today, I am satisfied with the results of the mediation.

Feel free to elaborate on your responses to any of the above questions.

Did you reach an agreement in the mediation? □ Yes  □ No

Do you think your conflict is resolved? □ Yes  □ No

Who came up with the ideas for solutions? (check all that apply)

□ I did  □ the other participant did  □ the mediators did  □ n/a didn't get to solutions today

For Office Use Only:

Final Session? □ Yes  □ No

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The officer involved in this incident respects the community s/he serves.

If I knew about a crime or incident in the neighborhood, I would share it with the officer I mediated with.

The mediation helped build mutual respect between the officer and me.

The mediation helped me gain a better understanding of policing, police practices, or police policies.

The mediation facilitated a greater understanding of the actions of the police officer at the time of the incident.

Based on what I learned in mediation, I would probably respond differently in a similar situation with a police officer in the future.

What did you like best about the mediation process?

What suggestions do you have to improve the mediation process and program?

Anything else?

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What did you like best about the mediation process?

What suggestions do you have to improve the mediation process and program?

Anything else?

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POST - POLICE COMPLAINT MEDIATION EVALUATION FORM: **POLICE OFFICER**

Please evaluate the mediation process by rating the following items in terms of whether you strongly agree, agree, neither agree nor disagree, disagree, or strongly disagree by checking the appropriate box. Your answers will help us improve our services. Thank you.

BIRTHDATE: ______________

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<td>1) The mediation process was adequately explained to me by the mediators and/or the program staff.</td>
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<td>2) As a result of the explanation of mediation, I understood the mediation process before the session began.</td>
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<td>3) The mediators listened to what I had to say without judging me or my ideas.</td>
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<td>5) Through this process, I think I understand the other people involved in the conflict better.</td>
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<td>6) Through this process, I think the other people involved in the conflict understand me better.</td>
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<td>7) I would bring other conflicts to mediation in the future.</td>
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<td>8) I would recommend mediation to others involved in conflicts.</td>
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<td>9) As of today, I am satisfied with the process of mediation.</td>
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<td>10) As of today, I am satisfied with the results of the mediation.</td>
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Feel free to elaborate on your responses to any of the above questions.

Did you reach an agreement in the mediation? ☐ Yes ☐ No

Do you think your conflict is resolved? ☐ Yes ☐ No

Who came up with the ideas for solutions? (check all that apply)

☐ I did ☐ the other participant did ☐ the mediators did ☐ n/a didn’t get to solutions today

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### POST - POLICE COMPLAINT MEDIATION EVALUATION FORM: POLICE OFFICER

<table>
<thead>
<tr>
<th>Statement</th>
<th>Strongly Disagree</th>
<th>Disagree</th>
<th>Neither Agree nor Disagree</th>
<th>Agree</th>
<th>Strongly Agree</th>
</tr>
</thead>
<tbody>
<tr>
<td>The community has respect for the police.</td>
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<tr>
<td>The person I mediated with has respect for the police.</td>
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<tr>
<td>If the person I mediated with knew about a crime or incident in the neighborhood, they would share it with me.</td>
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<tr>
<td>I have respect for the community I serve.</td>
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<tr>
<td>I have respect for the person I mediated with.</td>
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<td>I trust the people of _____________, in general.</td>
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<td>I trust the person I mediated with.</td>
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<td>The mediation helped build mutual respect between the resident and me.</td>
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<tr>
<td>The mediation helped me gain a better understanding of how my manner of policing affects other people.</td>
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<tr>
<td>The mediation helped me better understand the actions and thoughts of the resident at the time of the incident.</td>
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<td>Based on what I learned in mediation, I would probably respond differently in a similar situation in the future.</td>
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What did you like best about the mediation process?

What suggestions do you have to improve the mediation process and program?

Anything else?

2/2

Revised 1/16
# ONE MONTH LATER - POLICE COMPLAINT MEDIATION EVALUATION FORM: POLICE OFFICER

<table>
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<tr>
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What did you like best about the mediation process?

What suggestions do you have to improve the mediation process and program?

Anything else?

1

Revised 1/16
XV. SEVERAL EXAMPLES OF ACTIVE MEDIATION PROGRAMS:

**COMMENTARY**
Four (4) separate citizen-police complaint mediation programs are outlined on the following pages.

Each program is distinguished from the other not only in the way each is administered but also when one considers what types of complaints are eligible for mediation:

- Calvert County, Maryland Sheriff's Office – part of its general complaint investigation process;
- Denver, Colorado – uses the agency’s Disciplinary Matrix to identify mediation-eligible complaints;
- Pasadena, California – agency chooses complaints eligible for mediation;
- Seattle, Washington – outside professional standards unit selects mediation-eligible complaints.

**CALVERT COUNTY SHERIFF’S OFFICE**

In 2010, the Calvert County Sheriff’s Office implemented the first citizen-police complaint mediation program in Maryland. Called *Operation True Perspective* the program was incorporated into the CCSO’s complaint investigation procedures.

Mediator services are provided by the Community Mediation Center of Calver County.

Mediation: Mediation is a confidential alternative to the traditional complaint process. Mediation offers a different way of handling concerns or frustrations that citizens and police officers may have after interacting with one another. These concerns and frustrations often lead to citizens filing complaints against officers.

The mediator is a neutral third party trained and experienced in assisting citizens and police officers in talking through and possibly resolving their differences.

The OPS will identify those cases during the assessment phase, where the citizen and police officer may benefit from a fact to face dialogue that will enable them to voice their different perspectives based on their interaction with one another.

Identified cases will then be forwarded to the mediation center for referral. Mediation is a voluntary, confidential process in which both parties must agree to attend. If either party does not agree to attend mediation, then the complaint will be assigned for investigation and the traditional process will take place. If both parties agree to mediate, then there will be no need for further investigation. The case will be closed with mediation being the resolution. Mediated case will not be part of the respondent's OPS file.

**NOTE:** If both parties agree to mediation, the officer must make a concerted effort and participate during the process. If it is found that the officer did not make a concerted effort during the process, then the case will be sent back to OPS at which time the case will be assigned for investigation. [p. 3 CCSO GO]

**DENVER COLORADO COMPLAINT MEDIATION PROGRAM**

Denver, Colorado has a reputation as having one of the more effective complaint mediation programs currently in use. Operating under authority of a local ordinance enacted in 2005 that created the Office of Independent Monitor [OIM], a civilian oversight body the department [and Sheriff’s Office, a separate law enforcement agency] the department and OIM overhauled the agency’s disciplinary process to include the use of mediation to resolve eligible citizen complaints about police behavior. As part of its mediation program, the agency established a broad range of officer behaviors that are mediation-eligible. Rather than list or enumerate specific complaints that are/are not eligible for mediation, the Denver Police Department describes, by category, the types of officer that are ELIGIBLE or NOT ELIGIBLE for mediation. Those categories and a list of behaviors are contained on the agency’s Disciplinary Matrix. While there is some overlap to the behaviors listed, the seriousness of the violation is determined by its impact on the public and agency.

Additionally, the OIM and department also established a complaint review process that requires the OIM and certain agency administrators to agree to authorize mediation prior to contacting the complainant and officer with the offer of mediation. 
The following summarizes the types of complaints that are/are not eligible for mediation. Additional information can be obtained from www.denvergov.org

Mediation:

4.3.1 The mediation of police-citizen complaints is strongly endorsed and encouraged by the Department. As a voluntary option, mediation provides both officers and citizens the opportunity to gain a better understanding of each other’s perspective. When conducted by professional mediators in a neutral, non-confrontational and confidential manner, mediation can increase understanding and trust between officers and citizens.

4.3.2 Miscommunication and misunderstanding either create or exacerbate the vast majority of complaints made by citizens. Mediation is an exceptional tool for creating common ground between the Department’s officers and the community. Officers and citizens are encouraged to recognize mediation as an opportunity to educate and explain. When officers who have acted entirely within policy are offered mediation to resolve a citizen complaint, the hope is that they will recognize mediation as an educational opportunity which will allow them to help a community member understand Department policy and the police perspective. Likewise, providing officers the opportunity to mediate in lieu of conducting an internal investigation gives officers a unique opportunity to understand the perspectives of complainants and the effects of officers’ behavior on those persons.

Mediation Protocols:

1. Unless a complaint involves an allegation of criminal conduct against an officer, or if sustained could result in the termination or demotion of the subject officer, Denver Police [DPD] Internal Affairs [IAB] Command Staff may refer a complaint to the Office of the Independent Monitor [OIM] for possible mediation.

2. If the OIM concludes the complaint is appropriate for mediation (after conferring with the Chief of Police and the Manager of Safety when required by DPD policy), the complaint is referred to the OIM’s mediation vendor to ask the complainant whether s/he would be interested in mediating the complaint.

3. DPD personnel and OIM staff submit any complaint where the complainant is amenable to mediation to Internal Affairs command staff for review. IAB command staff notifies the Monitor of any complaint that is approved for referral to the mediation program.

4. Both the IAB command staff and the Monitor must agree that a complaint appears appropriate for mediation for a complaint to be assigned to the mediation program. Upon such approval, the complaint file is transferred to the OIM’s mediation vendor to contact the complainant.

Case Eligibility:

Any allegation of misconduct that falls into one of the following conduct categories, as presented in the Discipline Handbook, is ELIGIBLE for mediation only if the Internal Affairs Bureau and the Independent Monitor agree mediation is appropriate:

1. Category A: Conduct that has a minimal negative impact on the operations or professional image of the Department.
   
   Example:
   ▶ Plainclothes officer – identification;

2. Category B: Conduct that has more than a minimal negative impact on the operations or professional image of the department; or that negatively impacts relationships with other officers, agencies or the public.
   
   Examples:
   ▶ Discourtesy;
   ▶ Traffic Enforcement when not in Uniform;
   ▶ Failure to Make, File or Complete an Official Report;

3. Category C: Conduct that has a pronounced negative impact on the operations or professional image of the Department, or on relationships with other officers, agencies or the public.
   
   Examples:
Even if a complaint is eligible for mediation, the Manager of Safety, the Chief of Police or his/her designee, or the Monitor or his/her designee has the authority to decide for any reason that a case should not be assigned for mediation.

Any allegation of misconduct that falls into the following conduct category, as presented in the Discipline Handbook, is **ELIGIBLE** for mediation only if the Manager of Safety, the Chief of Police, and the Independent Monitor all agree that mediation is appropriate:

1. **Category D:** Conduct substantially contrary to the values of the Department or that substantially interferes with its mission, operations or professional image, or that involves a demonstrable serious risk to officer or public safety.
   - **Examples:**
     - Inappropriate Use of Force;
     - Misleading or Inaccurate Statement;

Any allegation of misconduct that falls into one of the following conduct categories as presented in the Discipline Handbook, is **INELIGIBLE** for mediation:

1. **Category E:** Conduct that involves the serious abuse or misuse of authority, unethical behavior, or an act that results in an actual serious and adverse impact on officer or public safety or to the professionalism of the Department.
   - **Examples:**
     - Inappropriate Use of Force;
     - Careless Handling of Firearm;

2. **Category F:** Any violation of law, rule or policy which: foreseeably results in death or serious bodily injury; or constitutes a willful and wanton disregard of Department values; or involves any act which demonstrates a serious lack of the integrity, ethics or character related to an officer’s fitness to hold the position of police officer; or involves egregious misconduct substantially contrary to the standards of conduct reasonably expected of one whose sworn duty is to uphold the law; or involves any conduct which constitutes the failure to adhere to any contractual condition of employment or requirement of certification mandated by law.
   - **Examples:**
     - Sexual Misconduct;
     - Under the Influence;

Any allegation of misconduct which, if proven, could constitute a violation of any rule that the Denver Civil Service Commission has designated as making an applicant ineligible to take a promotional examination for, or to be promoted to, the ranks of Sergeant, Lieutenant, or Captain is **INELIGIBLE** for mediation.

Even if a complaint is eligible for mediation, the Manager of Safety, the Chief of Police or his/her designee, or the Monitor or his/her designee has the authority to decide for any reason that a case should not be assigned for mediation.
The Pasadena Police-Community Mediation Program is a collaborative partnership between the Pasadena Police Department [PPD] and the Western Justice Center [WJC] developed to mediate civilian complaints against police officers. The goal of this program is to build more understanding and better relations between the Pasadena community and the police. The Western Justice Center convenes the mediation sessions with an impartial third party who facilitates communication and negotiation between the PPD employee and civilian. The program provides an opportunity for both the PPD employee and the civilian to discuss their issues in a safe environment. The police and community members are able to collaborate with one another rather than treat each other as adversaries and to have their complaints dealt with in an efficient manner.

[www.ci.pasadena.ca.us/Police/Mediation_Program](http://www.ci.pasadena.ca.us/Police/Mediation_Program)

Selecting Cases for Mediation:

“The Professional Standards Unit [of the Pasadena Police Department] conducts an initial investigation and, if the complaint appears suitable for mediation, the PSU will recommend it. The decision to mediate a given complaint is nominally made by an Administrative Lieutenant outside the PSU, but in practice, sergeants in the PSU appear to drive the selection process...

... **suitable** cases are those for which the Pasadena Police Department believes that mediation will:

► result in greater complainant satisfaction;
► improve citizen understanding of police procedures and actions;
► result in improved police conduct; and
► contribute to improved citizen-police relations.

...The PPD offers mediation for complaints that deal with police tactics, police procedure, quality of service, rudeness or discourtesy...

Although initially excluded from the mediation program “complaints deemed unlikely to be sustained after a full internal affairs investigation are now suitable for mediation because they “involve misunderstandings of police policy or practice, or they may be examples of communication failures...they are more suitable for mediation than investigation because mediation will lead to a resolution...”

Complaints **not considered to be suitable** for mediation in Pasadena, and which are formally investigated by internal affairs include complaints of:

► excessive force;
► racial profiling; and
► discriminatory policing.

The major stakeholders, including PPD, the union and the Western Justice Center Foundation agreed that serious allegations or incidents should not be eligible for mediation.

On its webpage explaining how to file a complaint the Pasadena Police Department summarizes its complaint mediation program stating “it can address complaints involving procedures, service, courtesy concerns and police tactics. Complaints regarding use of force, illegal arrests, discriminatory slurs and alleged criminal conduct by a member are generally inappropriate for mediation.
**Like a number of other jurisdictions that had implemented a mediation program to resolve some types of citizen complaints, the City of Seattle has had a limited utilization of its program. Basically, its mediation program has been under-utilized to the point that it has almost been abandoned. However, having undergone a recent investigation by the Department of Justice and having signed a consent decree the Seattle Police Department is in the process of updating its internal investigation process to include the reintroduction of mediation to resolve some citizen complaints. While it remains to be seen whether mediation will play a more expanded role in successfully resolving citizen complaints in Seattle, the format of Seattle’s OPA Mediation Program is presented as an example of a program that observed by an independent auditor.**

“The City has a three-part police accountability system. The first, and the cornerstone of the system, is [Office of Professional Accountability] OPA, which sits within [Seattle Police Department] SPD. A civilian Director leads OPA and reports directly to the [Chief of Police] COP, who is the ultimate arbiter of discipline. The second part of the system is the OPA Auditor, who does not sit within SPD, but serves as an independent civilian advisor to the City on the quality of OPA’s investigations and SPD’s policies. The third and final part of the system is the seven-member civilian OPA Review Board (“OPA-RB”). OPA-RB conducts community outreach regarding accountability issues and audits the operation of OPA by reviewing some of OPA’s closed investigative files.”

**Office of Professional Responsibility:**

In Seattle, Washington the Office of Professional Accountability [OPA] handles the investigation of complaints filed against Seattle Police Department [SPD] personnel. OPA is headed by a civilian director appointed by the Mayor and, while it uses SPD employees, including sworn officers, for the intake and investigation of citizen complaints, it is intended to be operationally independent of the SPD.

To enhance public trust and confidence in OPA’s independence and impartiality, Seattle contracts with an individual, referred to as the OPA Auditor, who has judicial or legal expertise to provide additional oversight of OPA’s complaint-handling and internal investigations. The OPA Auditor reviews in real-time how OPA proposes to classify each complaint. The Auditor’s review determines whether a complaint is investigated, referred to an employee’s supervisor for follow-up or handled through an alternative resolution [mediation]. The OPA Auditor also determines whether each internal investigation conducted by OPA is thorough and objective. Additionally, the OPA Auditor publishes a semi-annual report which summarizes how the complaints referred to OPA were handled and makes recommendations for any changes to OPA policies, practices and training.

As part of its written agreement with the Justice Department the Seattle Police Department agreed to update the Office of Professional Accountability’s *Internal Operations and Training Manual*. A revised version of the Manual was published and became effective on April 1, 2016.

**Complaint Intake:**

As part of its updated complaint process, OPA investigators conduct a preliminary administrative investigation of an allegation of misconduct that, if proven to be true, would be a violation of an SPD policy or the law. This administrative inquiry occurs during the complaint intake stage of the complaint process. After checking the OPA database to determine whether this allegation has already been received, the OPA investigator interviews, in person if possible [and audio records], the complainant to obtain basic information regarding the complaint [what happened, where, and when, and to provide any other information he/she may have describing the involved employee(s), whether there were witnesses who could be contacted, and any other evidence that might be helpful. If there are photos, private video, text messages or other evidence the complainant has, and it is an in-person interview, OPA will obtain or copy it.]. Unless the complaint involves particularly egregious allegations, use of force, [a] possible violation of law or appears to be otherwise inappropriate for mediation, the OPA investigator briefs the complainant on the agency’s mediation program providing the complainant with the OPA’s mediation booklet. As stated in the *Internal Operations and Training Manual* “the intake staff member should let the complainant know that:

- some cases are selected for mediation;
- [mediation] is an alternative to traditional case processing;
- mediation would allow for an opportunity for the complainant to communicate his/her concerns directly to the involved employee;
The complainant should be asked if he or she would be interested in this option if the case is selected for mediation, or whether he/she would like to receive more information about the OPA Mediation Program.” OPA’s procedures require that the investigator/intake member “note in the [OPA] Intake Log whether or not the complainant expressed interest in mediation or the reasons the mediation option was not discussed.” He/she is also required to “include a Mediation Program brochure or more detailed description of the program in the Complaint Information Packet if complainant requests more information, or refer the complainant to information available on OPA’s website.” The OPA investigator is not authorized to offer mediation to the complainant at this point but rather provides information about the process and asks the complainant to consider the possibility of participating in the program.

The OPA investigator concludes his/her preliminary investigation by gathering any other relevant evidence and creates a case file which will be reviewed by the OPA Director.

If the Intake staff member believes a complaint is particularly well suited for mediation, the reasons should be noted on the Intake Form. When the OPA Director and OPA Auditor review the intakes each week, the OPA Director will decide if the complaint should be referred for mediation.

OPA attempts to conclude its preliminary investigation within two (2) weeks but, by contract with the labor organization, must complete it no later than thirty (30) days from receipt of the complaint.

Complaint Classification:

Following completion of the preliminary administrative investigation, the OPA Director reviews the case file and classifies the complaint as being eligible for mediation or warranting an internal investigation. If the complaint is mediation eligible the OPA investigator notifies the complainant and the involved officer(s) to determine if each is voluntarily willing to participate in mediation.

Mediation Option:

OPA’s Internal Operations and Training Manual describes the Seattle’s mediation process, in part:

Some complaints, particularly those involving possible miscommunication or misperception between the complainant and an officer or other employee, may be suitable for mediation as an alternative to the traditional means of handling complaints. Unless the complaint involves particularly egregious allegations, use of force, [a] possible violation of law or appears to be otherwise inappropriate for mediation, the mediation alternative should be briefly discussed during intake.

Complaints that include an allegation of biased policing, and otherwise would be considered for mediation, must first be investigated sufficiently enough to determine whether or not it is reasonable to believe that a violation of the Bias-free Policing Policy may have occurred, viewing all available facts and evidence known at the time in a light most favorable to the allegation. If, prior to the OPA interview of the named employee, the OPA Director determines that no such prima facie case of biased policing exists, the case may be considered for mediation, if it is otherwise suitable. The goal of such mediation would be to help both the complainant and the named employee benefit from an open and safe exchange of perspectives and perceptions.

[After] the OPA Director and OPA Auditor have reviewed the intake case file, the OPA Director will decide if the complaint should be referred for mediation.
V. EXAMPLES OF MEDIATED COMPLAINTS:

**EXAMPLES OF MEDIATED COMPLAINTS**

**COMMENTARY**

Several agencies have made available summaries of complaints that have been mediated as well as the results of the mediation. Several are presented below as examples of “mediation in action.”

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**New York City Civilian Complaint Review Board**

I. Domestic Dispute - Alleged Discourtesy:

On July 27, 2010, Officer One and Officer Two responded to a call about two neighbors who were fighting. When they climbed to the fifth floor of the Bronx walk-up, they found Ms. Doe and Ms. Smith in the hallway screaming at each other. Ms. Doe’s 4-year old son, Jack, was also in the hallway. In her complaint to the CCRB, Ms. Doe alleged that Officer One yelled at her in an abusive tone and used profanity. She says he screamed “Get in your f***king apartment, or I am going to arrest you.” She agreed to mediation because she wanted to tell Officer One that it’s wrong to speak to people the way he did to her. Officer One also agreed to participate in a mediation session.

At the start of the mediation, Ms. Doe explained that she and Ms. Smith were arguing because Ms. Smith was banging on her door and “acting crazy” and that a neighbor had called the police. Ms. Doe said that it was traumatic enough just dealing with Ms. Smith whom she thought was on drugs, and then when Officer One started to yell at her she had had enough. Ms. Doe said she felt that the officer was taking Ms. Smith’s side and that the officer had no right to yell at her that way, especially in front of her son, Jack.

Then Officer One spoke. He said that when he got the scene both women were screaming and pushing each other. He said he repeatedly told the women to go back to their apartments but they wouldn’t stop fighting. Officer One also said that Jack had started to cry and he felt the situation was escalating. Officer One explained to Ms. Doe that police procedure in these types of situations is to try to separate the parties and get them back to their apartments. Once things had quieted down, he had planned to speak to each woman separately. Officer One also explained that rather than taking Ms. Smith’s side, he was focusing on Ms. Doe because he perceived her to be the more rational of the two women. He told Ms. Doe that his primary concern was for her and her son’s safety. Officer One’s repeated assertions about his concern for Ms. Doe’s and Jack’s safety shifted the focus of the mediation from the alleged obscenity and threat of arrest to a broader conversation about the intent of one’s actions versus how those actions are perceived.

Officer One came to understand that although his intention was to protect the civilians by de-escalating the situation, Ms. Doe perceived his actions as disrespectful. Ms. Doe came to understand that the officer’s concern for her and her son’s safety were the reasons behind his actions and that he did not intend to disrespect her. Although no apologies were made, at the end of the mediation Ms. Doe extended her hand and thanked Officer One for his time. Both parties signed a resolution agreement and the CCRB closed the case as mediated.

II. Subway Incident – Alleged Discourtesy:

On Friday morning, March 18, 2011, at approximately 8:30 am, Officer Three and Officer Four were on assignment at the West 72nd Street subway station in Manhattan, when they observed five teenage boys, about ten yards away, shoving each other near the edge of the crowded subway platform. The officers walked towards the boys and Officer Three shouted for them to stop shoving each other, but the boys kept at it. When Officer Four got close, he yelled “Freeze, if you know what’s good for you.” At that point the boys stopped shoving each other and began talking with Officer Four.

Ms. Smith, a 42 year-old woman who was standing on the subway platform, tapped Officer Three on the shoulder and asked him why they were bothering the boys. Officer Three spun around and said to her, “Back off or I’ll take you in
too. I’m busting my ass to save your ass.” Officer Four, who had finished speaking with the teenagers, approached Officer Three and Ms. Smith. Hearing her continue to question his partner, Officer Four said, “We don’t need this type of crap. Let’s go.” Ms. Smith recorded their names and badge numbers on her cell phone and the officers walked away and continued their patrol.

Ms. Smith then filed a complaint with the CCRB, alleging that both officers were discourteous and that Officer Three threatened to arrest her. She also stated that she believed the officers had stopped and questioned the teenagers because they were black and Hispanic and for no other reason.

Ms. Smith agreed to mediate her complaint after being offered the opportunity to do so by a CCRB investigator. The officers also agreed to mediate. At the mediation session, the mediator explained the process to the participants and then gave Ms. Smith and the two officers the opportunity to speak.

Ms. Smith said that she was standing on the subway platform waiting for her train to go to work when she heard the officers shouting at the boys. She said that the boys seemed to be acting like typical teenagers, so she wanted to know why the officers were yelling at them. Then she stated that she was stunned by the way the officers treated her and spoke to her. She concluded by saying that it seemed that the officers were just hassling the boys because they were minorities and that was wrong.

Then Officer Three spoke. He said that he wasn’t paying attention to the boys’ race when he yelled for them to stop shoving each other. He said that his primary concern was to have them stop so that no one got pushed onto the subway tracks. He said that he and his partner were on the platform that day because there had been an incident the day before (St. Patrick’s Day), when a person had been shoved onto the tracks and had to be rescued by another officer from their precinct. Officer Three also explained that when Ms. Smith tapped him on the shoulder and started to question him, he still didn’t know for sure what was going on between the boys and his partner and had wanted to keep his focus on them and not Ms. Smith. He also said again that he wanted to avoid at all costs having a repeat of the prior day’s incident when an officer had to jump onto the tracks to rescue someone.

Officer Four then spoke and said he didn’t recall what he had said to Ms. Smith, echoing Officer Three comments. Officer Four said he remembered feeling very relieved that the boys were only fooling around and not really fighting and that no one ended up on the subway tracks.

Under the mediator’s guidance, the two officers and Ms. Smith were soon talking directly with each other. By the end of the mediation session, Ms. Smith said that she had a much better understanding of what had happened and what the officers were thinking, and that she now believed that the officers had not been profiling the teenagers. She also stated that she sympathized with the officers and appreciated that they were out there trying to protect the public. Yet despite these things, she said she still felt that the officers had spoken to her in an improper manner. The officers said that they appreciated Ms. Smith’s words and agreed that they could have acted more professionally in the way they had spoken to her. The officers and Ms. Smith agreed that the mediation session had addressed the concerns Ms. Smith raised in her initial complaint and had been a valuable learning experience.

**OFFICE OF POLICE COMPLAINTS – WASHINGTON D.C. 156**

I. Traffic Stop - Discourtesy:

A citizen filed a complaint against an officer who had pulled her over for a traffic stop, alleging the officer subjected her to insulting language and conduct.

At mediation, the complainant described the incident as she remembered it: With her daughter in the back seat, she was driving through busy traffic on the highway. She crossed into another lane to exit. Apparently, she had pulled in front of the officer, who put on his siren and lights. She put on her hazard lights, and continued driving until she was off the exit ramp and could find a place to pull over safely. The officer began to yell at her over the loudspeaker to pull over. Once
she stopped, she began feeling very nervous and flustered. Because she could not roll down the window, she opened the door to speak with the officer. The officer yelled at her and spoke to her in an unnecessarily rude tone. At one point, the officer referred to the daughter in the back seat as the complainant’s granddaughter, which she took to be an age-based insult. The officer ultimately issued a ticket for failing to signal. The complainant added that while she believes she was driving properly, she was not trying to contest the ticket. She simply objected to the officer’s treatment of her and she was particularly concerned because her daughter had been very disturbed by the incident.

The officer stated that he did not recall the incident specifically. However, based on the complainant’s description of the incident, he stated that certain actions, such as failing to stop when instructed and opening the car door instead of lowering the window, could be interpreted as a threat to the safety of the officer. The officer also clearly stated that, based on the complainant’s description of the incident and the information on the ticket, he could have given a ticket for a more severe infraction than the one he actually issued. He had chosen to give the complainant a break once it was clear that she posed no threat. He acknowledged that he might have come across as unnecessarily harsh. He added that he was particularly sorry that the complainant’s daughter had been so upset after the incident, because the last thing an officer wants to do is make children afraid or distrustful of the police.

The parties continued to discuss the situation until they were satisfied that all issues had been addressed. At the conclusion of the mediation, the officer and the complainant agreed that the complainant would bring her daughter to the station, to allow the officer to meet the girl and engage her in some of the fun activities that the police department makes available to local children. Both parties agreed that the mediation session sufficiently resolved the case.

II. Execution of Search Warrant – Unwarranted Action/Discourtesy:

A senior citizen filed a complaint alleging that several officers who came to search her home harassed her and subjected her to insulting language and conduct. The complainant was home alone at the time, and she said their sudden arrival frightened her so badly that she had trouble opening her door. She said that as she attempted to get the door open, one of the officers cursed at her. Then, as the officers rushed into her home, the woman asked several times why they had come to her home, and the officers did not immediately answer her question. Instead, one of the officers told her to sit down on the couch while the home was searched. The complainant said that while she waited for them to complete the search, she overheard some of the officers making disparaging remarks about the condition of her home and the “clutter” in various parts of the home. No illegal items were found or seized as a result of the search. The complainant was greatly disturbed by the incident and filed a complaint because she believed her home had been targeted unfairly and also because she felt that the officers had been unnecessarily rude and disrespectful to her.

A mediation session was arranged between the complainant and the sergeant supervising the search team. In the mediation, the complainant began by giving a detailed description of the incident. She emphasized how shocked and frightened she had been, and how upset she felt about the way she had been treated. She described the language that had offended her. She also expressed confusion as to why her home had been searched in the first place, since she and her husband do not do drugs, and they do not permit any of their children or grandchildren who stay at the home to use drugs or engage in illegal behavior. And lastly, she told the officer about drug use and other illegal activity she had witnessed at other locations in her neighborhood, and expressed frustration that it seemed the police did not do anything about it.

After listening to the complainant, the sergeant began to explain the situation from his perspective. He stated that he was glad to have the opportunity to talk with the complainant, because he knew how shaken up she had been after the search. He described all the steps that his team had taken in order to obtain the search warrant, including the fact that an undercover officer from his team had witnessed drugs being sold by an individual at her home. When the complainant heard this, she said she had no idea that anyone had sold drugs from her home, but she was glad to know he had a
legitimate reason for coming to her home and said she understood that he was just doing his job. The officer said he believed her, and that he had dealt with many unsuspecting homeowners like her who, unfortunately, end up suffering the consequences for the illegal actions of other people staying in their homes, and that he felt badly when that happened.

The officer also said that he does not permit members of his team to use rude or insulting language. He said he had not heard the offending remarks when he was there at her home, but that he would review the language policy with the team during their next shift. He explained that officers are often in a hurry to get into the home they are searching because if they delay their entry too long, suspects may flush or remove evidence of drugs before the officers can get inside. He said he tries to keep his team in line, but sometimes the officers grow impatient, and he assured her that none of the officers were deliberately trying to insult her. She acknowledged that the officers have a difficult job and said she could understand the anxiety they must feel during those encounters.

The mediator then helped the woman and the officer see that they shared a concern about crime in the neighborhood, and that both wanted things to change for the better. The officer and the citizen discussed the broader problems existing in the neighborhood, and the efforts they have each made to improve the situation. The officer took down the addresses of other locations where the complainant had observed illegal activity, and he told her they would investigate those locations.

By the end of the mediation, the officer said he was grateful to have the chance to further explain the actions his team had taken that day, and the woman’s trust in the local police appeared to be restored.

III. Traffic Stop – Unwarranted Action/Discourtesy:

A citizen filed a complaint after being stopped for allegedly talking on her cellular telephone while driving. When she arrived for the mediation, the complainant was very upset and angry. She began by loudly accusing the officer of inappropriately stopping her and wrongly accusing her of using her cellular telephone. She explained that, at the time, she was not using the telephone and was a victim of police harassment. She went on in a loud voice and angry tone to accuse the officer of inappropriately pulling her over and giving her a ticket.

The officer responded in a similar tone. He said he was angry at being accused and attacked for just doing his job. He remembered the incident very clearly and was certain he had seen her on the telephone. She explained that, at the time, she was not using the telephone and was a victim of police harassment. She went on in a loud voice and angry tone to accuse the officer of inappropriately pulling her over and giving her a ticket.

The officer responded in a similar tone. He said he was angry at being accused and attacked for just doing his job. He remembered the incident very clearly and was certain he had seen her on the telephone. Both the complainant and the officer yelled and accused each other of not telling the truth.

The mediator met privately with both the complainant and the officer. The complainant explained that she was especially distressed when the officer pulled her over because it brought back memories of a previous incident in which she was pulled over and falsely accused by a police officer. She recalled that, because of the previous incident, she became very agitated and yelled at the officer. She maintained that she was not using her telephone, and could prove it with billing records. After having the opportunity to vent for a while, the complainant acknowledged that her behavior had contributed to the escalation of the incident.

In a private meeting with the mediator, the officer explained that when he stopped the complainant he was certain that she was using her cellular telephone, and had intended to issue her only a warning. It was only after she became so angry and verbally out of control that he gave her the ticket. He could not understand why she was so enraged and believed her accusations were completely unfounded and inappropriate. When he learned of her previous experience and her explanation as to why she was so upset, he was willing to consider the situation from her perspective.

Both the complainant and the officer then talked to each other about how the situation had escalated. The complainant acknowledged that she spoke inappropriately and would make an effort to control her anger in the future. She apologized to the officer. They agreed to put the incident behind them. The officer agreed to appear in traffic court with the complainant and assist her in responding to the ticket.
IV. Fatal Traffic Accident – Aggressive-Hostile Attitude/Unprofessional Behavior:

A married couple filed a complaint against an officer for aggressive and hostile behavior and for behaving in an unprofessional manner.

At the mediation, the husband explained that they had been called to the scene of an accident involving their only son. Upon their arrival, they saw that their son was not there so they approached the officer to find out where their son was and to ask about his condition. He said the officer spoke to them in a belligerent tone and was argumentative instead of being responsive to their needs. He felt that the officer's behavior made the situation even more difficult. He explained that since the officer would not give them information, his wife approached the other driver involved in the accident, at which point the officer became agitated and interfered with the conversation. The officer did provide some information, telling them the name of the hospital to which their son had been taken. Unfortunately, upon arrival at that hospital they learned that the information was incorrect and they were sent to another hospital. When they arrived at the second hospital, they learned that their son had died.

The officer expressed his sincere regret at their loss as well as for his behavior that added to their pain. He explained that he was alone that evening responding to a very bad accident in a tough neighborhood. He and the couple were able to share their perspectives about what happened and to talk about their feelings both at the time of the accident and after. It was a very emotional meeting for all of the parties. In the end, the parties came to an agreement in which the officer, working with his sergeant, would identify and complete an appropriate course in anger management or stress management.

V. Plainclothes Officers – Inappropriate language and conduct:

The citizen filed a complaint against two police officers citing inappropriate use of language and conduct. The citizen explained in her complaint that one morning two officers not in uniform appeared at her door and asked to enter her house to ask a series of questions. The citizen became anxious thinking that the officers were possibly bandits attempting to gain entrance into her house. She immediately called 911 and the officers retreated from the door but began circling around the house, peering into the windows. The citizen maintained that the officers violated protocol by making a high pressured attempt to enter her home.

During the mediation session, the citizen was still visibly upset from the incident. She explained that over the course of the past several months, there had been a series of incidents in her neighborhood of thieves impersonating officers and was thus frightened when the officers arrived in plain clothes at her door. She explained that her neighbors witnessed the incident and called repeatedly asking if everything was okay. She felt embarrassed and humiliated. The officers, on the other hand, explained that they were following police procedure. They explained that they were from the warrant squad and had authorization to ask her questions about the identity of an individual who in the police records shared her address. They further explained that as part of police protocol, officers often circle around to the back of the house to make certain that no individuals in the house are making an effort to escape.

As a result of the mediation the officers gained a better understanding of the citizen’s concerns when they approached her at the house and the citizen learned about the protocol warrant squad officers must follow to protect their safety and the safety of the neighborhood. The officers and citizen signed an agreement acknowledging that the mediation process resolved the issues pertaining to the complaint. The agreement also contained a written statement from the officers apologizing to the citizen for disturbing her and for inconveniencing her at the time of the incident.

ENDNOTES
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   “Operation True Perspectives,” by Susan Rork, Executive Director, Community Mediation Center – Calvert County, in the Chesapeake Current, October 17, 2013.
23. Email response from Ms. Lorig Charkoudian, Executive Director, Community Mediation Maryland, July 24, 2016.
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26. Email response, Ms. Lorig Charkoudian, Executive Director, Community Mediation Maryland, July 24, 2016.
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29. Walker, Archbold and Herbst, (pp. 5-15 & 87).
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64. Walker, Archbold and Herbst, (p. 19).
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81. Walker, Archbold and Herbst, (p.28).
83. Walker, Archbold and Herbst, (p. 30).
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86. Walker, Archbold and Herbst, (p. 23).
88. Walker, Archbold and Herbst, (p. 29).
90. Walker, Archbold and Herbst, (p. 29).
91. “Maryland Standards of Conduct for Mediators, Arbitrators and Other ADR Practitioners,” (updated in June 2012), www.courts.state.md.us/macro/becomingmediator
92. “Standards of Conduct for Mediators,” www.courts.state.md.us/macro/mpme
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103. Walker, Archbold and Herbst, (p. 57).
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106. Ibid., (p. 15).
107. Walker, Archbold and Herbst, (pp. 55-61).
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109. Ibid., (pp. 46-47).
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113. Ibid., (p. 19).
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