

Complaint Mediation Program

Index Code: #302.3

Effective Date: 9/18/2023

I. PURPOSE

The Queen Anne's County Agency of the Sheriff has established its Community Member Complaint Mediation Program to increase the level of trust and understanding between the community at large and members of the agency. Mediation empowers both community members and deputies to exercise their voice in a safe and productive environment. Mediation gives all participants a chance to be heard and be understood and to be exposed to new viewpoints from the other participant. It also gives deputies and community members an opportunity to consider new and more satisfactory ways of interacting with each other in the future.

II. POLICY

The agency may refer a minor complaint made against a deputy, subject to the agreement of the complainant and the involved deputy, to an independent mediation provider in lieu of forwarding the complaint to the Police Accountability Board (PAB) and Administrative Charging Committee (ACC).

This policy establishes a complaint mediation program which provides an alternative method to address minor misconduct complaints outside of the standard complaint process.

It is the policy of the agency to offer the option to voluntarily participate in mediation both to a community member who has filed a complaint involving certain types of conduct against a member of the agency and to the member about whose behavior the complaint has been filed.

III. SELECTION OF A COMPLAINT FOR MEDIATION

A. General

1. The Administrative Services Commander and/or the Chief Deputy, or their designee, will carefully review and evaluate each complaint and the circumstances prior to determining if mediation should/should not be offered to the parties involved in the incident.

2. While the Agency recognizes that there are several potential benefits for the community member, deputy, agency and community at large that can accrue through a successful mediation, the Agency understands that there is no right to mediation, either expressed or implied in this policy, for any party involved in a complaint.

3. The Agency reserves the right to decline to offer mediation for any complaint filed by a community member and to forward the complaint to the Police Accountability Board (PAB) and Administrative Charging Committee (ACC).

4. Additionally, circumstances may prompt the Agency to withdraw/rescind the mediation option from either the community member or the deputy before a mediation session takes place.

B. Mediation Eligible Complaints

1. Complaint Eligibility. A complaint of a minor nature is eligible for mediation if it falls into one of the following categories in the Statewide Police Disciplinary Matrix:

a. Violation category A, (defined as “Conduct that has or may have a minimal negative impact on operations or professional image of the law enforcement agency”), as stated in COMAR 12.04.10.04D(2); or

b. Violation category B, (defined as “Conduct that has or may have a negative impact on the operations or professional image of the law enforcement officer; or that negatively impacts relationships with other officer, or the public”), as stated in COMAR 12.04.10.04D(3).

2. Even if a complaint is eligible for mediation, the Sheriff or their designee has the authority to decide, for any reason, that the complaint may not be assigned for mediation.

C. Mediation of complaints involving racial/ethnic/cultural disparagement

1. The Agency has also decided not to categorically exclude any citizen complaint alleging racial/ethnic/cultural insensitivity on the part of its personnel from the possibility of mediation.

2. The Agency believes that such cases are an opportunity for citizens and agencies to share their perspectives on these sensitive topics. 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.

3. On receiving a complaint that claims racial/ethnic/cultural disparagement, the commander of Administrative Services and/or the Chief Deputy, or their designee, will:

a. Review the complaint and any available reports about the incident to determine the potential severity of the complaint and its mediation-eligibility otherwise,

b. Determine whether there is/is not indication of discriminatory policing/constitutional violation and, if necessary, speak with the complainant as part of his/her review,

c. Determine if the complainant was/was not arrested and if arrested, the complaint is ineligible for mediation until the case is adjudicated in court,

d. Determine the mediation eligibility of the complaint as otherwise required by this policy/procedure,

e. After determining the complaint’s eligibility for mediation, the commander of Administrative Services and/or the Chief Deputy or their designee, will consult with the Sheriff or their designee for approval before extending an offer of mediation to the deputy and complainant.

4. If approval for mediation is granted, the commander of Administrative Services and/or the Chief Deputy, or their designee, shall extend offers of mediation as outlined in this policy. If either the deputy or the complainant declines to mediate the

complaint, then the complaint will be subject to the agency's investigative process.

5. If the commander of Administrative Services and/or the Chief Deputy, or their designee, determines, after review and evaluation of a community member complaint that a member of the Agency was engaged in an act/behavior that is one of discriminatory policing, then that complaint will be investigated according to established procedures.

D. Eligibility Factors to be Considered

The Agency recognizes that all complaints that appear, at first glance, to be potentially eligible for mediation by type of behavior may not be good candidates for mediation. The Agency will use the following additional objective factors to determine if a complaint should be offered for mediation. Those objective factors include a deputy's:

1. Complimentary history, to include awards/commendations/positive public recognition or acknowledgment.
2. Prior work history including positive performance evaluations and/or voluntary, advanced, job-related training, or recommendation of supervisor(s)/command deputies within chain of command.
3. Disciplinary history including minimal or lack of prior disciplinary history relative to the deputy's years of service, nature and seriousness of any

prior sustained violation(s), number of prior sustained violation(s), length of time between prior sustained violation(s) and current case, two (2) prior complaints of any type in past 12 months.

4. Relationship between any prior violation(s) and the present alleged misconduct.

5. Whether the deputy's prior history demonstrates a continuation or pattern of the same or similar misconduct, and whether the prior history demonstrates continuous misconduct evidencing a failure to conform to rules or to correct inappropriate behavior.

Note: This list is not all inclusive. Whenever a question arises as the mediation-eligibility of a complaint the Commander of Administrative Services and/or the Chief Deputy, or their designee, will consult with the Sheriff or their designee, before deciding whether to offer mediation.

IV. NOTIFICATION TO PARTIES – OPTION TO MEDIATE

Once a complaint has been initially reviewed to determine its mediation eligibility, the parties involved in the complaint will be notified of the option to mediate in the order and manner described below:

A. Deputy

1. The Deputy will be contacted by the commander of Administrative Services [electronically] to determine if he/she chooses to voluntarily participate in mediation with the complainant. The Deputy shall be advised to contact the mediation center to help him/her to

decide whether to participate in the mediation program.

2. The deputy will have five (5) days to decide and to notify the commander of Administrative Services if the deputy voluntarily agrees to mediation of the complaint.
3. If the deputy declines to participate in mediation, the complaint will be investigated and resolved according to existing Agency policy.
4. If the complainant has agreed to mediation, the deputy will be contacted by the commander of Administrative Services and will be instructed to contact the mediation provider directly to establish a mutually convenient time for the mediation session.
5. Failure of the deputy to contact the mediation provider within ten (10) days of notification to mediate will be viewed as a withdrawal from the mediation process and the complaint will be investigated and resolved as per existing policy and procedure.
6. The Agency will not consider a deputy's decision to mediate or not mediate a complaint during any later disciplinary proceedings.

B. Complainant

1. If the deputy voluntarily agrees to mediation of the complaint, the commander of Administrative Services will forward the complainant's contact information to the mediation provider who will contact the complainant to determine if the complainant will

voluntarily participate in the mediation process.

2. If the complainant agrees to mediation, the mediation provider will contact the commander of Administrative Services to inform the deputy and to instruct the deputy to contact the mediation provider directly to establish a time for the mediation session.
3. If the complainant declines to mediate the complaint, the mediation provider will notify the complainant that his/her complaint will be investigated by the Agency and resolved by the Police Accountability Board (PAB) and Administrative Charging Committee (ACC). The mediation provider will then contact the commander of Administrative Services with the complainant's refusal to mediate.

V. MANAGEMENT OF MEDIATION AND RESOLUTION

A. Voluntary Participation in Mediation

1. Participation in the Agency's Community Member-Police Mediation Program by the complainant and the deputy is voluntary.
2. Each party to the mediation will be required to agree to and sign a "Consent to Mediate Agreement Letter" provided by the mediation provider prior to the commencement of the mediation session.
3. There is no right to mediation. Even if a complaint is eligible for mediation, any stakeholder/party to the process [the complainant, the deputy

and/or the Agency] may decline to agree that a complaint should be resolved through the mediation process.

4. No stakeholder/party to the process shall be required to state the reason for declining to participate in mediation or for agreeing to assign a case for mediation.

B. Withdrawal from Process

If a complainant or deputy declines to mediate the complaint or withdraws from the mediation process prior to the beginning of the mediation session the complaint will be investigated according to this Agency's established complaint investigation policy.

C. Mediation Provider

When a case has been referred to the mediation provider, the mediation provider will manage the case through mediation and resolution.

D. Scheduling a Mediation Session

1. If both parties voluntarily agree to participate in mediation, the mediation provider will schedule a mediation session at a mutually convenient time for both participants, at a neutral location.

2. If deemed necessary by the mediation provider, each party in mediation will be provided a written notification of the date and time of the mediation session. The commander of Admin Services, or their designee will also be provided with the date and time of the mediation session.

E. Appearance at the Mediation Session

1. Once the mediation provider has scheduled a mediation session and contacted the deputy, the deputy is required to appear at the mediation session as scheduled.

2. The mediation provider will contact the commander of Admin Services, or their designee, as soon as practical if a deputy fails to appear at a scheduled mediation session.

3. A deputy's failure to appear for a scheduled mediation session without a justifiable reason and/or without contacting the mediation provider prior to the session, will nullify the agreement to mediate and result in the complaint being investigated and resolved as per existing Agency policy.

4. Additionally, failure to appear at a scheduled mediation session without a justifiable reason and/or without contacting the mediation provider may lead to the exclusion from the mediation program for a period as determined by the Sheriff.

5. If the complainant fails to appear for a scheduled mediation session without a justifiable reason and/or without contacting the mediation provider, the deputy will have the option of rescheduling the mediation session or requesting that the Agency dismiss the complaint.

F. Confidentiality of Mediation Session

1. The Agency, along with the mediation provider, will adhere to confidentiality requirements set forth in

the Maryland Courts and Judicial Proceedings Article § 3-1803, et al.

2. Mediation confidentiality includes all mediation communications, which include speech, writing, or conduct made as part of a mediation session.
3. The parties to a mediation session may mutually agree to document in writing an agreement signed by the parties because of mediation. This document is not confidential unless the parties agree in writing otherwise.
4. To protect the integrity of the mediation process, a mediator should not communicate information about the parties, their behavior, the merits of their case or any settlement to the agency or mediation provider or other party outside the mediation session.
5. A mediator may report to the Agency and mediation provider the date and time when a mediation session took place and the outcome of the mediation session, i.e., "Mediated/Not Mediated."
6. Confidentiality should not be construed to prohibit the effective monitoring, research, or evaluation of a mediation program by responsible persons approved by the agency and mediation provider. Under appropriate circumstances, researchers and mediation evaluators may be permitted to obtain access to statistical data and, with the permission of the parties, to individual case files, mediation sessions, observations, and interviews with participants.

G. The Mediation Process

1. To ensure neutrality, mediation will be provided by the mediation process that is not affiliated with the Agency or any advocacy group.
2. The mediation process will be one that focuses on dialogue, relationships, and building understanding. There are several examples of mediation approaches that fit this criterion including inclusive mediation, transformative mediation.
3. The mediation provider will determine the type of mediation protocol to use for each mediation session.
4. At the discretion of the mediation provider one (1) or two (2) affiliated mediators will be referred to each scheduled mediation session.
5. The mediation session will take place in a neutral location, with all participants in a room together. A private session [caucus] will only occur when there is a concern for safety or fear of retaliation and the mediators need to explore whether to end the session.

VI. MEDIATION SESSION

- A. Agency personnel shall wear their uniform of the day or proper business attire the day when participating in a mediation session.
- B. A typical mediation session is scheduled to last for two (2) hours by the mediation provider although a session can be concluded before the end of the 2 hours. Likewise, if additional time is needed as determined by the independent mediator, it can continue

upon agreement of the parties, or another mediation session can be scheduled.

VII. CONCLUSION OF MEDIATION

A. When the mediation process has concluded, the outcome shall be determined by the mediation provider to be:

1. A successful resolution if all parties agree with the resolution. A successful resolution shall be documented by the mediation provider in a written statement, signed by both parties and the mediator. If both the deputy and the community member attend and participate in the mediation session, then the case is closed with an outcome of "Closed by Mediation" Complaints that are "Closed by Mediation" will be labeled as such.

2. An impasse, or not resolved, if one or more parties to the complaint cannot agree to a satisfactory resolution. An impasse shall be considered "not resolved" and referred for investigation and handled through the Department's administrative investigative process.

B. The mediator shall send a letter of conclusion to the Sheriff indicating the results of mediation. This notification will occur within ten (10) business days of the conclusion of the mediation session. Note: The Letter of Conclusion will contain only the names of the parties involved in the session and mediator, the agency control/identification number for the complaint, and the date and the time of the mediation session; the Letter of Conclusion will be accompanied by copies of the signed Consent to Mediate Letter.

C. Mediation Tracking and Reporting

1. Results of the mediation shall be tracked by the Agency and forwarded to the Queen Anne's County Police Accountability Board.

2. Complaint mediation statistics shall be included in the Agency annual reporting of complaints involving the public, and the statistics shall include:

- a. total number of complaints handled through mediation.
- b. number of successful resolutions, and
- c. number of mediation impasses.

D. If the deputy fails to comply with the actions and deadlines identified in the mediation agreement the deputy may face further disciplinary action.



Sheriff Gary Hofmann