

Volume

1

CITY OF ALBUQUERQUE

Civilian Police Oversight Agency

Guide to Mediation for Police Officers

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Guide to Mediation for Police Officers

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Q: What Is Mediation?

A: At the Civilian Police Oversight Agency, mediation is one way that Albuquerque Police Officers can resolve complaints filed against them by members of the public. Mediation offers you and the civilian the opportunity to sit down at a table in a comfortable, quiet, and private space and talk about the incident that led to the complaint. You won't be alone with the civilian—at least one neutral mediator provided by the City of Albuquerque Community Relations Department will be with you. These mediators are trained professionals experienced in conducting mediations; it is their job to structure the discussion between you and the civilian so that you and the civilian can communicate effectively. The more both parties listen to what the other has to say, the more likely it is that you and the civilian will come away with a better understanding of the incident. A successful mediation occurs when you and the civilian agree that the issues raised by the incident and complaint have been resolved.

Q: What happens in mediation?

A: At a mediation session, you and the civilian meet with a mediator in a private office or conference room. Before the session begins, the mediator will ask you and the civilian to sign an Agreement to Mediate. By signing the agreement, you and the civilian agree that anything you or the civilian say for the entire time during mediation is confidential. This agreement protects the mediator from being called to testify in any future legal proceeding. After the agreement is signed, the mediator will explain the mediation process and set ground rules for both you and the civilian to follow in order to facilitate discussion.

The mediator will ask both you and the civilian to describe what happened the day of the incident. The mediator is not a judge, and will not be determining who is right and who is wrong. The mediator's job is to help you and the civilian to engage in a full and frank discussion about the incident in an effort to arrive at a mutually acceptable resolution of the complaint. The mediator will speak to both you and the civilian, asking questions when necessary, to assist you and the civilian in talking and listening to each other. You will be free to speak your mind. You will be free to explain to the civilian what happened that day, what you did, and why. You will also be free to express how you felt about the citizen's behavior. At the same time, the citizen will be invited to explain why he or she filed the complaint, respond to your comments, and might try to explain his or her perception of the incident and his or her actions. At some point, if you and the citizen decide that you have resolved the issues between you, the mediator will ask you and the civilian to sign a resolution agreement. This agreement signifies that the complaint has been resolved. If you both sign the agreement, the mediator will give you a copy for your files. At that point, the mediation is considered successful. The complaint will then be inactivated and closed by the Civilian Police Oversight Agency as successfully mediated.

Q: Who are the mediators?

A: The individuals who mediate cases for the APD and the CPOA are contracted by the City's Alternative Dispute Resolution section of Community Relations Department but more importantly they are trained and experienced mediators.

Q: When and where does the mediation take place?

A: All mediations will take place at a location determined by the mediator. The mediator will ensure that you will have a safe, private space for you to meet with the civilian and the mediator.

Q: What would I get out of mediating my complaint?

A: The police department encourages its officers to participate in mediation. You can obtain two specific benefits if you successfully mediate your complaint. First, the allegations raised by the complaint do not become a part of your retention (disciplinary) file. This means that no information regarding the complaint will be made a part of your complaint history. Second, the department has agreed that because there is no history of the complaint other than with the CPOA, it cannot be counted against you in any way. In addition, the department does not include mediated complaints when it considers whether to add an officer to an early warning monitoring list.

You may obtain the same benefits just by agreeing to mediate your complaint. If you agree to mediate your complaint and the citizen fails to show up, or fails to negotiate in good faith, the complaint will be inactivated based on the recommendation of the mediator. The complaint will also be inactivated if there is a failure to reach a resolution by the parties as mediation is the sole remedy for a citizen if they choose that avenue to resolve their complaint. In other words, if there is no resolution, the citizen cannot come back to the CPOA or the department and request a full investigation. In those cases, the complaint will be inactivated as “mediation attempted.”

The most important thing you can get out of mediating your complaint is *satisfaction*. You have the chance to tell the citizen why you acted the way you did; you even have the opportunity to comment upon the civilian’s behavior during the incident. Of course, there is no guarantee that the citizen will be receptive to what you say, but you can finally talk to him or her directly. 90 % of all complaints mediated have been successfully resolved. Most studies show that officers who mediate their complaints are more satisfied with the complaint process than those whose complaints are investigated.

Q: I want an apology from the civilian. Can I get one?

A: During the mediation session, you can always ask for an apology from the citizen. In fact, if it is important to you, you should ask. There is no guarantee that the citizen will apologize, but there is a guarantee that if you mediate your complaint, you can ask the citizen to apologize. Keep in mind, the citizen may be seeking an apology from you too. That is one of the biggest differences in mediating a complaint and a full investigation into a complaint. If the CPOA investigates the complaint, there is absolutely no way you can ask for or receive an apology, because you do not meet with the citizen in person.

Q: Why should I agree to mediate when I was just doing my job?

A: In many Citizen Police Complaints, what an officer does is not the issue. It's how the officer does it. For example, let's say you stop someone for running a red light. When you approach the driver you ask for her paperwork and you use what you think is a businesslike, professional tone of voice. The driver though, who has never dealt with the police before, finds the tone you used abusive and threatening. When you learn a complaint has been filed against you, you don't understand why she filed it-you were only doing your job. With mediation, you can explain that you were not threatening her at all. You can tell her why police officers need to be firm with the people they are dealing with. You might also be able to learn from the citizen about the effectiveness of your business voice. Insights like that can improve your skills as a police officer.

Q: Why is my case suitable for mediation?

A: The CPOA and the department have set guidelines for determining what types of complaints are eligible and appropriate for mediation. To begin with, a complaint is not suitable for mediation if the officer allegedly injured someone or damaged property, if the allegations stem directly from an arrest, or if the officer has an extensive complaint history. If the conditions are met, complaints that can be mediated can include those where the officer allegedly made threats, refused to identify himself or herself, stopped and questioned a civilian, and/or used discourteous or offensive language.

Q: Can I bring my union representative or attorney to the mediation session?

A: You may bring a union representative or an attorney to the mediation but neither is permitted to observe or participate in the mediation session. You can however, stop the mediation session at any time to consult with your representative or attorney outside the room where the mediation takes place.

Q: What if I feel the mediation is not working?

A: If you think the mediation is not working, you have the right to stop the mediation at any time. The civilian and the mediator also have the right to stop the mediation. However, if you fail to negotiate in good faith, and based on the recommendation of the mediator, appropriate sanctions by the Chief of Police may be taken against you. In other words, if you go to the mediation and participate and negotiate in good faith and agreement is not reached, that is okay. If you choose to mediate and then go and you don't participate or stop the mediation simply because you want out of the complaint, then sanctions could result.

Q: What has to happen before the complaint against me can be mediated?

A: If you are an acceptable candidate for mediation and the civilian has agreed to mediate the complaint, someone from the CPOA or a mediator will contact you to see if you want to participate in mediation. Only after you agree to mediate can the mediation process

begin. If you decline mediation, a full investigation will take place by the CPOA investigator originally assigned to the complaint.

Q: The civilian screamed at me when the incident occurred. If I agree to mediate, I don't want that to happen again. What can you do about that?

A: During mediation, it is fairly common for people, including police officers, to vent—that is, to express some emotion about the incident that led to the complaint. Venting can be useful in mediation because it can help to clarify issues. However, name calling and insulting speech are not productive or helpful. The mediator will not permit the civilian to scream at you during mediation.

Q: I remember my encounter with the civilian. I was having a really bad day and what the civilian said I did actually happened. I would like to apologize, but won't that create a bigger problem for me?

A: No. The mediator is prohibited from using an apology offered during mediation as an admission of guilt or to punish the officer in any way. In fact, no record is kept that you even offered an apology. The confidentiality agreement that you and the civilian signed at the beginning of the mediation session precludes anyone from using an apology offered by either the citizen or the officer during the mediation for any purpose other than for successful mediation of the complaint.

Q: I work nights. How can I mediate?

A: If you agree to mediate, scheduling arrangements will be made through the department so you can participate in mediation.

Q: The citizen makes allegations against me and my partner. I want to mediate but my partner does not. What happens if he doesn't agree to mediate?

A: If you or your partner does not agree to mediate, the complaint cannot be mediated and the CPOA will investigate the complaint. With mediation, all subject officers must agree to mediate before the CPOA can schedule the mediation.

Q: How long does mediation take?

A: That really depends on you and the civilian. Some mediations are completed within 30 minutes, while others can last two hours or longer. It truly depends on what you have to say and how willing you are to listen to the civilian. You shouldn't worry about taking too much time. The mediator(s) will stay with you as long as it takes as long as you and the civilian are making progress.