

SEATTLE POLICE DEPARTMENT MEMORANDUM

TO Police Accountability Review Panel

DATE October 31, 2007

FROM Kathryn Olson, Director
John Fowler, Associate Director

Office of Professional Accountability

SUBJECT Mediation Program

Background

As an outgrowth of his work as the Independent Auditor of Internal Investigations for SPD, Judge Terrence, ret., and others advocated for mediation as an alternative to the normal police misconduct complaint investigation process.¹ They recognized that many complaints could be successfully resolved if the parties had an opportunity to sit down and talk in a neutral, non-confrontational, and confidential environment. Following negotiations with the Seattle Police Officers Guild (SPOG), the Office of Professional Accountability (OPA) created a police-citizen mediation program in 2005.

The OPA mediation program provides officers and citizens an opportunity to clear up misunderstandings and miscommunication related to a particular incident. The process helps citizens learn about the basis for police officers' actions and promotes an improved understanding of police work, the dangers involved, and the totality of circumstances that led the officer to respond the way he or she did. At the same time, mediation allows for officers to learn more about the effect their words and behavior can have on the public, and helps to demonstrate the impact of effective communication.

Judge Terrence Carroll, ret., and other mediators from Judicial Dispute Resolution ("JDR") have been providing their services on a pro bono basis since OPA began mediating complaints in August 2005. A total of 16 mediations were completed during the first 18 months of the program, through December 2006. Given the recent rate of referral, OPA will surpass this number for 2007, with a goal to complete a total of 18-20 mediations this year.

As seen in other jurisdictions, parties in Seattle report a high rate of approval with the process when disputes are mediated. Officers and citizens are asked to complete a survey following their mediation and 90% report that the dispute was resolved to their satisfaction.

Selecting Cases for Mediation

The OPA Director has full discretion to determine whether or not mediation of a complaint is appropriate. Generally, mediation is approved for cases where there is potential for: (1) greater complainant satisfaction; (2) increased understanding of police practices and procedures; (3) improved officer conduct by understanding how

¹ Further information concerning the OPA mediation program can be found at: <http://www.cityofseattle.net/police/OPA/Docs/2005MediationReport.pdf> and http://www.cityofseattle.net/police/OPA/Docs/2006_Mediation_Report.pdf.

actions are perceived and the impact they have; and, (4) improved relationships between the community and the police. Examples of cases referred include allegations related to professionalism (courtesy/remarks), exercise of judgment and discretion, failure to take appropriate action, misuse of authority, and violations of rules and regulations such as duty to identify. Complaints that would result in significant discipline if the allegations were sustained are considered ineligible for mediation. For example, complaints of unnecessary or excessive force are generally not considered for mediation. However, use of force may be tied to miscommunication and misperception. If minimal force is described and minimal injury occurred, and/or the force alleged is similar to the force described in the use of force report, such a complaint may be referred for mediation.

As she decides whether to refer a particular complaint to the OPA mediation program, the Director also looks to the named employee's history with the Department. Past or current complaints against the officer and previous experience with mediating OPA complaints will be considered. Once a case is identified for mediation, it is referred to the Associate Director for processing. He contacts the parties to determine their willingness to mediate and negotiates with JDR to identify a mediator and arrange for a mutually convenient mediation date.

Following the mediation, if the mediator informs the Department that the employee participated in good faith, the original complaint is dismissed and will not be recorded on the officer's complaint history. If the employee does not participate in good faith, the complaint will be processed and recorded on the officer's complaint history as a supervisory referral, but no discipline shall be imposed. Finally, if the complainant refuses to participate after the employee has agreed to mediation, the complaint will not result in discipline or a record on the employee's complaint history.² To date, the mediators have reported that all citizens and officers who have been through the process have participated in good faith. The initial intake discussion and screening has proved invaluable in educating the parties about mediation and in encouraging them to arrive at their session with the mutual goal of resolving the conflict.

Expanding the OPA Mediation Program

OPA currently is considering ways to expand its mediation program. Opportunities for expansion focus on creating a larger pool of mediators able to handle police misconduct complaints, paying for mediation services, and adding staff resources to help run the program. Though JDR has done a remarkable job in mediating for the OPA for over two years, it is time to involve other mediators and to provide at least nominal payment for such services. JDR has indicated its gracious willingness to assist in identifying and training mediators, and will continue to handle more complex cases as the mediator pool expands, with the hope that OPA will have funds to help offset the costs associated with such services.

Three steps need to be taken: (1) Initially, OPA must provide specialized training on issues related to police misconduct complaints to mediators already versed in dispute resolution techniques and who are willing to mediate, at least initially, on a pro bono basis. After this group is trained, individuals can gradually begin taking on mediations now handled by JDR alone, allowing for more referrals from OPA and opportunities to evaluate an individual mediator's skills. Assuming success with this approach, this specialized training can be arranged for subsequent groups. (2) Though JDR has provided its services pro bono and it is likely other competent mediators would initially volunteer, paying at least a nominal fee for mediation services is an important consideration. Even as new mediators are trained, it is anticipated that JDR would continue to handle cases, in particular those involving more complex issues, and should be compensated for this expertise. Furthermore, many other qualified mediators are not financially in a position to volunteer their services, and providing compensation allows OPA to tap into a wider range of skilled professionals. (3) Finally, though the OPA Associate Director has capably

² These terms are pursuant to the collective bargaining agreement with the Seattle Police Officers' Guild.

handled oversight of the mediation program to date, more staff resources will be necessary to handle the convening and coordinating process required to successfully move cases into mediation, particularly as other sources besides JDR become involved. Also, there are many related tasks that also will expand, such as eliciting feedback from the participants and compiling statistics and reports related to the mediation program.

Budget support to expand the OPA mediation program has been sought. If the program can be expanded as outlined, OPA predicts that the number of cases resolved through mediation in 2008 could be as high as double this year, or up to 40 cases. Given the interest in mediation by the parties and experiences of the program to date, there is every reason to believe that this form of alternative dispute resolution will continue to be successful in resolving complaints of police misconduct filed with the Office of Professional Accountability.

Thank you for taking the time to review the OPA mediation program. We hope that PARP agrees that offering alternative dispute resolution options to complainants and officers is beneficial, and that the panel will support efforts to expand opportunities to mediate OPA complaints. Please let us know if you have questions or suggestions about other ways the program can be improved.