



## Community- Police Complaint Mediation February 2020



### Philadelphia Police Advisory Commission

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## Community-Police Complaint Mediation

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### Introduction

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When citizens and officers interact, a brief but intense relationship develops between two people with different perspectives. In this relationship, many factors can affect the outcome and perceived outcome. Ultimately, different perceptions of the same interaction may emerge, and each party may be unaware of what they may have done to contribute to a problem or negative interaction. By necessity, in these interactions police officers retain their authority and the dynamics are greatly influenced by that fact. Unfortunately, if a resident is unhappy with their interaction with an officer or vice versa, there is no mechanism for the two of them to authentically communicate in a non-judgmental and open space. Rather, the only recourse is the current complaint and disciplinary system. This system does not allow for any direct communication between the two people most involved in the interaction.

Although the Philadelphia Police Department has effective mechanisms in place to investigate serious allegations or provide command level discipline to officers, neither option provides citizens and officers with the opportunity to engage in face-to-face dialogue after their initial encounter. In recent years, municipalities began offering one-on-one facilitated dialogue as an option to resolve community-police complaints. In addition to providing a faster and more cost-effective alternative to formal complaint processes, many Alternative Dispute Resolution (ADR) methods empower participants with the ability to control the final resolution of their issues. ADR methods have proven effective in resolving community-police complaints because both parties gain understanding, perspective, and insight into the each other's behavior and actions. Less formal than traditional internal investigations, structured dialogue between parties allow for productive conversation led by a facilitator who assists in overcoming communication barriers to increase understanding between police and civilians.

In accordance with Executive Order NO. 2-17, the Police Advisory Commission completed a review of community-police mediation programs to develop a program proposal for Philadelphia using evidence based smart practices. Part I provides an overview of mediation, Part II reviews the benefits of participating in complaint mediation, Part III discusses program components, part IV provides a summary of community-police mediation programs in other jurisdictions, part V looks toward the future of community-police complaint resolution methods in Philadelphia, and part VI discusses the PAC's recommendations.

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## I. What is Mediation?

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Mediation is a type of Alternative Dispute Resolution (ADR) method used to resolve issues between two parties and has been in practice across cultures for thousands of years.<sup>1</sup> Community-Police mediation offers an alternative to PPD Internal Affairs investigations and command-level discipline for select allegations. When deciding between the implementation of a mediation program or a facilitated dialogue program it is important to understand the differences. For instance, mediation inherently requires confidentiality, whereas facilitated dialogue requires an additional step of developing a confidentiality contract to protect both parties. In addition to the mediation process being confidential, it is also third party neutral, non-judgmental, voluntary, and non-punitive. The following information breaks down the key components of the mediation process:

### *Confidential*

Confidentiality plays a pivotal role in the success of mediation programs: both parties are required to sign a confidentiality agreement. During the mediation, only the citizen, officer, and mediator(s) are in attendance. There are no audio or visual recordings made and no documents are generated after the session concludes. While the mediation is in progress, the mediator may take notes to help facilitate discussion, but those notes are destroyed at the end of the session. Confidentiality is integral to the success of mediation and provides a solid foundation for parties to engage in frank discussions of their private thoughts and feelings.<sup>2</sup>

Confidentiality allows both parties to speak candidly without fear that their statements can be used in administrative hearing or be introduced in a civil or criminal proceeding. Officers are also free to apologize to citizens, which they may avoid doing while on duty or be cautioned against if a formal complaint is filed. It is worth noting that if either party apologizes during a mediation session, this apology would occur organically; no one is forced to apologize. In addition, if either (or both) parties make any admissions or apologies those statements are not used against either party after the session concludes.

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<sup>1</sup> Suzanne McCorkle and Melanie J. Reese, *Mediation Theory and Practice*, 2nd ed. (Thousand Oaks, CA: Sage, 2015), 16.  
<sup>2</sup> <https://www.cedr.com/articles/?item=Confidentiality-a-guide-for-mediators>

### ***Third Party Neutral***

One of the founding principles of mediation is the premise that parties need to address and resolve the issue themselves. Although a trained mediator is involved in the process, their role is only to facilitate meaningful dialogue between parties. The role of the mediator is not a fact-finder, investigator, or judge and they do not take sides, decide who is right or wrong, or provide legal advice. Mediators assist both parties in an information exchange with the hope of reaching a resolution. Additionally, there is no pressure to come to an agreement or to apologize to one another. The mediator is there to ensure the conversation stays focused, free from offensive or abusive language and conduct. Simply said, “the disputing parties *own* the process.”<sup>3</sup>

In addition to a neutral facilitator, mediation also provides a neutral setting where both the police officer and the citizen are equals. By removing distractions and power dynamics that exist during public police-citizen interaction, both parties can focus on resolving the conflict that brings them together.<sup>4</sup> Both parties are addressed by their first names, to further humanize and abolish the power imbalance. Sessions are held in a neutral, comfortable, and mutually accessible community space, such as a school, municipal building, recreation center, or library.

### ***Non-punitive***

Mediation is non-disciplinary. The mediator does not decide the outcome of the complaint or make a judgement on behalf of either party. The officer does not receive any discipline post mediation, and the complaint is closed after a successful session. Section III discusses in further detail what a successful mediation looks like.

### ***Voluntary***

Since mediation aims to change behavior going forward and increase mutual understanding between parties, it would not be effective to force participation. Additionally, since both parties “own” the mediation process, they must be invested in the conversation; forced participation would guarantee failure. Officers have the option to decline participation in the mediation program, as do the citizens

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<sup>3</sup> <https://cops.usdoj.gov/pdf/e04021486web.pdf>

<sup>4</sup> <http://www.policechiefmagazine.org/peaceful-communications-community-members-law-enforcement/>

that file complaints. In many programs, either party can choose to end the mediation process at any point and the complaint will be referred to the department for traditional investigation.

### **Goals of Mediation**

Contrary to traditional investigative methods that are grounded in factfinding and determination of guilt,<sup>5</sup> mediating complaints against police aims to increase understanding on both sides. In the PAC's experience, a significant portion of complaints against police are rooted in misunderstanding and poor communication. Traditional means of complaint investigation do little to resolve these issues, at times serving only to increase the divide between citizen and officer, leaving both sides feeling unfairly targeted and unjustly dealt with. By opening a channel for dialogue, police and citizens share an opportunity to listen and respond in a safe and controlled setting.

Prior to mediation, each party only considers a limited piece of reality, where in each person's view, the other is acting inappropriately.<sup>6</sup> Mediation allows both parties the freedom to explore situational, emotional, and relational views from opposing perspectives.

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<sup>5</sup> Ibid.

<sup>6</sup> McCorkle and Reese. *Mediation Theory and Practice*, 2<sup>nd</sup> Ed., 3.

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## II. What are the benefits of participating in mediation?

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Before discussing how the PPD can benefit from community-police mediation, it is important to revisit two fundamental theories of policing: procedural justice and police legitimacy.

At its most basic definition, procedural justice means citizens have a voice in the process, are treated with respect, trust the motives of the police, trust the police to be neutral decision makers, are made aware of why the police decided to resolve the situation in a certain way, and believe the police are genuinely invested in the interest of both parties.<sup>7</sup> These attributes fall in line with the goals and outcomes of a community-police mediation program. During the mediation session, the citizen can be heard, and the officer can make their decision-making process understood. Through these sessions both participants can gain perspective and reinvest themselves as members of the same community.

Besides building understanding and mutual respect with residents in their district, mediation can increase the public's sense that officers are justified in their authority as law enforcement representatives, a concept also known as police legitimacy. "Legitimacy is a characteristic of legal authorities and can therefore be created or undermined by their behavior."<sup>8</sup> If citizens believe in police legitimacy, police will be able to operate more effectively within the community. Citizens will be more likely to call for help, serve as witnesses, comply with police investigations, and will be less likely to perceive the police as a threat.<sup>9</sup>

### **Police Department and Officer Benefits**

When cities implement mediation programs, the police departments benefit as well. A review of best practices for cities with successful programs show that it is cost efficient and allows internal affairs resources to focus on serious allegations against officers. Many complaints against police are unable to be substantiated due to lack of evidence, but still require a time commitment by investigators,

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<sup>7</sup> Tyler, T. (2003). Procedural Justice, Legitimacy, and the Effective Rule of Law. *Crime and Justice*, 30, 283-357. Retrieved from <http://www.jstor.org/stable/1147701>

<sup>8</sup> Skogan, W. and K. Frydle. *Fairness and Effectiveness in Policing: The Evidence*. National Research Council Committee to Review Research on Police Policy and Practices. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, D.C.: The National Academies Press, 2004, 291.

<sup>9</sup> Ibid.

inspectors, and officers. Additionally, internal investigations and command level discipline can have negative effects on officer morale.

“In traditional complaint procedures, which are 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. This includes saying they are sorry.<sup>10</sup>” Using mediation as an option for complaint disposition removes this obstacle for officers. Officers can take an active role in the complaint disposition process, empowered by the protection confidentiality agreements provide. Additionally, having the mediation executed by an outside agency can reduce reluctance to speak candidly and avoid feeling like the department is “out to get them” with an internal affairs investigation.<sup>11</sup> Current methods of investigating complaints against police are lengthy and so far-removed from both the complainant and the officer, it is hard for either side to feel satisfied with the resolution. Through the mediation process, both parties can control the outcome.

In the PAC’s experience, many times complainants do not want to have an officer disciplined, they just want the opportunity to be heard. “Mediation offers a conciliatory model that improves the relationship between complainants and officers one case at a time, while often creating systemic social change and impacting officers’ work in the long term.<sup>12</sup>” Implementing an option for mediation with certain types of complaints can allow the officer to see exactly how their actions affected the complainant. In the field, officers do not have the time to walk citizens through their decision-making process. Through mediation, officers can take the time to speak with citizens one-on-one, and explain police tactics, policies, and procedures. The officer can use the opportunity to educate citizens and have their actions, decision making, and motivations better understood. In turn, going forward, officers can engage in honest self-reflection thereby improving the quality of policing in their districts. The benefits of community-police mediation extend well beyond the individual participating parties. Community-police mediation empowers civilians, while increasing transparency and understanding of police operations.<sup>13</sup>

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<sup>10</sup> <https://cops.usdoj.gov/pdf/e04021486web.pdf>

<sup>11</sup> Ibid.

<sup>12</sup> <http://nolaipm.gov/wp-content/uploads/2017/09/2016-Annual-report-mediation-FINAL1-1.pdf>

<sup>13</sup> Strategies for a Successful Mediation Program. <https://www.youtube.com/watch?v=fXIXoH2GAog&t=2419s>



Some jurisdictions offer the benefit of having “successfully” mediated complaints removed from the officer’s discipline file. Like other ADR programs, mediating complaints allows the officer to have a clean slate and move on from their mistakes without having a discipline on file that follows them through their career.<sup>14</sup>

### **Community Benefits**

The benefit of being heard cannot be emphasized enough. As previously stated, in the PAC’s experience many complaints against police stem from miscommunication and misunderstandings. Through mediation citizens are empowered by police actively listening and responding to their perspective. Even if both parties do not agree, coming together to listen and problem-solve can build social capital that extends beyond the individuals. Both the officer and civilian will carry the benefits of positive contact with them beyond the mediation room, and in turn improve police legitimacy and procedural justice. Mediation can serve as a reminder to both the officer and citizen that they are both part of the same community.

After a lengthy investigation process, many complaints of professionalism and discourtesy are unfounded or not-sustained, and results are reported in a letter to the citizen. Through mediation, community members become an active part of the process and can benefit from having their issue addressed promptly. Community members also benefit from an increased knowledge of policing policy and procedure and gain insight into the officer’s thought process and decision making. The community member can also share their thoughts on policing and what good policing looks like to them.

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<sup>14</sup> Ibid.

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### III. Program Components

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#### **Who are the mediators?**

The American Arbitration Association, the Society for Professionals in Dispute Resolution, and the American Bar Association Section on Dispute Resolution have developed and approved professional standards for mediators. The Commonwealth of Pennsylvania does not have a certification or licensing process for mediators. However, in order to provide guidance to both practicing and aspiring mediators, the Pennsylvania Council of Mediators (PCM) has issued recommendations to promote best practices.<sup>15</sup>

Generally, mediators come from a variety of backgrounds and have substantial knowledge, skills, and abilities in areas such as conflict resolution, philosophy, and alternative dispute resolution. Mediators gain experience in these, and other areas, through a combination of training and practical experience.<sup>16</sup> The PCM encourages co-mediators and the use of mentors to develop and refine mediation skills. Some jurisdictions with community-police complaint mediation programs provide specialized training in handling law enforcement. For example, in New York City, mediators attend 2-day seminar at the NYPD Police Academy.

Some community-police mediation programs use trained volunteers, such as law students, retired judges, and community members who agree to mediate while receiving a nominal stipend (typically \$50-\$100) per session. In the City of Philadelphia, the Philadelphia Commission on Human Relations (PCHR) provides mediation services to the community through a Dispute Resolution Program (DRP). They are experienced in dealing with community issues including issues of race, gender, religion and other sensitive topics that other mediation programs may not have the background to handle. The PCHR could be a valuable partner in implementing a community-police meditation program in Philadelphia. Although PCHR has strained resources, ideally the City would structure an agreement between the PAC, PPD and PCHR to manage a certain number of cases during the pilot phase of the

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<sup>15</sup> <http://www.pamediation.org/recommended-guidelines.html>

<sup>16</sup> <http://www.pamediation.org/recommended-guidelines.html>

mediation program, with the potential to add an additional position to departmental budgets and provide specialized training for all mediation staff in handling law enforcement complaints.

### **What allegations can be mediated?**

Generally, community-police complaint mediation programs focus on allegations that arise from misperceptions, misunderstandings, and miscommunications, such as professionalism, discourtesy, and lack of service.

### **What should not be mediated/officer ineligible?**

Comparatively more serious complaints involving use of force, overt racism and overt racially offensive language, etc. should continue to be subject to an in-depth investigation by the Internal Affairs Department. Additionally, officers with an excessive complaint history, or officers who are currently under investigation should be considered ineligible.

The complainant should also be vetted prior to being referred to mediation. The complainant's demeanor and supporting evidence should be considered. It is important to note that although a complaint may be eligible for mediation, the complainant themselves may not be suitable for a variety of reasons including chronic complainants or complainants that are unwilling or resistant to any resolution other than the one they demand. Complaints that make it clear that monetary compensation is being sought, in cases that claim of injury or property damage, should also be considered ineligible.

### **Defining the Mediation Process**

There are various models of mediation, with different styles that work in different ways, but the principals and goals are generally the same. Using the Facilitative Model of Mediation as an example, participants can expect the following during a mediation session:

After a complaint is submitted and determined to be suitable for mediation, both parties are contacted. If both agree to participate, the mediation session is scheduled at a mutually agreeable time and convenient location. Prior to the start of the session, the mediator(s) will give an opening statement to both parties where they will explain the process in detail and review the confidentiality laws. Then

each party is given uninterrupted time to share their perspective of the dispute, generally starting with the initiating party (complainant). The respondent (officer) will then explain their perception of events. During uninterrupted time, the mediator(s) gather information and begins to understand the driving issues of each parties' position, as well as the common interests of the parties.

At any time, the mediators, respondent, or officer may request a caucus with the mediator(s). A caucus consists of a private and confidential meeting with either party, where questions may be asked, further clarification can be given, or issues can be probed further. Information discussed in caucus is confidential and will not be shared with the other party when the mediation session resumes. Caucusing is unique to the Facilitative Model.

The mediator(s) then guides the parties in brainstorming and evaluating options for a resolution. Although most facilitative models of mediation end in a mutually established, signed, written agreement the community-police mediation session could also be deemed successful, without a signed resolution. With each participant driving the outcome, if both parties actively participated in good faith the mediation can be considered successful.

### **How to determine if a complaint is successfully mediated**

Overall, participants are responsible for determining the outcome of the mediation process and therefore control their own narratives.<sup>17</sup> If complainant and officer expectations and outcomes are well managed, success can be measured by whether the participants built understanding. In many cases agreeing to disagree, through mutual respect and understanding, is a successful outcome of mediation. For the police department, success can be measured by whether the mediation was completed within specified window (60 days, 90 days, etc.). The officer's willingness to participate should also be considered when determining success, for example if the officer attempts mediation but the complainant drops out of the process, or if the complainant decides to pursue traditional means of complaint investigation. In addition to administering post-mediation satisfaction surveys at the close of the session, PAC intake coordinators can initiate follow-up phone interviews with each party, 30 to 60 days post-mediation.

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<sup>17</sup> <http://www.policechiefmagazine.org/peaceful-communications-community-members-law-enforcement/>

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## IV. Mediation Programs in Other Cities

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### **Office of the Independent Police Monitor, New Orleans, LA**

In 2009, the New Orleans City Council passed an ordinance creating a police oversight division housed within the New Orleans Office of the Inspector General. The ordinance gave the Office of the Independent Police Monitor (IPM) the authority to establish and administer a complaint mediation program.<sup>18</sup> In 2010, the New Orleans Police Department and the IPM signed a Memorandum of Understanding which, in part, created guidelines for the complaint mediation program. The IPM received funding to develop and implement the mediation program from the United States Department of Justice, Community-Oriented Policing Service, and received subsequent grants from Baptist Community Ministries to continue operations. The mediation program was fully funded by grants for the first three years before becoming a part of IPM's budget.<sup>19</sup>

The IPM mediation program accepts many allegations, including of professionalism, discourtesy, neglect of duty, and racial profiling. During the session two mediators are present, chosen specifically to represent the demographics of the community. IPM has approximately thirty mediators on hand who received more than fifty hours specialized training and an additional twelve hours of professional development.<sup>20</sup> IPM mediators use an inclusive mediation model, where the goal is to “support participants in having difficult conversations and to guide a problem-solving process to develop solutions which meet everyone’s needs, with all content decisions made by the participants<sup>21</sup>.” The Inclusive Framework model of mediation uses two mediators to co-mediate the session.

If the citizen and officer agree to mediation, the officer will not be subject to investigation, will not be disciplined, and the complaint record will show “closed by mediation.”<sup>22</sup>

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<sup>18</sup> Section 2-1121 of Article XIII of the City Code and City Ordinance 23146  
<https://d3n8a8pro7vhmx.cloudfront.net/nacole/pages/109/attachments/original/1458082815/1-NOLA-Independent-Police-Monitor-City-Ordinance-2-1121.pdf?1458082815>

<sup>19</sup> <http://nolaipm.gov/wp-content/uploads/2017/09/2016-Annual-report-mediation-FINAL1-1.pdf>

<sup>20</sup> Id.

<sup>21</sup> <http://communitypolicemediation.org/about/our-mediators/>

<sup>22</sup> <http://nolaipm.gov/wp-content/uploads/2017/09/MOU-Signed-11-10-10.pdf>

### IPM Statistics and Participant Surveys

In 2016, the first full year of operations for the IPM mediation program, 104 cases were referred to the program and 41 cases were mediated. Of the 63 cases that were not mediated, 23 were declined by the citizen and 14 were declined by the officer. The remainder of cases were not mediated for a variety of reasons, from officers no longer employed by the department to civilians with outstanding warrants.<sup>23</sup>

In participant surveys, nearly 100% found the mediation unbiased and agreed it built mutual respect. Overall, 89% of civilians had a better understanding of policing. For Officers, 92% agreed it's a good way of resolving disputes and every officer said they'd participate in a mediation again.

### Civilian Complaint Review Board, New York, NY

In 1993, a provision to New York City's Charter mandated that the Civilian Complaint Review Board (CCRB) establish a mediation program option to resolve complaints in an "informal conciliation."<sup>24</sup> Although the program was established in 1993, mediation was not well utilized. Recognizing the positive impact complaint mediation could have on community-police relations, the CCRB revitalized the program. In 2009, then NYPD Police Commissioner Raymond W. Kelly issued a press release encouraging officers to participate in the program.<sup>25</sup>

The CCRB's mediation program is voluntary and non-disciplinary. Most allegations are eligible, excluding pending criminal matters, physical injury and property damage complaints. The allegations they mediate include abuse of authority, use of force, offensive language, and discourtesy. There are three potential outcomes for mediated complaints: successful, unsuccessful, and mediation attempted. Cases deemed unsuccessful and mediation attempted are referred for further investigation, however, mediation attempted shows on the officer's record and is looked at favorably.

CCRB uses approximately 30-40 mediators with a variety of backgrounds, from attorneys, to human resource and social work professionals. Mediators are required to complete 40 hours state certified

<sup>23</sup> <http://nolaipm.gov/wp-content/uploads/2017/09/2016-Annual-report-mediation-FINAL1-1.pdf>

<sup>24</sup> [https://www1.nyc.gov/assets/ccrb/downloads/pdf/about\\_pdf/nyc\\_ccrb\\_charter.pdf](https://www1.nyc.gov/assets/ccrb/downloads/pdf/about_pdf/nyc_ccrb_charter.pdf)

<sup>25</sup> [http://www.nyc.gov/html/nypd/html/pr/pr\\_2009\\_mediation.shtml](http://www.nyc.gov/html/nypd/html/pr/pr_2009_mediation.shtml)

mediation training, a two-day law enforcement training session, and have a minimum of 2 years' experience. For their time, Mediators receive a \$100 stipend per case.

NYPD administration uses a variety of approaches to monitor officers. This includes listing key details of complaints against officers in their internal personnel databases. If an officer decides to pursue mediation the officer benefits by having the details of the complaint against them masked with the complaint shown only as “mediated.”<sup>26</sup> In addition, complaints that are successfully mediated are not counted against the officer during annual reviews.<sup>27</sup>

### CCRB Statistics

“In 2017, the Mediation Unit conducted 226 mediation sessions, resulting in 204 satisfactory resolutions, a 90% success rate. The remaining 22 complaints were returned to an investigator and closed by the Investigations Division. For cases closed in 2017, the mediation acceptance rate for civilians was 41%. Officers who were offered the chance to mediate a complaint accepted mediation 91% of the time.”<sup>28</sup> Overall, mediated cases take less time to complete, approximately 90-100 days, versus 145 days for cases referred for full investigation.

### Office of Police Complaints, Washington, D.C.

A Washington D.C. statute established the Office of Police Complaints (OPC) in 1999. As established in the DC code, OPC has the authority to investigate, mediate, or dismiss complaints against police.<sup>29</sup> At the conclusion of the session, if both parties agree the issue was resolved they sign a resolution agreement stating they will adhere to the confidentiality agreement and that OPC will take no further action on the complaint. OPC defines “resolution” as both parties feeling they have had the opportunity to be heard and the conversation was productive, not that they have come to an agreement. Confidentiality built in to Federal Law and the DC Code protects mediation against subpoenas and

<sup>26</sup> Patterson, Raymond W., "Resolving Civilian-Police Complaints in New York City: Reflections on Mediation in the Real World" (2006). Scholarly Works. Paper 493. <http://scholars.law.unlv.edu/facpub/493>

<sup>27</sup> Patterson, Raymond W. Resolving Civilian-Police Complaints in New York City: Reflections on Mediation in the Real World (2006). 201

<sup>28</sup> [https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy\\_pdf/annual\\_bi-annual/2017\\_annual.pdf](https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2017_annual.pdf)

<sup>29</sup> <https://code.dccouncil.us/dc/council/code/sections/5-1102.html>

freedom of information act requests and will provide sanctions against anyone that attempts to use statements from sessions in future legal proceedings.

### Statistics and Participant Surveys

In their 2018 Annual Report, participant surveys show 100% of officers and 85% of complainants found the mediator to be helpful during the mediation session and 85% of officers agreed that mediation is a fair forum to discuss the complaint.<sup>30</sup> It is also important to note that the average days between referral to mediation and completion decreased from 58 days in 2016, to 18 days in 2018.

### Other Issues to Consider

The Commonwealth of Pennsylvania does not issue licenses or certifications for mediators; however, training is offered by community-mediation centers. Mediators generally receive 20 to 40 hours of training in conflict resolution, problem solving, information gathering, and related areas. To provide further guidance to both practicing and aspiring mediators, the Pennsylvania Council of Mediators (PCM) offers recommendations on best practices for mediators within the Commonwealth. This includes the 2005 Model Standards of Conduct for Mediators, developed by the American Arbitration Association, the American Bar Association's Section for Dispute Resolution, and the Association for Conflict Resolution.<sup>31</sup>

In addition to defining standards of conduct, section five of the Model Standards discusses confidentiality during the mediation process. Section five establishes the following provisions:

“A. A mediator shall maintain the confidentiality of all information obtained by the mediator in mediation, unless otherwise agreed to by the parties or required by applicable law.

1. If the parties to a mediation agree that the mediator may disclose information obtained during the mediation, the mediator may do so.

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<sup>30</sup>[https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/AR18\\_Final.pdf](https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/AR18_Final.pdf)

<sup>31</sup> Full text of the Model Standards of Conduct of Mediators can be found at <http://www.pamediation.org/archives/Ethics-PartTwo.pdf>.



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. 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.<sup>32</sup>”

In Pennsylvania, mediation confidentiality is further protected the Confidential Mediation Communications and Documents Act (Pennsylvania Consolidated Statutes, Title 42, Section 5949). The Act establishes that “all mediation communications and mediation documents are privileged. Disclosure of mediation communications and mediation documents may not be required or compelled through discovery or any other process. Mediation communications and mediation documents shall not be admissible as evidence in any action or proceeding, including, but not limited to, a judicial, administrative or arbitration action or proceeding.<sup>33</sup>” The statute does limit confidentiality in instances of fraudulent documents and communications. The statute also does not apply to “a communication of a threat that bodily injury may be inflicted on a person; a communication of a threat that damage may be inflicted on real or personal property under circumstances constituting a felony; or conduct during a mediation session causing direct bodily injury to a person.”<sup>34</sup>

### **Funding Sources**

There are many opportunities for the PPD to implement a cost-neutral community-police mediation program. PPD should first consider resources the City has on hand, such as the mediators on staff at the Philadelphia Commission on Human Relations (PCHR). PCHR and PPD, ideally, would enter into an agreement that PCHR co-mediate cases during the pilot/testing phase of the program.

Looking ahead to establishing a permanent community-police mediation program, if successful, the PPD, PAC and PCHR could explore the feasibility of adding additional staff to continue working in partnership. PPD and PAC can also work together to establish a roster of mediators from the community. Mediators often receive a nominal stipend for participating in the session.

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<sup>32</sup> <http://www.pamediation.org/archives/Ethics-PartTwo.pdf>

<sup>33</sup> [http://www.pamediation.org/archives/PA\\_STATUTE\\_ADD.pdf](http://www.pamediation.org/archives/PA_STATUTE_ADD.pdf)

<sup>34</sup> [http://www.pamediation.org/archives/PA\\_STATUTE\\_ADD.pdf](http://www.pamediation.org/archives/PA_STATUTE_ADD.pdf)

In addition to utilizes existing City and community resources, there are a wide variety of grants available to local law enforcement agencies interested in establishing a community-police mediation program through the U.S. D.OJ. Office of Community Oriented Policing Services, the American Arbitrators Association (AAA) and other agencies.

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## V. The Future of Mediation in Philadelphia

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Implementing a community-police mediation program can take the Philadelphia Police Department to the next level in neighborhood-based community policing. The following is a sample model of what a collaborative, multi-agency, mediation model could look like in Philadelphia (for illustrative purposes):

### Philadelphia Model

#### IAD Will:

- Identify complaint categories eligible for mediation.
- Vet complaints for eligibility based on the following criteria:
  1. Allegation / complaint category eligible for command-level discipline (lack of service or verbal abuse)
  2. Complainant suitability- desired outcome, pursuit of litigation, willingness to participate, etc.
  3. Officer suitability- complaint history, willingness to participate, active investigation.
  4. Continue investigation if either party does not participate, or if mediation unsuccessful. In cases where officer was willing to participate or participated in unsuccessful mediation, willingness or participation should be looked at favorably.
- Determine what officer's record will show.
- Limit Officer participation to X (number) complaints every X (number) calendar year(s).

#### PAC Will:

- Flag PAC complaints for IAD that may be eligible.
- Receive cases IAD designates as eligible.
- Reach out to the community member, to explain mediation and obtain consent.
- Reach out to the officer, to explain mediation and obtain verbal consent.
- Obtain signed letter of consent from both parties and prior to scheduling mediation.
- Coordinate and schedule mediation for a mutually agreeable time and location.
- Administrate, receive, and report on pre-and post-mediation surveys.
- After mediation, PAC will send a letter to IAD informing them whether mediation successful/unsuccessful.
- Provide follow up interviews with both parties within 30 or 60 days.

#### PCHR Will:

- Provide co-mediation services for first year pilot program.
- Provide confidentiality agreement to both parties prior to start of mediation session (*sample confidentiality agreement, Appendix A*).

- Provide post-mediation satisfaction survey to both parties at the end of the mediation session.
- Provide PAC with signed resolution agreement outcome (*sample resolution agreement, Appendix B.*). No documentation will be generated as part of the mediation process.

Officers Will:

- Participate in mediation voluntarily, as an alternative to traditional complaint investigation.
- Participation will be considered successful as long as participation is in good faith.
- Record will only reflect complaint mediated.

*\*Officers can bring attorney/union and pause mediation to consult with their representative, however, only mediator, initiator, and respondent(s) are allowed in the mediation room.*

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## VI. Recommendations

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The PAC developed this report to serve as a proposal to implement a community-police mediation program. The following recommendations offer a broad framework for PPD to further explore the information contained in this report with the goal of developing a pilot a mediation program.

**Recommendation 1** The PAC recommends that the PPD engage with local partners, including the PAC and PCHR, to form a community-police mediation work group.

1.1 The multi-agency work-group will serve as an information exchange and roundtable of ideas to be considered during the initial stages of program development.

1.2 Using a collaborative approach to program development will allow PPD to consider mediation in a broader context.

1.3 The goal of this workgroup is to create a Philadelphia-specific model by discussing issues and defining goals tailored to suit the City's unique needs.

**Recommendation 2** The PAC recommends the PPD co-chair a steering committee alongside PAC representatives to develop specific mediation program components.

2.1 PPD should include representatives from Philadelphia Commission on Human Relations on the committee to consult on key program components.

2.2 PPD should consider entering into an agreement with PCHR during the initial implementation of the pilot program/testing phase. PCHR would agree to co-mediate eligible community-police complaints during the one-year pilot phase.

2.3 Based on the efforts of the steering committee, the PPD and PAC should work together to produce a document outlining the mechanics of the community-police mediation program. This document will serve as the pilot model for the Philadelphia Community-Police Mediation program.

2.4 PPD should consider that some municipalities also provide mediators with additional training on issues specific to law enforcement officers.

2.5 The PAC recommends that the PPD use professionally trained mediators who volunteer their services for a nominal stipend.

**Recommendation 3** The PAC recommends the PPD create new materials and utilize pre-existing, publicly available materials that clearly explain the mediation process and set reasonable expectations for participants.

3.1 Produce internal training materials, including roll-call videos for Officers.

3.2 Provide Community Relations Officers with mediation training so they can be well informed and present the program at public meetings and events.

3.3 Ask PPD Commanding Officers, with the rank of Sergeant and above, to volunteer to receive training as mediators in order to act as program ambassadors. Ambassadors can provide informed answers and honest feedback to officers regarding participation.

3.4 PPD leadership should present program information directly to officers by scheduling visits to each district.

**Recommendation 4** Ensure key stakeholders across the City are well informed about community-police mediation confidentiality.

4.1 The PPD will inform officers and the community about confidentiality surrounding mediation communications.

4.2 Information regarding confidentiality should be highlighted in all communications, including training materials and publicly disseminated information.

4.3 This messaging will specifically include that participants cannot use any information that was obtained through mediation in most legal proceedings (see exceptions discussed on page 10 as outlined

in Confidential Mediation Communications and Documents Act, Pennsylvania Consolidated Statutes, Title 42, Section 5949).

4.4 The PPD should be well informed regarding penalties associated with complainants/plaintiffs/defense attorneys/prosecutors attempting to exploit confidential mediation information in court proceedings.

**Recommendation 5** To ensure a successful city-wide launch of the mediation program, the PPD should begin by launching a pilot program.

5.1 Consider that officers interested in participating be eligible on a case-by-case basis. Randomized participation may also help with program evaluation.

5.2 The pilot program period will last for three months, with the option to extend, or until X number of cases are mediated.

**Recommendation 6** To ensure Officers are well informed prior to pilot launch, the PAC recommends the PPD participate in a prototype mediation. Inviting officers to view a simulated mediation will ensure their ability to make a well-informed decision if they receive an offer to participate in mediation.

**Recommendation 7** The PPD should join the PAC in revising the Citizen Complaint form to include a checkbox where a civilian can elect to a) opt-in for mediation b) decline mediation or c) request more information regarding the mediation option. The opt-in does not guarantee the complaint will be eligible for mediation.

**Recommendation 8** The PAC recommends the PPD explore the feasibility of partnering with a local University to develop and administrate pre- and post-mediation surveys to participants. Administration of a post-mediation survey can measure effectiveness, identify key areas where improvement is necessary and gauge participant satisfaction.

Appendix A  
POLICE ADVISORY COMMISSION

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In the Matter of PAC Mediation

MEDIATION PROGRAM  
CONFIDENTIALITY AND  
CONSENT AGREEMENT

CASE #0000000000

xxxxxxxxxxxxxx, Complainant(s)

and

xxxxxxxxxxxxxx, Subject Officer(s)

The Police Advisory Commission mediation program is an informal, non-disciplinary procedure that is voluntary for both the complainant(s) and subject officer(s). Mediation is a process that allows you to work out the dispute with the help of a trained neutral mediator.

Your signature on this Agreement means that you agree that everything that happens during the mediation session is confidential and shall not be disclosed for any purpose, including statements made at or documents prepared for the mediation session. However, you may discuss the mediation with your attorney, representative or employer. It also means that you agree that, if there is any subsequent hearing, proceeding or investigation, you will not, and will not cause or permit anyone else (including the mediator or the other parties to the mediation) to, testify about or provide any information shared in the mediation session (including any documents or records prepared for the mediation session). This prohibition against disclosure applies to all judicial or administrative hearings or investigations, including any discovery requests, which may be made in connection with such proceedings. In addition, you agree that you will not make, cause or permit to be made any recordings of any kind (including video and audio) of these proceedings.

This Agreement is a legally binding agreement and, if violated, may be enforced in court. A violation of this Agreement means that the person who is responsible for revealing (or causing the mediator to reveal) any oral or written information shared during the mediation process can be held responsible by a court for legal and other related costs.

I have read (or have had read to me) the above paragraphs and understand and agree to their content. I hereby consent to mediate the above matter under the rules of the Police Advisory Commission.

Complainant: \_\_\_\_\_

Date: \_\_\_\_\_

Subject Officer: \_\_\_\_\_

Date: \_\_\_\_\_

Mediator: \_\_\_\_\_

Date: \_\_\_\_\_



Appendix B

Police Advisory Commission

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In the Matter of PAC Mediation

Case #XXXXXXXXXX

MEDIATION PROGRAM  
RESOLUTION AGREEMENT

XXXXXXXXXXXXX, Complainant(s)

and

XXXXXXXXXXXXX, Subject Officer(s)

-----X

The complainant(s) and the subject officer(s) appeared on [Month, day, year] and participated in a mediation session regarding Police Advisory Commission Case number XXXXXXXXXX. We have voluntarily reached a final resolution of the issues pertaining to this complaint through the use of the PAC mediation process.

We understand and agree that no further investigation will be conducted by the Police Advisory Commission or Philadelphia Police Internal Affairs into this matter, and that this mediation is the final resolution of this civilian complaint.

We agree that the mediation process has successfully resolved the issues pertaining to this complaint. As a result, the Subject Officer releases the Complainant, and the Complainant hereby releases the Subject Officer (as well as the Philadelphia Police Department, and the City of Philadelphia) from all claims which could be raised in any lawsuit or administrative proceeding arising out of the events that were the subject of this complaint and mediation.

We also agree that the terms of the Confidentiality and Consent Agreement signed in connection with this mediation will remain in effect.

Complainant \_\_\_\_\_

Date of Signature: \_\_\_\_\_

Subject Officer \_\_\_\_\_

Date of Signature: \_\_\_\_\_

Mediator \_\_\_\_\_

Date of Signature: \_\_\_\_\_