

CODE OF MARYLAND REGULATIONS (COMAR)

Title 12 DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

Subtitle 04 POLICE TRAINING AND STANDARDS COMMISSION

Chapter 11 Police Complaint Mediation Program

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12.04.11.01 Purpose.

A. This chapter establishes a police complaint mediation program which provides an alternative method to address minor, nonviolent police misconduct complaints outside of the standard complaint process.

B. A law enforcement agency may refer a nonviolent complaint made against a police officer, subject to the agreement of the complainant and the involved police officer, to an independent mediation provider.

12.04.11.02 General Provisions.

A. Mediation is a process for settling minor police misconduct disputes based on the voluntary participation of the disputing parties.

B. If eligible, voluntary mediation between community members and police officers may be used in place of the traditional administrative complaint process and administrative charging committees (ACC).

C. The mediation process can bridge the communication gap and create a greater understanding and appreciation between community members, police officers, and employing law enforcement agencies.

12.04.11.03 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) “Confidential material” means any communication occurring during a mediation session that may not be disclosed outside the mediation except as allowed pursuant to Courts and Judicial Proceedings Article, §3-1804, Annotated Code of Maryland.

(2) “Impasse” means an outcome of a mediation session in which the parties are unable to resolve the dispute.

(3) “Independent mediation provider” means an organization, separate and apart from a law enforcement agency, that can provide mediators to conduct mediation sessions between complainants and law enforcement personnel.

(4) “Letter of conclusion” means a document signed by staff of the independent mediation provider that is delivered to a law enforcement agency indicating that a mediation session was held between a complainant and police officer.

(5) “Letter of consent to mediate” means a document signed by the parties in mediation indicating each party’s voluntarily participation in mediation, and witnessed by the mediator.

(6) “Mediation” has the meaning stated in COMAR 12.04.10.03B.

(7) “Mediator” means a trained, impartial third party, affiliated with an independent mediation provider, who will facilitate a mediation session between parties to assist them in reaching a voluntary resolution to their dispute.

(8) “Police misconduct” has the meaning stated in Public Safety Article, §3-101, Annotated Code of Maryland.

(9) “Resolution” means a mutual agreement resolving a conflict between two or more disputing parties.

12.04.11.04 Establishing a Police Complaint Mediation Program.

A. The Maryland Police Training and Standards Commission (MPTSC) in collaboration with community-based mediation resources shall establish and maintain a listing of qualified mediation providers located within the State.

B. A law enforcement agency interested in establishing a mediation program shall contact MPTSC for referral to an appropriate mediation provider.

C. Prior to establishing a mediation process, a law enforcement agency shall enter into a memorandum of understanding (MOU) with a local independent mediation provider approved by MPTSC.

D. A local law enforcement agency shall establish guidelines for mediation consistent with this regulation and any policy guidelines provided by MPTSC.

E. A law enforcement agency that enters into an MOU with a qualified mediation provider shall report the establishment of a program to MPTSC and forward a copy to ensure the program meets the requirements of the regulation.

12.04.11.05 Mediation Participation.

A. Participant Requirements.

(1) Participation in a mediation program is voluntary and shall be agreed upon by the complainant, law enforcement agency, and police officer identified in the complaint.

(2) A complainant or police officer who is the subject of a complaint of police misconduct has the right to decline mediation.

(3) If a police officer who is the subject of a complaint declines the offer to mediate the complaint, the decision to not participate may not be considered during any disciplinary proceeding.

(4) A party to mediation shall sign a letter of consent to mediate as an alternative to the formal police misconduct complaint process, outlined in COMAR 12.04.09 and the uniform citizen complaint process.

B. Confidentiality.

(1) All parties involved in a potential mediation process shall agree to the confidentiality requirements as set forth in Courts and Judicial Proceedings Article, §3-1803, Annotated Code of Maryland.

(2) Except as provided in Courts and Judicial Proceedings Article, §3-1804, Annotated Code of Maryland, statements shared during a mediation are considered confidential material and may not be disclosed in any judicial, administrative, or other proceeding.

C. Costs associated with participating in a mediation program are the responsibility of the law enforcement agency employing the involved police officer.

12.04.11.06 Complaints Eligible for Mediation.

A. Complaint Eligibility.

(1) A nonviolent complaint of a minor nature is eligible for mediation if it falls into one of the following categories:

(a) Violation category A, as stated in COMAR 12.04.10.04D(2); or

(b) Violation category B, as stated in COMAR 12.04.10.04D(3).

(2) A law enforcement agency shall review the nature of the complaint and determine if mediation is appropriate, based on the following factors:

(a) Type and severity of the alleged violation;

(b) Circumstances of the alleged police misconduct; and

(c) Work history and past disciplinary record of the involved police officer.

(3) Even if a complaint is eligible for mediation, the agency head or designee has the authority to decide, for any reason, that a case may not be assigned for mediation.

B. Complaints Not Eligible.

(1) A complaint of police misconduct that involves any level of force is not eligible for mediation.

(2) A complaint is not eligible for mediation if it falls into one of the following categories:

(a) Violation category C, as stated in COMAR 12.04.10.04D(4);

(b) Violation category D, as stated in COMAR 12.04.10.04D(5);

(c) Violation category E, as stated in COMAR 12.04.10.04E(6); or

(d) Violation category F, as stated in COMAR 12.04.10.04D(7).

C. A complaint of police misconduct not eligible for mediation shall be handled through the process set forth in COMAR 12.04.09.

12.04.11.07 Complaint Procedures.

A. When a minor complaint from a member of the public has been made to a law enforcement agency or police accountability board, a law enforcement agency shall review the nature of the complaint and determine if it is eligible for the mediation program.

B. Notification to Involved Parties.

(1) If the complaint is eligible and conforms to Regulation .06 of this chapter, the law enforcement agency shall notify the police officer who is the subject of the complaint of the mediation option.

(2) If the police officer agrees to mediation, the law enforcement agency shall notify the complainant of the mediation option.

C. If the police officer or a complainant decline to participate in mediation, the matter shall be referred back to the administrative complaint process set forth in COMAR 12.04.09.

D. If all parties to the complaint agree to the mediation process, the law enforcement agency shall contact the independent mediation provider in which there is a current memorandum of understanding (MOU) and proceed with the process pursuant to the MOU.

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

12.04.11.08 Resolution.

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

(1) A successful resolution if all parties agree with the resolution; or

(2) An impasse if one or more parties to the complaint cannot agree to a satisfactory resolution.

B. An impasse shall be referred back to the law enforcement agency of the involved police officer for investigation and handled through the administrative complaint process set forth in COMAR 12.04.09.

C. A successful resolution shall be documented by the independent mediation provider in a written statement, signed by both parties and the mediator.

D. The mediator shall send a letter of conclusion to the referring law enforcement agency indicating the results of mediation.

E. Results of the mediation shall be tracked by the law enforcement agency and forwarded to the local police accountability board.

F. Complaint mediation statistics shall be included in the law enforcement agency's annual reporting of complaints involving the public, and the statistics shall include the:

(1) Total number of complaints handled through mediation;

(2) Number of successful resolutions; and

(3) Number of mediation impasses.

G. If the police officer fails to comply with the actions and deadlines identified in the mediation agreement, a new complaint shall be initiated and the actions of the original complaint of misconduct shall be considered as a potential aggravating factor.