

Handling Citizen Complaints by way of MEDIATION (Pages 7-9 of the Administrative Investigations Field Guide)

Definition

Mediation- An informal process in which the complainant and accused employee meet face to face with the assistance of a neutral third party mediator to discuss the alleged misconduct. The goal of mediation is to engage in a good faith discussion with the goal of reaching a shared understanding.

Policy

The Virginia Beach Police Department recognizes the value of mediation. When allegations of employee misconduct are brought to its attention, the Office of Internal Affairs will work to facilitate mediation, when appropriate, between complainants and accused employees, utilizing the services of a mediator. Citizens may not pursue mediation and an Internal Affairs investigation on the same complaints that are eligible for mediation; instead they must elect which procedure to use.

Screening

The Commanding Officer of Internal Affairs or designee will review complaints brought to their attention to see if they warrant consideration for mediation. If a matter is determined to be potentially eligible for mediation, Internal Affairs will contact the complainant to see if there are any additional details that the complainant wants to include in the complaint. The Office of Internal Affairs will also review the complainant's complaint history and current or past litigation with the City of Virginia Beach. This will be used in screening; however, it will not automatically make a case ineligible for mediation.

Case Eligibility

Generally, cases involving courtesy, minor allegations of unsatisfactory work performance (to include Inquiries) and biased based policing complaints may be eligible for mediation.

Complaints involving the following circumstances will not be eligible for mediation:

- If force was used
- Allegations involving criminal misconduct
- An employee was assaulted
- A lawsuit has been filed
- The complainant was injured as a result of employee actions
- Ethnic slur directed at a person

If the complaint is determined to be eligible for mediation, but the complainant has a pending court case with the accused employee, then the mediation will only take place after the case has been adjudicated in court.

Employee Eligibility

Generally, an employee is eligible for mediation unless they have had two prior complaints with similar allegations within the past 12 months.

The Commanding Officer of Internal Affairs, or designee, will make the final determination whether a case is eligible.

If deemed eligible then the employee will be contacted by the Office of Internal Affairs. A determination will be made whether the employee is interested in participation in the mediation program. The employee will be made aware of the following:

- Name of complainant
- Summary of allegation
- Notification that the complaint has been approved for mediation
- Explanation of the mediation program, that the process is voluntary and that upon completion the case will appear in IA PRO as mediated.

Voluntary Participation

The complainant and employee will be advised that participation in the mediation process is completely voluntary and that if they participate they are to act in good faith. Good Faith means they will actively listen to the other party and actively participate in the discussion. Good Faith does not require an agreement. The mediator has the final authority to determine whether participants are acting in good faith. If the mediator determines the employee is not acting in good faith, then the mediator may end the session and return the complaint to Internal Affairs for investigation. If the mediator determines the complainant is not acting in good faith, then the mediator will close the case as “Mediated” with no further action. Since participation is voluntary, either party may withdraw before mediation has convened. Mediation will be considered “convened” once the parties have assembled and the session has begun. In the event either party decides they do not wish to participate in mediation before mediation is convened, they will be advised that the complaint will be referred back to the Office of Internal Affairs to handle according to normal Internal Affairs procedures. The fact they did not choose to participate will not be held against them.

Prior to scheduling mediation, the complainants will be advised in writing that they have the right to mediate a complaint or have the Office of Internal Affairs review the complaint in accordance with their normal procedures; however, they may not use mediation and an Internal Affairs investigation on the same issue. They will also be advised that in electing to mediate a complaint the complaint will not be eligible for the Investigation Review Panel (IRP) because in that case there is no Internal Affairs investigation to review. However, should either party withdraw from mediation before it is convened, then the complaint, with the approval of the complainant, will be referred back to the Office of Internal Affairs for review in accordance with their normal procedures. In that situation, at the conclusion of the investigation, if any, the IRP process would be applicable. Additionally, the Complainant will be advised that the purpose of mediation is to address the complaint, which may or may not result in resolution of the complaint and that mediated complaints shall not result in a monetary award.

Complaints Involving Multiple Employees

All employees accused in the complaint must be willing to participate in mediation as described herein, or mediation will not go forward. In the event one employee does not wish to participate in mediation then the complaint will be referred back to the Office of Internal Affairs.

Failure to Appear for Mediation

If the complainant fails to appear for a scheduled mediation without good cause, then the complainant will be given one final opportunity to reschedule the mediation session. If the complainant fails to appear a second time without good cause, they will not be allowed to reschedule again and the case will be closed.

If the employee fails to appear for a scheduled mediation without good cause, they will be given one opportunity to reschedule. If the employee fails to appear a second time without good cause, the complaint will be returned to the Office of Internal Affairs for investigation.

Confidentiality

Documents created as a result of mediation may be subject to release under the Freedom of Information Act; however, some specific portions may be excluded from mandatory disclosure. For example, the identity of the officer(s) and medical information may be exempt from required disclosure. Nevertheless, for mediation to be successful, all parties must feel free to speak candidly. Therefore, officer(s) are assured that an apology or admittance of wrongdoing will not be used against them by the Police Department.

Support and Representation

With the exception of the parent(s) or guardian(s) of a juvenile or dependent adult, the complainant and employee do not have the right to have a support person or legal representation present during the mediation.

Adjudication of Mediated Cases

Complaints that are finalized as described above through good faith mediation will be documented by the Office of Internal Affairs as “mediated” and concluded using the IAPro software. Documentation will consist of the name of the complainant, the involved officer(s), the specific allegation or listing as an Inquiry, a brief summary of the original complaint, and the mediation agreement.