

SAN FRANCISCO OFFICE OF CITIZEN COMPLAINTS MEDIATION RULES

100 ELIGIBILITY FOR MEDIATION

Cases will be evaluated for eligibility for mediation by intake supervisors based upon two criteria, case eligibility and officer eligibility.

101 Case Eligibility

A) All complaints will be considered eligible for mediation when the complaint involves a dispute with a member of the public rather than a disagreement with departmental policy.

B) The following cases should not be considered for mediation absent exceptional circumstances:

- 1) cases listed as A or B offenses in the disciplinary schedule; -
- 2) cases involving substantial injury to either complainant or officer;
- 3) cases involving sexual or racial slurs;
- 4) cases involving use of force allegations;
- 5) cases regarding questions of law such as search or detention issues.

102 Officer Eligibility

A) Mediation will not be available to officers who have any of the following in their OCC or MCD files:

- 1) Sustained case within the past year;
- 2) A prior mediation within the past six months;
- 3) Three mediations within the past two years.

B) Officers who are ineligible for mediation based on any of the above will become eligible after a one year period of no sustained complaints.

103 Non Eligible Cases

Cases which do not meet the above criteria will be sent for standard investigation.

200 MEDIATION REQUESTS

Mediation is a voluntary procedure for the resolution of cases which will not be placed in the officer's personnel file .

201 Request Letter

A case which has been determined to be eligible for mediation will be sent to the Mediation Coordinator (Coordinator). The Coordinator will send a letter to the complainant and the officer explaining the mediation process.

201.1 Contents

The letter will explain the process, rules and expectations of mediation. The Coordinator will outline the issues to be mediated in plain language for all parties to read. It will provide a space for any comments or changes requested by any party.

201.2 Responses

Responses to the request letter will be due 15 days from the date of mailing. Failure to respond by either party will result in a waiver of mediation.

202 Agreement/Disagreement to Mediation

If both parties agree to mediation the Coordinator will select a mediator and date for the mediation pursuant to section 300 et seq of these Rules. If either or both parties object to mediation the case will be sent to the Chief Investigator for re-assignment .

300 MEDIATION PROCESS

301 Mediators

Mediators will be selected at random from a pro bono list of mediators compiled pursuant to section 500 of these rule .

Mediation will be conducted by a panel of two mediators, one of whom must be an attorney, one not; and at least one of whom has served as a mediator on three prior occasions.

301.1 Selection of Mediation Panel

The Coordinator will send each party the panel selected for the Mediation for approval. Each side will be allowed to veto one mediator for any reason, any further veto must be for cause.

A) Any veto of a mediator must be made in writing within 5 days of notice of their selection.

302 Scheduling of Mediation

The Coordinator will schedule the mediation at a time convenient to all parties based upon the following:

- A) Mediator's schedule
- B) Complainant's schedule;
- C) Officer's work schedule;
- D) Witness availability.

302.1 Continuances

Once the date has been set, all parties will be notified and will have three days to request a different date. After three days no continuances will be granted absent a showing of extreme hardship. Such requests must be in writing and made to the Coordinator with copies to all other parties and the Mediators .

303 Place of Mediation

Mediation will take place at the office of one of the Mediators unless a request is made for other accommodations by the Mediator.

304 Mediation File

The Coordinator shall construct a mediation file which will be available to all parties and the Mediators at least 5 days prior to the mediation.

304.1 Confidentiality

The mediation file is confidential and shall not be reproduced, duplicated or made public in any way. Any violation of this rule will result in an end of the mediation and prosecution by the proper authorities.

304.2 Contents

The mediation file shall contain the complaint, any physical evidence, all police reports and any other material deemed necessary by the Coordinator. Any party may provide additional evidence at the mediation.

304.3 Conclusion

At the conclusion of the mediation, successful or unsuccessful, all mediation files will be returned to the Coordinator. Failure to do so will be deemed a violation of the confidentiality rule cited above.

305 Conduct of Mediation

The Mediator will be in charge of the mediation and will conduct it as he or she sees fit provided they follow the basic rules of mediation as determined by the San Francisco Bar Association and as outlined below.

305.1 Rules

Pursuant to Rule 305, each side will be afforded an opportunity to present witnesses and evidence in order to express their issues and concerns to all parties . No cross examination will be allowed.

305.2 Representation

Mediation is a non-confrontational dispute resolution process. In order to maintain that atmosphere each party may be allowed to bring an uninvolved individual, but that individual will not participate in the mediation except to observe and provide support.

305.4 Evidence

Except for section 111,9 of the Evidence Code, which provides for confidentiality, the Rules of Evidence do not apply to mediations. Parties may bring whatever information they feel relevant to the mediation.

305.5 Taping

The mediation is confidential and no taping shall be allowed by anyone involved.

305.6 Conclusion

The mediators will attempt to facilitate a resolution to the issue. The resolution will be an attempt to end the matter to the satisfaction of both parties . If the parties cannot resolve the case it will be handled pursuant to section 600 of these Rules.

306 Close of Mediation

Upon the closure of the mediation the Mediators will deliver to the Coordinator a confidential writing outlining the process and whether any resolution was accepted. If the resolution was not accepted by both parties, or if the mandates of the resolution are not carried out within the specified time -for fulfillment, the case will be handled as outlined in section 600.

306.1 Officers File

A case which has been mediated will be sealed and a finding of "mediation" will be entered into the officers file. Both parties will receive a letter stating a mediation had been held and the issue fully resolved. No other investigation will occur involving those events covered by the mediation.

400 NOTICES, RECORDS, APPEALS

401 Notices

Notices shall be sent to all parties at the address given in the complaint, or for officers, their work assignment. Notices shall be sent by U .S. or internal S.F.P.D. mail, and time periods shall run from the date of mailing.

402 Records

The Coordinator shall cause a complete chronology for each case to be kept in the case file detailing all actions taken. This chronology is confidential and is not to be released to either party absent court order . The chronology shall not be destroyed with the rest of the mediation file in the case of an unsuccessful mediation.

403 Appeals

There shall be no appeal from the mediation process as it is a self providing process whereby failure to reach an agreement renders the mediation void . In no way shall any party be allowed to initiate further proceedings or request further relief once a resolution has been agreed upon.

500 SELECTION OF MEDIATORS

501 Qualifications

All mediators must be approved by the San Francisco Bar Association, Mediators can not be associated with the Police Department as follows:

- A) representing, or is associated with a firm representing the City Police Department, complainant or individual officer as plaintiff or defendant in a civil or criminal action;
- B) currently or previously been a sworn member of the Police Department;
- C) involved, or whose law firm is involved, in criminal practice .

502 Pool

The Coordinator will cause notice to be sent to all mediators currently approved by the Bar Association requesting applications for mediators who meet the qualifications outlined above. The notice will also include a description of the OCC mediation process. All applications will be kept on file at the OCC and used as the pool for selection described above.

502.1 Updating

The Coordinator will update the pool every year by contacting all current mediators and sending a letter to any mediators approved by the Bar Association since the date of the last mailing.

502.2 Dismissal

Any mediator who is dismissed by the Bar Association will not be eligible for OCC service and their name shall be removed from the pool. Furthermore, the Director may remove a mediator from the list if a showing of good cause is made by the Coordinator after an application for removal is made by any party to a mediation.

503 Selection of Mediators for List

The Coordinator will select two mediators, as outlined above, at random from the available pool to be forwarded to the parties pursuant to section 301 .1. In as much as is practical, no mediator will be considered for a service a second time until all potential mediators have been afforded a first time.

600 CONCLUSION OF MEDIATION

Cases which are sent to mediation will be handled exclusively through this process . No other investigation will occur, and all parties are required to abide by these rules. A form provided by the Office of Citizen Complaints will be completed at the end of all mediations providing basic non- confidential information on the mediation for statistical purposes. Confidential comments will also be solicited from the parties on a voluntary basis.

700 MAINTAINING MEDIATION RECORDS

701 Case Statistics

The Director shall maintain a confidential record of mediations stating the number;

- A) eligible cases
 - 1) nature
 - 2) officer
- B) requests made
 - 1) complainants
 - 2) officers
- C) cases mediated
- D) successful/unsuccessful mediations

702 Officer Eligibility Statistics

In order to comply with officer eligibility as outlined in section 102 of these rules the Director shall maintain a confidential record of officer mediations for each officer. These records will be destroyed pursuant to the procedure in section 102.