

Police Mediation Planning Committee Meeting Notes – February 18, 2013

The first topic up for discussion was the Approval Process. The big questions that were addressed were, 1) who makes decisions pushing mediation forward? 2) when is the complainant excluded? and 3) when is the police officer excluded? The last two questions seemed to hinge largely to the mental health of the participants.

Simone Levine discussed how NYC was the most stringent: in New York, they don't want supervisors mediating. New York had to approve officers to allow the next step, and then there was a three-person committee to decide: city council, police department, and police monitor. Levine also mentioned that in New York, the mediated case does not show up on the police officer's disciplinary file.

Levine also mentioned that in the majority of jurisdictions, the executive director decides if the complainant and the police officer were appropriate; and that they were usually accepted, as mental health issues did not normally present as a problem. The situations in which complaints were rejected for mediation were often due to complainants having unreasonable requests, such as wanting the police officer fired.

Pertaining to who makes the decisions that push mediation forward, Ursula Price presented four options: 1) the IPM approves the process, then refers to PIB; 2) the IPM and PIB work together and meet weekly or fortnightly to review; 3) committee; or 4) staff. Levine noted that the question of mental health should be left up to the mediator. Lou Furman said that the process should be as inclusive as possible. Wes Ware asked where funding would come from, and Price said that we would need to secure funding. Ware asked what the guidelines were for the committee that would potentially approve the process. Price said that we would use guidelines that we developed in our meeting.

Levine discussed other jurisdiction's programs. Levine stated that in San Francisco, the executive director makes the decision, along with their delegate. In Kansas City, it is a one-man program, where the director – who is a former police officer – does everything. In Portland, they have a supervisor, who they prefer is not a former police officer. In Washington, D.C., they have a standalone program that investigates officers independently. In Seattle, they have a director and a city auditor. Levine noted that Seattle, D.C. and Seattle all have strong police unions.

Al Grandoit asked how they decided what must be mediated. Levine responded that these jurisdictions would sometimes ask the complainant if they want to mediate, and if so, the programs would investigate the complaint and take it on for mediation. Allyson Curry asked what type of committee they employ. Levine responded that in many of these programs, they have one person consistently making the decision – and that in the jurisdictions with more police involvement, the standards were more restrictive. Mike Glasser said that he felt we should not have absolute exclusionary criteria unless there is criminal or civil litigation. Glasser stated that he did not like the idea of only one person with all the decision-making authority, and also that the police department should not have absolute discretion. Glasser also felt that we were working backwards and wanted to address the inclusion/exclusion criteria before discussing the suitability criteria.

Curry stated that all upper-level police officers have had 40 hours of mediation training, per the Department of Justice. Simon Hargrove confirmed this fact. Hargrove said that the criteria will determine *who* should be included in mediation before determining *what* should be mediated.

Furman stated that including too much in inclusion criteria for mediation may rack up mediations for officers, which may look bad for a police officer on his record, whether or not it is actually a negative thing. Grandoit said that he knew mediation was confidential, so he was concerned it would be used as an alternative to litigation because the officers would know that all information would be kept private. Curry mentioned the NOPD's Job Performance Improvement Plan, and thought we could refer to them regarding the officer's file and participation records. Glasser said that JPIP would not apply here because that regards internal issues rather than issues with citizens.

Levine suggested tabling the discussion about the number of mediations on an officer's record as far as exclusion criteria. Price noted that jurisdictions vary as to what's considered too important to include in mediation. Glasser suggested that the number of complaints an officer may receive will vary based on their assignment; for example, a traffic cop might receive a lot more complaints because they write thousands of tickets, whereas an officer who is assigned to a desk position will not receive complaints; and thus, complaints are not all created equal. Price suggested that civil services and discussion of mediation on an officer's disciplinary record be tabled until a later time.

Norwood asked what kinds of cases or individuals would be appropriate, and expressed a concern about treating mediation as a substitute for the disciplinary process. Levine stated that D.C. has an involuntary program for which the police officer will receive a bad mark on his record if he does not show up. Hargrove and Price discussed how false arrests should be excluded from mediation. Quant said that mediation serves as an opportunity to mend wounds between the cops and the community, and that we need to differentiate between successful and unsuccessful mediations, and that mediation in and of itself should never be seen as a bad thing. Hargrove pointed out that the clock is ticking on administrative complaints, and mediation should be done within that timeline so that it is still beneficial.

Abigail Reikow questioned how incarcerated people would be able to participate in the mediation process. Furman pointed out that there must be a focus on the restorative justice component – that mediation seeks to heal. Reikow said that even if her clients acknowledge that they are guilty, there is still the issue that the police officer might not have handled the arrest fairly. Furman asked if you could have an investigation and a mediation going on simultaneously, and if the mediation were to fail, whether the investigation would then continue. Levine pointed out that the 60-day time period only existed for more serious cases (DI-1) so no time clock would be in place for less serious cases (DI-3), which would likely be the type to be mediated.

The discussion turned next to false arrests, with questions around how intake of complaints was going to work. Hargrove said that actual false arrests should not be addressed in mediation, as the issue at hand is a false arrest complaint. Grandoit said that false arrests could always end up in mediation, and said that it seemed as if it was being presented as if mediation is not serious

enough to handle false arrest claims. Hargrove said the criteria can make it easier to determine what is mediated.

Norwood said that what Hargrove is saying involves a point of fact. Norwood agreed that if a complainant is alleging false arrest, the issue should not be mediated. But then, Norwood pointed out, there is a question of whether the complainant really knows what they mean when they allege false arrest. Price said that we should add a caveat that all allegations are determined by the intake staff, who are just the person who hear the complaints, and are separate from those on the committee who are making the recommendations for mediation. Price also determined at this time that the group was in agreement that all false arrests and excessive force issues should be excluded from mediation.

Levine noted that two jurisdictions mediate use of force, Seattle (where demonstrations were taking place) and Kansas City, and that these programs did not absolutely exclude use of force, but often did. Furman said that we need to differentiate between what use of force can be excluded. Price said that we should define excessive force as shots fired, head injuries, and anything requiring hospitalization. The group agreed to this definition.

Glasser said that we should not deny the right to mediate if the officer has a use of force history. Curry said that mediation should not replace a pattern of behavior. Levine then said we should table the discussion of use of force history until after meeting with the Civil Service Commission to see what they want to do. Price then adjourned the meeting.