

Mediation: A Useful Resource for Campus Law Enforcement

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“Courage is what it takes to stand up and speak. Courage is also
what it takes to sit down and listen.”

Winston Churchill

Introduction:

As the number and severity of complaints of improper police actions continue to rise across our nation law enforcement management has had to look for new and often innovative ways in which to manage those complaints, while at the same time looking to offer all parties involved (law enforcement and citizens) a role to play in this process. Unfortunately there has frequently been a perception held by the public, as well as a number of law enforcement organization personnel, that the current complaint process is broken, or at best non-responsive, to their needs. Although this perception is not always deserved, it is still an issue that warrants attention by the police administrator, as confidence in the law enforcement agencies ability to investigate itself is as important to good public relations as it is essential to law enforcement personnel morale and confidence in that organizations ability to resolve both internal and external complaints.

Coulson (1993) aptly made the observation that improvement of the citizen complaint process is essential to police/community relations and therefore is indispensable to public safety. In fact, an environment of poor police/community relations will make keeping the peace and enforcing the law much more difficult (Cimini, 1997). Accountability, integrity, and professionalism are the cornerstones of an equitable and cooperative police/community relationship (MacCorquodale & Meehl, 1948).

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The author's believe that an improved citizen complaint process, which involves investment in a mediation process or program by the organization, will serve to greatly enhance the relationship with the public, who have often been stymied by police bureaucracy typical of many law enforcement organizations complaint process. Additionally, there are also benefits to our own employees by utilizing the mediation process as well, making this a win-win situation for all involved. As noted by Moore (2002), increased public confidence can foster public support for police action and lead to a more positive and safer experience for all.

Mediation-A Communications Process

Mediation is a process in which a trained third and neutral party assists disputing parties in communicating their issues clearly, and involves exploring possible mutually agreeable solutions amenable to those parties involved in some form of a dispute. The neutral third party, most commonly called a mediator, is not a judge or a decision-maker and does not offer legal counsel to any party. The mediator should be viewed as more of a communication facilitator, who will assist the disputing parties identify both expressed and often underlying issues. As noted in "Resolve Employee Conflicts with Mediation Techniques" (Negotiation, 2007, Dec Issue) "Rather than imposing a decision, a trained mediator applies communication skills, objectivity, and creativity to help disputants reach their own voluntary solution to the conflict" (p. 6). The mediator will also attempt to assist the parties in promoting an honest expression of feelings in a controlled environment focused on providing a win-win situation for both parties, doing away with fear and distrust often caused by a more formal employee complaint process. The

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ultimate goal of the mediator is to assist the parties as they create mutually agreeable resolutions to the issues presented for mediation. Mediation is an informal process, designed to be a flexible alternative that provides participants with an opportunity to resolve their own issues.

Mediation will not:

- Be formalized beyond effectiveness.
- Be precedent setting.
- Eliminate or replace any of the law enforcement agencies other existing dispute resolution processes.

Why Do I Need Mediation?

Traditionally, when a citizen files a complaint against a law enforcement employee (usually a police officer), that complaint would be automatically forwarded to the Internal Affairs Division (IAD) or other office which may be responsible for internal investigations for investigation and processing. For smaller departments the task of investigating a complaint has often been the responsibility of a supervisor in the department to conduct the complaint process and then report the findings of an inquiry or complaint to a superior for a decision and administration of the complaint. If IAD was involved many departments have a particular time period (usually 180 days) to investigate the allegation and report its findings back to the department as well as the citizen who filed the complaint. Because so many of the complaints filed with IAD only involved the citizen and the employee, IAD often found themselves unable to sustain or exonerate many of the allegations brought forth by the citizens.

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Therefore, after filing the complaint and waiting 180 days for a response, the citizen would typically receive a letter in the mail notifying them that the allegations made against the police officer could not be proved or disproved and that no further action would be taken concerning their matter. In fact, many citizens felt victimized a second time by the very process that was put into place to protect their rights and give them voice if they felt they were somehow wronged by a law enforcement officer. This frustrating process can result in citizens holding negative perceptions about the law enforcement agency and its employees, thus causing less cooperation and support of the organization by the citizens the department serves.

Conversely, the police officer also felt victimized by IAD, because even though the complaint was not sustained, the officer still had to endure the stress of an internal affairs investigation. This may result in the officer having a negative perception toward the people they serve as well as the department, which may affect their work performance as well as their overall job satisfaction level. Through mediation, participants gain a better understanding of the officer's duties and responsibilities and the citizen's expectations (Muller, D., Judd, C. M., & Yzerbyt, V. Y., 2005). The mediation process itself is designed to be positive for both the citizen and the employee, thus bringing about a win/win situation as opposed to the adversarial IAD process. In addition, most mediation issues can be handled without lengthy delays, usually within 30 days or less.

Legal Ramifications of NOT Utilizing Mediation:

The above scenario is not all that far fetched, and in fact, this is a typical example of how many law enforcement agencies currently manage their citizen complaint process. However, due to this lengthy and often disjointed process the very process that is

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designed to resolve citizen's complaints on many occasions has been responsible for generating lawsuits against the law enforcement agency. At the very least the perception of the police department being a responsive place where you can bring your complaints and resolve them in a timely and efficient manner is damaged within the community. Remember that nothing good will likely come from a lawsuit, and even if the law enforcement agency wins the legal battle, they may still lose the war in the public arena.

Instituting a mediation program for your law enforcement agency is not a difficult task, but does require careful planning and an update to your department's policies and procedures. However, the single largest obstacle to implementing a mediation program (or any other new program for that matter) for a police administrator will be educating the agencies command staff, patrol officers, civilian employees, police union (if one represents the department's officers) and the citizens. Traditionally, change has never been a subject embraced by law enforcement personnel, no matter what rank or position in an organization. The sheer mention of change without sufficient preparation and proper implementation may result in immediate aversion to the process, causing the program to fail even before it can be implemented. For example, many on the law enforcement side will view mediation as too touchy feely for them; hence they will have to be sold on the value of mediation. Often simply asking for input into the process and an open honest discussion about why you want to initiate a medication program and its benefits to both the department and the rank and file officers will help to quell any negative rumors or connotations that may be held about the process and its value to both parties.

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Luckily several states already provide a vehicle by which law enforcement entities may establish their own mediation program. For example, Chapter 143 of the Texas Local Government Code outlines the rules and procedures by which law enforcement agencies can create and operate their mediation programs in the State of Texas. In addition, a quick Internet search will reveal numerous mediation associations and law enforcement entities which could provide assistance to the police administrator (i.e. the Houston Police Department's Citizen & Employee Mediation Program).

Conflict is Increasing as Citizen Demographics Change:

To put this need for a mediation program into perspective, it is important to understand that the backgrounds of conflicting parties, such as socioeconomic, personality, and attitudinal variables, can influence behavior in conflict situations. Bringing these influences to awareness is an important step in learning to deal effectively with conflict. The reality is that conflict is inevitable and pervasive, and that conflict is essentially based in perceptions (rather than reality) and feelings (rather than facts). Thus, conflict can only be resolved by dealing with perceptions and feelings. While there is no simple formula which makes conflict disappear, there are approaches which can minimize the destructive effects of conflict and maximize the possibility of resolution.

This is exactly what mediation is structured to accomplish. Mediation is an informal process, designed to be a flexible alternative that provides participants with an opportunity to meet face-to-face to resolve their own issues and differences. With this accomplishment, police officers and citizens can focus their attention on working together cooperatively to keep the peace and enforce the law. Let's now look briefly at

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the value of mediation to law enforcement officers, the citizens of our community, and lastly, to the police administrator.

Benefits of the Mediation Process to Law Enforcement Officers:

Mediation has numerous benefits to the participating employee. For issues resolved in mediation, the list of benefits includes, but is not limited to:

- A faster resolution, as many issues can be resolved in less than 30 days.
- No Internal Affairs investigations are conducted, thereby adversarial environment may be avoided.
- No discipline, as employees cannot be penalized for utilizing mediation.
- Mediation is less costly since attorneys do not need to be hired.
- No complaint or disciplinary disposition will be placed in an employee's personnel or IAD files.
- The employee has the opportunity to have input into how the issue is resolved.
- Confidential discussions are protected by state law.
- A direct opportunity exists to build a better citizen and employee relationship.
- Mediation is a less adversarial process can be utilized to improve police/community relations.
- Employees have an opportunity to resolve the issue at the lowest possible level, without input from management.

Benefits of Mediation Process to Citizens:

Citizens also have an opportunity to receive tangible benefits from using mediation. The actual benefits derived from participating will vary from citizen to citizen and from employee to employee. Mediation agreements generally yield a more satisfactory result for both citizens and employees than does the IAD Process. Some of the benefits to citizens include an opportunity to:

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- Be heard and understood.
- Develop a resolution to their concern.
- Achieve faster resolution to their issues and concerns.
- Enhance their perception of accountability.
- Enhance public confidence in peace officers and the department.
- Opportunity to communicate directly with the person with whom they have a concern in a controlled and neutral environment.
- Obtain a better understanding of law enforcement and police services.

Benefits of Mediation Process to the Police Administrator:

Mediation can even provide some substantial benefits to Police Administrators, such as:

- Improvement in police response to citizens' complaints.
- Increase public confidence in law enforcement.
- Improvement in police/community relations.
- Improvement in officer's safety.
- Possible decrease in legal actions taken against the law enforcement agency.
- Increase in officer's moral as mediation is utilized to resolve more minor infractions and less punitive action is taken against the rank-and-file by IAD.
- Often mediation is more cost effective for the organization and avoids costly lawsuits.

Conclusion:

A successful mediation program, at the most basic level, can result in a better understanding of a law enforcement agencies responsibility to both the employee as well as the citizens of the community in which the organization serves. Mediation also brings about a better understanding of the expectations of law enforcement organization in the community and affords participants the opportunity to be heard and understood. Due to the changing cultural aspects of communities throughout the country and the changing nature of law enforcement in those communities, mediation is needed to provide an opportunity to change the negative perceptions regarding law enforcement to positive perceptions.

The mediation process itself is designed to be positive for both the citizen and the police officer, thus bringing about a win/win situation as opposed to the IAD process which takes an adversarial approach to resolving issues (Williams, 1997). In other words, mediation changes perceptions and fosters cooperation, one mediation at a time. Communication is the key, let's mediate!

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