

NOPD CONSENT DECREE MONITOR
NEW ORLEANS, LOUISIANA



March 20, 2019

202.747.1904 direct

File Number: 37PA-191555

Deputy Superintendent Danny Murphy
Compliance Bureau, New Orleans Police Department
714 Broad Street
New Orleans, LA 70119

Dear Superintendent Murphy:

This letter constitutes confirmation that the Office of Consent Decree Monitor ("OCDM") has reviewed and provided comments on Chapter 24.2 - Community Police Mediation. The OCDM has no objection to the policy as written.

We believe that Chapter 24.2 - Community Police Mediation, incorporates all requirements of the Consent Decree and sets forth clear and appropriate rules to guide officer conduct. We will continue to assess the adequacy of this policy following its implementation. If we identify any concerns following implementation, we will present those concerns to you and the Department of Justice. Additionally, we note that, pursuant to the Consent Decree, NOPD has agreed to review and revise policies and procedures as necessary upon notice of a significant policy deficiency. We also note NOPD's obligation to review this policy after a year of implementation to ensure it "provides effective direction to NOPD personnel and remains consistent with the Agreement, best practices, and current law." Consent Decree at ¶ 8.

We appreciate your team's effort, cooperation, and responsiveness throughout this process.
Very truly

Very truly yours,

David L. Douglass
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NEW ORLEANS POLICE DEPARTMENT OPERATIONS MANUAL

CHAPTER: 24.2

TITLE: COMMUNITY-POLICE MEDIATION

EFFECTIVE: 09/02/2018

REVISED: Replaces Policy/Procedure 1025

PURPOSE

The Community-Police mediation process is designed to help resolve conflict and allow the parties involved to come to a mutually acceptable resolution.

The Office of the Independent Police Monitor (OIPM) has established the Community-Police Mediation Program because adversarial disciplinary processes are not always the most effective way to resolve all police-community conflict. NOPD members and community complainants may participate in mediation as an alternative to the traditional complaint investigation process.

The NOPD goal in participating in a mediation process is to increase the level of trust between the Department and the community at large. Mediation provides NOPD members with a mechanism to resolve complaints outside the investigation process.

DEFINITIONS

Complainant—Any community member (minor or adult) who makes a complaint to the NOPD or to the OIPM.

Mediation—A mediation process helps parties develop a mutual understanding of a conflict. Mediation may help the parties identify disputed issues, facilitate communication, provide an opportunity to improve community relationships, and generate options that may help the parties reach a mutually acceptable resolution.

Mediation Coordinator—The Mediation Coordinator is a person designated by the OIPM to serve as the unbiased, impartial and independent coordinator and facilitator of the Community-Police Mediation Program. The Mediation Coordinator will establish, coordinate, and review all the mediation processes and ensure the collection of evaluative data. The Mediation Coordinator will closely liaise with the NOPD Public Integrity Bureau (PIB) as necessary to develop and maintain the referral processes.

Mediator—The role of the mediator is to be a neutral and trained third party who does not influence or pressure either party to come to an agreement; the complainant and the NOPD employee own the process.

NOPD Member—Any person employed or appointed by the Department, including full-time or

part-time officers, reserve officers, civilian employees and volunteers.

ELIGIBILITY PROCESS

1. Only civilian complaints will be considered eligible for mediation. PIB will determine whether a complaint is eligible. The PIB Administrative Lieutenant/Intake Lieutenant will assess complaint allegations and provide cases eligible for mediation to the OIPM within three days after the complaint is received by the NOPD. PIB will adhere to its normal complaint intake and classification process. Complaints that PIB does not provide to the OIPM for potential mediation will remain with PIB for the appropriate non-mediation investigatory process.
2. Certain civilian complaints will be considered eligible for mediation, for example: professionalism, discourtesy, and neglect of duty. Complaints involving the following will not be considered eligible for mediation:
 - (a) A criminal allegation against the NOPD member;
 - (b) Where discipline results in the possible termination of an NOPD member;
 - (c) False arrest;
 - (d) Unreasonable use of force;
 - (e) The planting of evidence;
 - (f) Untruthfulness/false statements;
 - (g) Unlawful search;
 - (h) Retaliation;
 - (i) Sexual misconduct;
 - (j) Domestic violence;
 - (k) Theft; or
 - (l) Possible misconduct of the supervisory or command leadership of the subject NOPD member
3. The complaint will not be eligible for mediation if the NOPD member against whom the complaint is made has already mediated two complaints within the previous 12 months.
4. Eligibility determinations will be final and not subject to appeal.

SUITABILITY PROCESS

5. Once PIB has deemed a complaint eligible for mediation and provided the complaint to OIPM, the OIPM will assess case and party suitability for mediation through assessment conversations with the NOPD member and the complainant. Whether the parties agree to mediation will be considered in determining suitability.
6. The OIPM will determine suitability for mediation. A complainant may be suitable for mediation when:
 - (a) The complainant has provided informed consent to mediation (See **Form 312 – Consent to Mediation and Withdrawal of Complaint**);
 - (b) If the complainant is a minor, the minor will be accompanied at the mediation by an adult support person;
 - (c) The complainant agrees to sign the confidentiality form (See **OIPM Mediation Program Confidentiality Agreement Form**) and the complaint waiver form (See **Form 312**); and
 - (d) The complainant understands the expectations of mediation and is willing to participate in the mediation in good faith.

7. The OIPM will determine suitability for mediation. A NOPD member may be suitable for mediation when:
 - (a) The NOPD member has provided informed consent;
 - (b) The NOPD member has signed an automatic 60-day extension form and confidentiality form (see 1025.5); and
 - (c) The NOPD member understands the expectations of mediation and is willing to participate in the mediation in good faith.
8. Suitability criteria will be final and not subject to appeal.
9. Complaints that the OIPM determines are unsuitable for mediation will be automatically re-filed by PIB for the appropriate non-mediation investigatory process.

AGREEMENT/DISAGREEMENT TO MEDIATE

10. Participation in the mediation process is voluntary, and the complainant and NOPD member must agree to mediation before the mediation can proceed.
11. The NOPD member, if agreeing to mediate a complaint, shall give written authorization by signing an extension form that allows PIB to extend the investigation period of the complaint for an additional 60 days for a maximum period of 120 days. The NOPD member must sign the extension form within 10 days after PIB provides the complaint to the OIPM.
12. The complainant, if agreeing to the mediation and as part of the mediation process, must withdraw the complaint from the normal complaint investigative process outlined in **Chapter 52.1.1 – Misconduct Intake and Complaint Investigation** and allow the issue that is the basis of the original complaint to be handled according to this Chapter by signing a complaint waiver form within 20 days after PIB provides the complaint to the OIPM.
13. If both parties agree to mediate, the Mediation Coordinator will select a mediator or mediators and a date for the mediation session.
14. If the NOPD member does not agree to mediate, the complaint will be automatically re-filed by PIB under the complaint investigative process outlined in **Chapter 52.1.1 – Misconduct Intake and Complaint Investigation** and will be subjected to the appropriate non-mediation investigatory process. If the complainant does not agree to mediate, the complaint will be automatically re-filed by PIB and will be subjected to the appropriate non-mediation investigatory process.

MEDIATION TIME PERIODS

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|---|---|---|
| The PIB Administrative Lieutenant/Intake Lieutenant assesses complaint allegations and refers cases eligible for mediation to the OIPM. | OIPM determines suitability, and the parties agree to mediate and sign the confidentiality, extension and complaint waiver forms. | Mediation occurs. |
| 14 days after the complaint is received by NOPD. | 20 days after PIB provides the complaint to the OIPM. | Within 60 days after the complaint is received by the NOPD. |

15. A complaint that is not mediated within 60 days will be returned to PIB for the appropriate non-mediation investigatory process. In the case of a failure to mediate

based on scheduling or a failure of the NOPD member to participate in the mediation in good faith, the complaint will be automatically re-filed by PIB and will be subjected to the appropriate non-mediation investigatory process. The mediator will adequately document to PIB the basis for its determination that the NOPD member has failed to participate in the mediation in good faith. (See **Chapter 52.1.1 – Misconduct Intake and Complaint Investigation**)

SCHEDULING OF MEDIATION

16. The Mediation Coordinator will schedule the mediation at a time agreed upon by all parties. Failure to agree on a date will not be the basis of any disciplinary action against an NOPD member. If a date cannot be agreed to, the complaint will be automatically re-filed by PIB and will be subjected to the appropriate non-mediation investigatory process.

MEDIATORS

17. All mediators will be selected by the Mediation Coordinator from a pool of mediators. This pool of mediators will consist of appropriately skilled mediators that have undergone police complaint mediation training arranged by the Mediation Coordinator. Ideally, mediation will be conducted by a panel of two mediators. Where a civilian complainant is not fluent in English, a bilingual mediator or an interpreter will be offered.

CONFIDENTIALITY

18. The mediation and any paperwork associated with the mediation are confidential and shall not be reproduced or made public in any way. Both parties must sign a Confidentiality Agreement that will include a prohibition on the use of any information disclosed in the mediation process in a judicial or trial setting.
19. Survey forms will be provided before and after the mediation session to be filled out separately by both parties. The information will be anonymous and will be used only for research and evaluation purposes. Consent to fill out the survey forms will be obtained from both parties.

CONDUCT OF MEDIATION

20. Mediation is a non-confrontational dispute resolution process. In order to maintain a positive atmosphere, each party is allowed to bring another individual, but that individual will not participate in the mediation except to observe and provide support (unless that individual is an adult accompanying a minor).
21. The Rules of Evidence do not apply to mediations. The parties may bring whatever information they feel relevant to the mediation.
22. The mediator or mediators will attempt to facilitate a resolution to issues brought up in the mediation. The goal is for parties to listen to each other to determine what led both to the complaint and to the complainant-police interaction.

MEDIATION OUTCOMES

23. Working together, all parties should attempt to decide on a resolution that will satisfy both parties. Parties may elect to draft and sign a resolution agreement and may choose to share that agreement with the OIPM and/or PIB. A specific resolution is not required to successfully conclude a mediation session.

24. The agreement to enter into mediation, the act of taking part in mediation, and the resolution of the mediation will not be recorded in the NOPD member's disciplinary record.

APPEAL

25. There shall be no appeal from the mediation process. Mediation is a voluntary process entered into willingly by both parties; due to its voluntary nature, appeal is unnecessary.