



King County

Office of Law Enforcement Oversight

September 28, 2020

TO: Sheriff Mitzi Johanknecht, King County Sheriff's Office (KCSO)

FR: Adrienne Wat, Interim Director, Office of Law Enforcement Oversight (OLEO)

RE: Mediation Program, General Orders Manual 3.03.300

OLEO has reviewed KCSO's proposed revisions on General Orders Manual (GOM) 3.03.300 on Mediation (included starting on page 3). In preparation for making recommendations for changes to the policy, OLEO reviewed mediation policies in other jurisdictions and King County's Office of Alternative Dispute Resolution policies and procedures.

Our recommendations are the following:

- Retain GOM 3.03.310(4) and add to 3.03.310(2) to include "When a complaint has more than one allegation, mediation shall not be considered for bias complaints that include other allegations that are otherwise ineligible for mediation." This language will resolve the potential conflict between the two policies.
- Add to GOM 3.03.310(2) that "Mediation shall not be used in cases when an employee makes a complaint involving bias by a supervisor. When the investigation is closed and includes a disposition other than sustained, mediation may be used as a means to assist the parties with improving their working relationship."
- Replace "should not" with "shall not" in GOM 3.03.310(3).
- Add to GOM 3.03.310(3) that mediation shall not be used when complaints involve dishonesty.
- Revise proposed language in GOM 3.03.310(5) to "For internal complaints, mediation may be used to address conflicts between employees, including with a supervisor, meeting the criteria of subsections 1-3 listed above."
- Revise GOM 3.03.315(3)(b) to "Mediation can help identify the root causes of conflict and what factors led to the initial complaint."

- Revise GOM 3.03.315(3)(c) to “Mediation can help prevent similar dissatisfying behaviors and interactions from occurring in the future and help participants understand different perspectives.”
- Revise GOM 3.03.320(1) to “Although anyone in the subject employee’s chain of command or IIU investigator may recommend mediation, potential mediation cases will also be reviewed by the OLEO or IIU Commander and the selection is approved by the OLEO and the Commander of IIU (with input from the Legal Advisor).”
- Revise GOM 3.03.320(2) to “If the complaint is eligible for mediation, the complainant would be offered the option of mediation before any investigative actions are taken. The complainant shall agree to participating in mediation before the other involved party is notified and given the opportunity to participate.”
- Combine GOM 3.03.320(3) and GOM 3.03.320(4) and revise to “If both parties agree to the mediation, King County’s Office of Alternative Dispute Resolution will schedule the session for a mutually agreeable time and place (including evenings and weekends) within thirty (30) days of the agreement.
 - The parties will be notified of the mediation time and location.”
- Revise GOM 3.03.320(6) to “Mediation will occur at a location identified by King County’s Office of Alternative Dispute Resolution.”
- Replace “The mediator” with “King County’s Office of Alternative Dispute Resolution” in GOM 3.03.325(1).
- Add the definition of “good faith” under GOM 3.03.325(1) which states, “Good faith means that the employee listens and considers the issues raised by the complainant, and acts and responds appropriately.”
- Revise GOM 3.03.325(2) to “OLEO will then inform IIU of the result of the mediation.”

3.03.300 MEDIATION PROGRAM

3.03.305

INTRODUCTION: [04/14 2/20](#)

The King County Office of Law Enforcement Oversight (OLEO) and the Sheriff's Office have established a voluntary ~~deputy-citizen~~ mediation program. The program shall provide an alternative method to resolve ~~citizen-c~~complaints by allowing willing ~~citizens-complainants~~ and ~~complainants and/or deputies employees~~ to meet under the guidance of a professional mediator to discuss and resolve their differences. The OLEO and the Sheriff's Office shall establish standards and guidelines for determining when a particular complaint may be referred to mediation.

Prior to the complainant agreeing to utilize the mediation process to resolve the complaint, the OLEO shall ~~should~~ explain the mediation process to the complainant, including that if the ~~deputyemployee~~ participates in good faith, the ~~deputyemployee~~ will not be subject to discipline and the complaint will be administratively dismissed.

Commented [HB1]: Suggest we remove the term citizen since it is not an all inclusive term.

Commented [HB2]: Suggest changing deputy to employee since some complaints may involve non-commissioned members (911, community serviced officers, etc)

Commented [HB3]: IIU and other command staff should also have the ability to explain the mediation option, especially for internal complaints.

3.03.310

USING MEDIATION: [04/14 2/20](#)

An ~~external~~ complaint may be considered for mediation if it resulted from a failure to communicate or a lack of communication such that the allegation would be resolved better through mediation than through the formal disciplinary process. These cases include allegations of conduct that have more than a minimal negative impact on the operations or professional image of the department; or that negatively impact relationships with other ~~deputiescomplainants~~, agencies, or the public. Past or current complaint history of the employee, previous mediation history, and any record of prior complaints by the ~~citizencomplainant~~, may be taken into consideration when determining whether a complaint should be considered for mediation.

[Mediation may also be used for internal complaints involving employee conflicts, provided the involved employees agree to use the mediation in lieu of an investigative finding.](#)

Commented [HB4]: We believe mediation is an excellent option for many employee conflicts and propose expanding the option for mediation to include internal complaints.

1. Mediation should be used when complaints include:
 - a. Courtesy.
 - b. Use of Profanity.
 - c. Procedural Issues related to vehicle stops.
 - d. Other procedural issues:
 - Why was I handcuffed?
 - Why was I not allowed to leave?
 - Why was a report not taken?
 - e. Vehicle Operations (speeding, sirens, code responses).
2. The use of mediation should be evaluated on a case-by-case basis for complaints involving:
 - a. Racial, gender, sexual orientation, or other biases.
 - b. Racial profiling, or other.
3. Mediation should not be used when complaints involve:
 - a. Use of force.
 - b. Sexual harassment.
 - c. Cases involving employees with a history of numerous ~~citizen~~complaints.
 - d. Allegations of criminal misconduct.

- e. Cases where ~~there are~~ criminal charges are pending from the underlying contact with the ~~deputyemployee~~.

~~4. Complaints that, if the allegations were determined to be true would likely result in termination, demotion, or suspension, will not be considered for mediation.~~

~~45. Mediation will not be offered as an alternative remedy to discipline if a deputyemployee has participated in two (2) mediated complaints within a twelve (12) month period.~~

~~5. For internal complaints, mediation may be used to address employee-supervisor and employee-employee conflicts meeting the criteria of subsections 1-3 listed above.~~

Commented [HB5]: Suggest we strike this section since subsection 2 allows for mediation involving racial profiling, racial, gender, sexual orientation, etc. If true some of those allegations would likely result in a property loss so I believe this section is contradictory.

3.03.315

MEDIATION SESSIONS: 01/14/20

1. A mediation session is:
 - a. An alternative to the traditional complaint and disciplinary process.
 - b. A voluntary, confidential process where a trained mediator helps ~~citizencomplainants~~ and ~~deputiesemployees~~ talk and listen to each other.
 - c. A chance for ~~deputies employees~~ to hear how their actions affected ~~citizencomplainant~~s and vice versa.
2. A mediation session is not:
 - a. A process to make judgments about who is right or wrong.
 - No evidence or witnesses are required.
 - b. A session where parties have to leave in agreement.
 - c. A session where parties are forced to shake hands and make up.
3. Some benefits of the mediation session are:
 - a. Mediation allows ~~deputiescomplainants~~ and ~~citizenemployeees~~ to resolve complaints themselves, rather than depend on the judgment of others.
 - b. Mediation is more satisfying than the regular complaint process.
 - c. Mediation can make a real difference in the understanding, attitude and behavior of the participants.
 - d. Mediation can improve relationships between the organization and the community.
4. Mediations sessions are confidential:
 - a. All participants sign a legally binding confidentiality agreement.
 - b. The contents of a mediation session are not subject to subpoena or discovery.
 - The one exception is where mandatory reporting requirements apply for certain admissions of criminal acts by any party.
 - c. Labor and/or legal representatives are not allowed to participate.

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3.03.320

MEDIATION PROCESS: 01/14/20

1. The party making the complaint would be offered the option of mediation during the initial phases of the complaint process; it is first and foremost the complainant's choice.
2. Potential mediation cases will also be reviewed by the OLEO or IIU Commander and the selection is approved by the OLEO and the Commander of IIU (with input from the Legal Advisor).
3. If the deputyemployee also agrees to mediation, the session is scheduled for a mutually agreeable time and place (including evenings and weekends).
4. If both parties agree to the mediation, a mediation session ~~will~~ should be coordinated within thirty (30) days of the agreement.
 - _____ The parties will be notified of the mediation time and location.
 - _____
5. A professional mediator will be provided by King County's Office of Alternative Dispute Resolution.
6. Mediation will occur at a location identified by the selected mediator.
7. The selected mediator may meet with the parties together, separately, or both and review the incident in a non-confrontational manner.
8. The 180-day timeframe for completion of internal investigations is tolled after both parties agree to mediation. The timeframe is restarted upon notification that the deputyemployee failed to participate in good faith.

Commented [HB6]: Allows flexibility for vacations and ADR availability

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3.03.325

REPORTING: 01/14/20

1. The mediator will inform the OLEO Director of the completion of the mediation session and whether the deputyemployee participated in good faith.
2. The OLEO Director will then inform the IIU Commander that the matter was resolved by mediation.
3. If the mediator determines that the deputyemployee did not participate in good faith, the complaint will be processed as would have been done in the absence of the offer of mediation.
 - This finding is not subject to challenge.