

OFFICE OF THE CHIEF OF POLICE

NOTICE 13.5

December 18, 2020

TO: All Department Personnel

FROM: Chief of Police

SUBJECT: REVISED BIASED POLICING ALTERNATIVE COMPLAINT RESOLUTION – PILOT PROGRAM; AND, THE ALTERNATIVE COMPLAINT RESOLUTION ACKNOWLEDGEMENT, FORM 01.28.06 – RENAMED AND REVISED

The Department currently uses two types of alternative dispute resolution processes to resolve complaints of misconduct: the Community Police Unification Program (CPUP) and the Alternative Complaint Resolution (ACR). Because alternative dispute resolution has been shown to increase understanding between parties and improve public trust, strategies to increase participation have been implemented. This Notice revises ACR procedural constraints and eligibility to include biased policing complaints for a three-year pilot study. The pilot program will become effective once the appropriate E-Learning course prerequisite has been posted on the Department's Local Area Network. This Notice also revises and renames the Alternative Complaint Resolution Acknowledgement, Form 01.28.06, as the Alternative Complaint Resolution Agreement.

Under current procedures, complaints of biased policing are not eligible for the ACR process. However, for this pilot study, selected biased policing complaints may be eligible for ACR when conducted by supervisors who have received specialized training. In addition to mediation and a full investigation, the ACR adds a third option for resolving eligible complaints.

Eligibility Guidelines. The ACR pilot process is limited to public complaints of biased policing and/or discourtesy where there are no additional allegations; or, only additional minor allegations of misconduct, including some unlawful detentions or searches. Complaints of biased policing and discourtesy shall be recorded with a Complaint Form (CF) No. by the same method as any other public complaint of misconduct.

Complaints involving the following circumstances shall not be resolved through the ACR process:

- A reportable use of force;
- Ethnic remark or other specific discourtesy directed at a class of persons;
- A complainant was arrested;
- A lawsuit was filed;
- A person was injured;
- Property was damaged;
- Excessive delay in reporting allegations; or,
- Allegations of criminal misconduct.

Generally, all Department employees (sworn and civilian) are eligible to participate in the ACR process unless they have had two prior complaints with similar allegations generated within the last twelve months. However, eligibility is ultimately at the discretion of the accused employee's watch commander (Lieutenant, Sergeant II, Detective OIC or civilian equivalent).

Note: For complaints of biased policing, if the intake supervisor determines there is evidence that a bias occurred, any consideration for an ACR shall be terminated and the complaint shall be processed for investigation. Body worn and digital in-car video can assist supervisors in determining whether an ACR is appropriate.

Body Worn and Digital In-Car Video. Body worn and digital in-car video devices shall be deactivated while participating in an ACR.

Supervisors. Only supervisors who have completed the following training shall be authorized to conduct ACRs to resolve complaints of biased policing:

- The ACR E-Learning (forthcoming); and,
- A course in mediation or conflict resolution, such as the Straus Institute for Dispute Resolution through Pepperdine School of Law; Basic Mediation Training – Los Angeles City Attorney's Office; or, any mediation/dispute resolution course approved by the Commanding Officer (CO), Internal Affairs Group, or his or her designee.

Initially, the Department will select supervisors from a pool of those who volunteer to respond to biased policing ACR requests and have completed or are completing the required training.

As the pool of supervisors who are authorized to complete ACRs may initially be limited based on the need to complete the two mandatory trainings, Area watch commanders are encouraged to request an authorized supervisor from a neighboring command to complete an ACR if none exist for their own command.

To be successful, volunteers must have a sincere desire to participate and believe in the benefits of alternative dispute resolution. Resolving allegations of biased policing requires critical mediation skills. Allegations of biased policing are significant in that they affect the way the public views the Department and its policing methods. Mediation provides a proven way of resolving these complaints.

Training Coordinator. Area/division Training Coordinators shall maintain an updated list of supervisors who have completed the required training before they are eligible to conduct ACRs for complaints of biased policing.

Timelines. While the goal is to complete ACRs immediately during the complaint intake, supervisors may postpone the ACR for up to 30 days if the complainant is not available or exigent circumstances exist. Delays beyond 30 days require the Area or divisional CO's approval.

Agreements and Forms. The Alternative Complaint Resolution Acknowledgement form has been revised and renamed as the Alternative Complaint Resolution Agreement form. The complainant(s), accused employee(s), and supervisor conducting the ACR are required to review and sign the agreement prior to convening the ACR process.

A. Use of Form. The purpose of this form is to confirm that all involved parties of the ACR process understand and agree to the ACR provisions.

B. Completion. The completion of this form is self-explanatory.

C. Distribution. The distribution of this form is as follows:

1 – Original, Complaint Coordinator, to be included with the complaint package.

1 – Copy, Uploaded into the Complaint Management System.

2 – TOTAL

The revised and renamed form has been attached for immediate use and duplication and is available in E-Forms on the Department's Local Area Network. All other versions of the form shall be marked "obsolete" and placed in the Area/division recycling bins.

Participation is voluntary and may be withdrawn by any of the involved parties up to the time the ACR has convened. If, prior to convening, either complainant or the accused employee(s) chooses to withdraw, the complaint shall be referred for investigation.

Note: If during the ACR, misconduct involving a serious crime is alleged, the supervisor shall refer the complaint for investigation. For this purpose, a serious crime is defined as any felony, theft, or sexual assault. Minor additional allegations should be handled through the ACR process.

Challenge to ACR. As specified in Department Manual Section 3/819, *Alternative Complaint Resolution Process*, if, based on compelling circumstances, a CO determines the ACR process is not appropriate (due to either the nature of the complaint or the employee's work history), the CO may override a watch commander's decision, even if the ACR has already occurred. If this occurs, the CO shall provide the employee with a written rationale, providing substantial justification. Prior to notifying the employee, the CO shall consult with the CO of Internal Affairs Group, who has the final authority regarding the decision.

Complaint Disposition. Once the ACR has been completed, the complaint shall be closed without additional investigation unless a serious crime is alleged. Biased policing complaints resolved through the pilot ACR program shall be changed from "Disciplinary" to "Non-Disciplinary" and closed with the ACR disposition.

All Department Personnel

Page 4

13.5

This Notice does not alter the current ACR constraints related to voluntary and good faith participation, confidentiality, support persons, employee representation, or any other provisions of the ACR process not addressed above. Additionally, this Notice does not change the ability of supervisors without the specialized mediation/dispute resolution training to facilitate an ACR for non-disciplinary complaints.

Any questions regarding this Notice may be directed to Internal Affairs Group, at (213) 996-2771.



MICHEL R. MOORE
Chief of Police

Attachment

DISTRIBUTION "D"

**Los Angeles Police Department
Alternative Complaint Resolution Agreement**

CF No.: _____

1. The confidentiality of this Alternative Complaint Resolution (ACR) session is governed by California Evidence Code Sections 250, 703.5 and 1115-1124 (attached).
2. All parties agree that everything said and everything written during this mediation proceeding will remain confidential and that no party will subpoena any staff or volunteer, or anything written by them, for any purpose in any legal proceeding, whether it is civil or criminal. All agreements are confidential and not admissible as evidence in any judicial or administrative hearing unless otherwise agreed to mutually by the respective parties.
3. All parties understand the sole purpose of this proceeding is to resolve the complaint regarding the Department employee's conduct. There is no monetary resolution or impact on any legal proceedings or traffic citations.
4. The complainant agrees that, to the best of his or her recollection, he or she has disclosed all the alleged misconduct which occurred during the incident resulting in the ACR session, and that there is no intent to disclose any additional allegations of misconduct once mediation begins.
5. All parties agree to participate in "good faith," which means they agree to participate with honest and sincere intent.
6. Participation is voluntary and may be withdrawn by any of the involved parties up to the time when the ACR has convened. If, prior to convening the ACR session, either the complainant or the accused employee(s) chooses to withdraw, the complaint will be referred for investigation. All parties understand that once the ACR has been convened, the complaint will be closed without additional investigation by the Los Angeles Police Department unless a serious crime of misconduct is alleged.

Note: If during the ACR, a serious crime of misconduct is alleged, the supervisor shall refer the complaint for investigation. For this purpose, serious crime is defined as any felony, theft, and sexual assault. Minor additional allegations will be handled through the ACR process.

This agreement is entered into voluntarily by:

Signature: _____ Date: _____

Signature: _____ Date: _____

Signature: _____ Date: _____

Signature: _____ Date: _____

Supervisor Signature: _____ Date: _____

Alternative Complaint Resolution – California Evidence Code

§250. “Writing” means handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

§703.5. No person presiding at any judicial or quasi-judicial proceeding, and no arbitrator or mediator, shall be competent to testify, in any subsequent civil proceeding, as to any statement, conduct, decision, or ruling, occurring at or in conjunction with the prior proceeding, except as to a statement or conduct that could (a) give rise to civil or criminal contempt, (b) constitute a crime, (c) be the subject of investigation by the State Bar or Commission on Judicial Performance, or (d) give rise to disqualification proceedings under paragraph (1) or (6) of subdivision (a) of Section 170.1 of the Code of Civil Procedure. However, this section does not apply to a mediator with regard to any mediation under Chapter 11 (commencing with Section 3160) of Part 2 of Division 8 of the Family Code.

§1115. For purposes of this chapter: (a) “Mediation” means a process in which a neutral person or persons facilitate communication between the disputants to assist them in reaching a mutually acceptable agreement. (b) “Mediator” means a neutral person who conducts a mediation. “Mediator” includes any person designated by a mediator either to assist in the mediation or to communicate with the participants in preparation for a mediation. (c) “Mediation consultation” means a communication between a person and a mediator for the purpose of initiating, considering, or reconvening a mediation or retaining the mediator.

§1118. An oral agreement “in accordance with Section 1118” means an oral agreement that satisfies all of the following conditions: (a) The oral agreement is recorded by a court reporter or reliable means of audio recording. (b) The terms of the oral agreement are recited on the record in the presence of the parties and the mediator, and the parties express on the record that they agree to the terms recited. (c) The parties to the oral agreement expressly state on the record that the agreement is enforceable or binding, or words to that effect. (d) The recording is reduced to writing and the writing is signed by the parties within 72 hours after it is recorded.

§1119. Except as otherwise provided in this chapter: (a) No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation is admissible or subject to discovery, and disclosure of the evidence shall not be compelled, in any arbitration, administrative adjudication, civil action, or other noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given. (b) No writing, as defined in Section 250, that is prepared for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation, is admissible or subject to discovery, and disclosure of the writing shall not be compelled, in any arbitration, administrative adjudication, civil action, or other noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given. (c) All communications, negotiations, or settlement discussions by and between participants in the course of a mediation or a mediation consultation shall remain confidential.

§1120. (a) Evidence otherwise admissible or subject to discovery outside of a mediation or a mediation consultation shall not be or become inadmissible or protected from disclosure solely by reason of its introduction or use in a mediation or a mediation consultation. (b) This chapter does not limit any of the following: (1) The admissibility of an agreement to mediate a dispute. (2) The effect of an agreement not to take a default or an agreement to extend the time within which to act or refrain from acting in a pending civil action. (3) Disclosure of the mere fact that a mediator has served, is serving, will serve, or was contacted about serving as a mediator in a dispute. (4) The admissibility of declarations of disclosure required by Sections 2104 and 2105 of the Family Code, even if prepared for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation.

§1121. Neither a mediator nor anyone else may submit to a court or other adjudicative body, and a court or other adjudicative body may not consider, any report, assessment, evaluation, recommendation, or finding of any kind by the mediator concerning a mediation conducted by the mediator, other than a report that is mandated by court rule or other law and that states only whether an agreement was reached, unless all parties to the mediation expressly agree otherwise in writing, or orally in accordance with Section 1118.

§1122. (a) A communication or a writing, as defined in Section 250, that is made or prepared for the purpose of, or in the course of, or pursuant to, a mediation or a mediation consultation, is not made inadmissible, or protected from disclosure, by provisions of this chapter if either of the following conditions is satisfied: (1) All persons who conduct or otherwise participate in the mediation expressly agree in writing, or orally in accordance with Section 1118, to disclosure of the communication, document, or writing. (2) The communication, document, or writing was prepared by or on behalf of fewer than all the mediation participants, those participants expressly agree in writing, or orally in accordance with Section 1118, to its disclosure, and the communication, document, or writing does not disclose anything said or done or any admission made in the course of the mediation. (b) For purposes of subdivision (a), if the neutral person who conducts a mediation expressly agrees to disclosure, that agreement also binds any other person described in subdivision (b) of Section 1115.

§1123. A written settlement agreement prepared in the course of, or pursuant to, a mediation, is not made inadmissible, or protected from disclosure, by provisions of this chapter if the agreement is signed by the settling parties and any of the following conditions are satisfied: (a) The agreement provides that it is admissible or subject to disclosure, or words to that effect. (b) The agreement provides that it is enforceable or binding or words to that effect. (c) All parties to the agreement expressly agree in writing, or orally in accordance with Section 1118, to its disclosure. (d) The agreement is used to show fraud, duress, or illegality that is relevant to an issue in dispute.

§1124. An oral agreement made in the course of, or pursuant to, a mediation is not made inadmissible, or protected from disclosure, by the provisions of this chapter if any of the following conditions are satisfied:

(a) The agreement is in accordance with Section 1118.

(b) The agreement is in accordance with subdivisions (a), (b), and (d) of Section 1118, and all parties to the agreement expressly agree, in writing or orally in accordance with Section 1118, to disclosure of the agreement.

(c) The agreement is in accordance with subdivisions (a), (b), and (d) of Section 1118, and the agreement is used to show fraud, duress, or illegality that is relevant to an issue in dispute.