



Citizen Review Committee

1221 SW 4th Ave. Room 320, Portland, OR 97204, (503) 823-0146

March 21, 2006

Hank Miggins, Chair
Citizens Review Committee
1221 SW 4th Avenue, Room 320
Portland, OR 97204

Re: **Workgroup Report on Mediation**

Dear Chair Miggins:

The Citizen Review Committee (CRC) has a duty to “review methods for handling complaints and advise on criteria for dismissal, *mediation*, and investigation” (Portland City Code Section 3.21.090). To help the CRC fulfill its duty, the CRC appointed CRC members Gwenn Baldwin, Michael Bigham, and Marcella Red Thunder to review the Independent Police Review Division’s (IPR) methods and criteria for mediating complaints of police misconduct.

This letter reports our observations and recommendations to the CRC.

METHODOLOGY

The workgroup held public meetings on August 24 and October 12, 2005 to develop a project plan. For background information we received a briefing from the IPR staff and reviewed IPR’s mediation protocols (Encls. 1 and 2) and the mediation section of the 2004 Annual Report (Encl. 3). We received and considered comments from Portland Copwatch representative Dan Handelman.

The workgroup decided to review 45 cases selected randomly from approximately 235 mediation-related files that IPR closed between 1/1/2003 and approximately 10/1/2005. “Mediation-related” cases fall into 3 broad categories:

1. **Completed mediations.** We reviewed 15 out of 70 cases in which the parties completed the mediation process.
2. **Uncompleted mediations.** We reviewed 15 out of 113 cases in which all of the parties, IPR, and PPB (IAD) initially agreed to mediate, but later one of the parties did not respond, could not be contacted or failed to appear at the mediation session without an explanation or excuse.

3. Rejected mediations. We reviewed 15 out of 52 cases in which the complainant agreed to mediate but (1) IPR, PPB, or the officer refused to mediate, or (2) the complainant later changed his or her mind and decided not to mediate after IPR had agreed the case was suitable for mediation.

The workgroup also adopted evaluation criteria and incorporated them into checklists for each category (Encls. 4, 5, and 6). The checklists were identified only by case number and a brief summary of the facts, omitting names and other personal information.

Each workgroup member independently and privately reviewed all 45 files in the IPR office and filled out a checklist for each file. The workgroup members did not consult with one another during the file review process or review checklists of other reviewers.

After completing the case reviews, the workgroup met again in public meetings on February 8 and 15 and March 8, 2006 to discuss our observations and reach a consensus about the content of our report to the full CRC. Collectively the workgroup spent approximately 50 hours designing the study, reviewing the files, analyzing the results and formulating a final report.

OBSERVATIONS

Completed Mediations

- Satisfaction of parties. Complainants and officers reported satisfaction with the outcome of completed mediations. After reviewing their exit surveys, we subjectively assessed each party's overall satisfaction on a scale of 1 to 5 (1=completely dissatisfied, 5=completely satisfied). We assessed an average satisfaction level of 3.93 for complainants and 3.90 for officers.
- Appropriateness. In all 15 cases a majority of the reviewers found that the cases were appropriate for mediation as a matter of public policy. In 11 cases the reviewers were unanimous. In 4 cases, a reviewer dissented believing that the cases should have been referred to IAD for an investigation or service complaint.
- Apparent inconsistency. IPR's mediation protocol 5.09 prohibits mediation in cases in which the officer will be a witness against the complainant in a pending criminal prosecution. Several completed mediations involved cases in which there were pending non-criminal traffic offenses in which the officer would be a witness against the complainant. The protocol does not prohibit the mediation of non-criminal cases. However, when we reviewed rejected mediations, we found one case with a pending non-criminal parking offense which IPR rejected for mediation and dismissed on the grounds of "Other Judicial Review." We address this issue below in our recommendations.
- Number of participants. In 11 mediations there were equal numbers of participants representing complainants and officers. In two mediations, officers outnumbered complainants, 2 vs.1 and 3 vs.1. In the case involving 3 officers vs. 1 complainant, the complainant had explicitly requested the participation of the third officer, a sergeant. In two other mediations, complainants outnumbered officers 2 vs. 1. While imbalanced participation raises issues of fairness, the participants reported an average satisfaction level of 3.27 out of 5 on our subjective assessment scale. We have no specific recommendations about equalizing the numbers of participants. IPR and the mediators simply should be

sensitive to the possible dynamics and seek to mitigate any unfairness or discomfort that may be created.

Uncompleted Mediations

- Complainant's agreement to mediate. A complainant's agreement to mediate is a decision with important consequences. If the complainant cannot be contacted to schedule the mediation or fails to appear at the mediation without excuse, IPR protocols give the officer the choice of rescheduling or having the complaint dismissed. Unsurprisingly, the officers choose to have the complaints dismissed.

We observed several problems. First, a majority of reviewers could not determine from the documentation in six of the files whether the complainants were adequately informed about the consequences if they failed to follow through with mediation once they agreed to it. We did not listen to the audio-recorded interviews of complainants so we do not know whether the intake investigators verbally explained the consequences.

Second, IPR treated statements of interest by non-involved family members in three cases as agreements by the complainants to mediate. In two of the cases mothers expressed interest for their sons; in one case a wife expressed interest for her husband. The true complainants were not asked and did not agree to mediate. However when the primary affected complainants did not respond to the mediators' scheduling efforts, IPR dismissed their complaints.

Third, IPR treated somewhat tentative or ambiguous statements by several complainants as agreements to mediate.

We address these problems in our recommendations below.

- Lost contact with complainants. The inability to re-contact complainants is the primary reason that some mediations could not be completed. IPR or the mediators could not re-contact the complainants in 12 of the 15 cases that we reviewed. In one of the 12, the complainant was in jail and in another the complainant was homeless, but in the rest the complainants either moved without a forwarding address or phone number or did not respond to letters or phone calls.

Another complainant expressed doubt that he would be able to schedule mediation due to his seasonal construction work. He subsequently did not respond to attempts to contact him.

We address this issue in our recommendations below.

- Failures to appear. When complainants and officers have agreed to a mediation date, they usually appear as scheduled. There were exceptions. In one case a complainant said he was unable to get away from work and did not call IPR to reschedule because he did not have IPR's telephone number. In another case, the complainant appeared but the officer did not, apparently because he was not

notified of the date. The complainant did not want to reschedule, saying that he was satisfied that he had made his point.

In a third case, the complainant, two officers, and at the complainant's request, one sergeant appeared for mediation. According to the complainant's exit survey, an officer and the sergeant left before the mediation was over; one officer remained. The early departure was not mentioned in either of the two mediators' exit surveys although they did not note that one officer and the sergeant were very dissatisfied with the mediation. If an officer and sergeant left early and without justification, there is no indication in the file that IPR notified the Bureau.

- Maintain training issue notes. In one case, the IPR Director initially noted that the complaint raised a training issue. The Director later removed his training note from AIM when the mediation could not be completed. The training issues still have value regardless of the outcome of the mediation and should be retained with briefings if appropriate.

Rejected Mediations

- Party who rejected mediation. In 6 cases IPR rejected mediation.

In 3 cases the complainants changed their minds when it became time to schedule the mediation or they rejected a statement made by a family member to IPR that the primary affected complainant wanted to mediate.

In one case IAD rejected mediation.

In the remaining cases it was not completely clear which party was primarily responsible for the rejection. Officers did not reject mediations in any cases in which mediations were offered.

In one of the 6 cases rejected by IPR, IPR rejected mediation because the complainant had made offensive remarks to the officer during the incident. Rather than presume that offensive remarks would make mediation unworkable, IPR should give IAD and the officer the opportunity to accept or reject mediation.

- Complainants' rejections. Similar to the problems we identified above with uncompleted mediations, we found one case in which a non-involved wife's "agreement to mediate" was later rejected by her husband who was the true complainant. We also found a case in which the complainant was interested in mediation but would not agree to it unless she received more information. It is unclear whether all her questions were answered or whether her questions were even answerable. It is clear that her responses should not have been treated as an agreement to mediate.

RECOMMENDATIONS

1. Adequately inform complainants. IPR should make sure that complainants understand the consequences of agreeing to mediate. Complainants should be clearly informed that their complaints may be dismissed if they do not notify IPR if they change their addresses or phone numbers, if they do not respond to IPR's or the mediators' attempts to schedule a mediation, or if they do not appear at scheduled mediation session.

We hesitate to prescribe a specific procedure. For example, sending the complainant a written explanation of mediation would clearly document the information provided. However, it might also impose a marginal delay to a process that is intended to be speedy. Furthermore some complainants may not understand written information as well as they might understand a careful verbal explanation.

One approach might be for IPR Intake Investigators to carefully explain mediation. If the complainant expresses interest, the Intake Investigator could send the complainant a written explanation with a consent form and prepaid return envelope. If the complainant expressed strong verbal interest, IPR could begin the process of setting up mediation pending receipt of the signed consent. IPR would terminate the mediation setup process if the consent is not received within a short time. IPR could then pull the case out of the mediation pipeline and handle it according to the regular procedures for non-mediation cases. However, IPR would treat a signed consent as a knowledgeable and irrevocable commitment. If the complainant does not follow through after that, IPR could dismiss the complaint.

2. Obtain and document clear agreement by the primary complainant. Before committing a case to the mediation pipeline with the possibility of dismissal if the complainant does not follow through, IPR needs to be sure it has a clear agreement to mediate from a primary affected party. The current mediation agreement forms describe the participants' responsibilities and the consequences of moving forward with mediation. A participant's written consent on this form or by email is the only clear agreement to mediate. Mere statements of interest or requests for additional information should not be treated as irrevocable agreements. One person's agreement, whether as a co-complainant or as an interested family member or friend, should not commit the primary affected complainant. Unequivocal enthusiasm for mediation by a friend, relative, or co-complainant may be enough to begin preparing a case for mediation but it should not be enough to commit a primary complainant who has not agreed to the process.
3. Non-criminal traffic offenses. IPR should be consistent about whether it will or will not mediate cases involving a pending non-criminal traffic offense. The protocol prohibits the mediation of cases involving pending criminal traffic offenses like DUII, some DWS's, Reckless Driving, and Failure to Perform the Duties of a Driver ("Hit and Run"). We recommend that IPR either not attempt to mediate cases with non-criminal traffic offenses still pending or wait until the traffic offenses have been resolved.
4. Explore procedures to keep contact with complainants. In order to reduce the number of uncompleted mediations, we recommend that IPR redouble its efforts to keep contact with complainants. Several complainants appear to have moved without forwarding instructions. It might help to provide interested complainants with a written explanation about mediation, especially the importance of maintaining

contact, and to require them to sign and return a consent form with available times and alternate contact information, such as a parent or other family member.

5. Consistent scheduling flexibility. IPR should be consistent about allowing rescheduling of mediation when one of the participants has a last minute conflict or fails to make the mediation. Current protocols give the officer the choice of rescheduling or having the complaint dismissed if the complainant fails to appear. The complainant does not have a choice between rescheduling and moving the complaint to investigation or service complaint; he or she can only agree to reschedule in order to pursue the complaint. IPR should revise its mediation protocols to permit rescheduling if either party fails to attend, depending on the reasons given. Repeated failure to show would be grounds for dismissal.

Sincerely,

Gwenn Baldwin
Workgroup Chair

Michael Bigham
Workgroup member

Marcella Red Thunder
Workgroup member