

	GENERAL ORDER	Effective: 03-07-2022	# 04-07
	Section: Personnel	Replaces or Modifies: New Policy	
	Title: Mediation		
Issued by: Chief Deputy Mattie Provost			

I. Purpose:

It is the policy of the Fort Bend County Sheriff's Office (FBCSO) to provide a safe and secure work environment and to reduce conflict and miscommunication.

II. Policy Statement:

It is the policy of the Fort Bend County Sheriff's Office (FBCSO) to enhance communication between employees and to resolve employee job-related issues in a timely, fair, and equitable manner at the lowest possible level. When appropriate, the FBCSO will provide alternative means for resolving issues, to include alternative dispute resolution or mediation.

III. Definitions:

Alternative Dispute Resolution. Informal means to resolve employee disputes that may include mediation, simple negotiation, arbitration, moderated settlement conference, and mini-trials that are held outside the formal court and administrative systems.

Ineligible Issue. An issue is ineligible for any alternative dispute resolution process, including mediation, if it can be substantively described as a Class I policy violation or if it is so egregious that it threatens the integrity of the Fort Bend County Sheriff's Office (e.g., child abuse or neglect or domestic violence). An issue may not be eligible for mediation if the nature or magnitude of the issue makes it impractical or unreasonable for mediation.

Mediation. A forum in which an impartial person, the mediator, facilitates communication between parties to promote understanding, reconciliation, or settlement, which may result in an agreement.

Mediation Process. The steps constituting the structure of a mediation session, including introduction, opening statements, two-way exchange, issue clarification, option generation, negotiation, agreement writing, reality testing, and closure.

Mediation Procedure. The term used to describe all mediation-related activities collectively, including intake, education, interviews, mediation sessions, evaluations, and file closure.

Mediation Session. The mediation meeting wherein the parties and the mediator assemble in private to discuss and negotiate the issues of concern.

Mediator. An individual selected to act as a neutral third party during a mediation session and whose duty is to facilitate the discussion of issues.

Participant. Any party, dispute resolution staff member, or mediator who has a role in the mediation procedure including any interview or meeting.

Party. Any person having an interest in an issue or dispute forwarded to ADR for resolution.

IV. Details and Procedures:

A. Initiating Mediation

An employee may request mediation or a captain may refer an issue to the Chief Deputy, or Chief Deputy's designee, with a recommendation for mediation. The Internal Affairs Section will screen and refer mediation eligible issues to the Chief Deputy, or Chief Deputy's designee for mediation.

B. Mediation Eligibility

Serious policy violations (Class I complaints), including child abuse, child neglect, domestic violence, other criminal conduct, or conduct so egregious that it threatens the integrity and operations of the Sheriff's Office will NOT be eligible for mediation. Certain management decisions, discipline, or policy issues may not be eligible for mediation.

C. Time Considerations

Issues that are eligible for resolution through mediation will be processed and completed within 60 calendar days or less. Any deviation from this time consideration shall first be approved by the Chief Deputy or Chief Deputy's designee.

D. 24- Hour Notice Requirement

The 24-hour notice requirement is waived for all issues referred to mediation procedure due to its non punitive nature. Employees may not object to any mediation meeting because a 24-hour notice was not issued.

E. Mediation Participants

Only the parties involved in the mediation (initiating and responding parties) and the mediator may participate in a mediation session, except that a mediator evaluator or a mediator in training may be permitted to observe the mediation. In all instances, the content of the mediation is confidential and not to be disclosed, unless existence of exigent circumstances.

F. Representation

No party may have a representative present during a mediation interview or session. Any party may consult with a representative prior to or after a mediation interview or session.

G. Mediator Qualifications

All mediators must acquire the necessary skills to mediate prior to conducting Sheriff's Office sponsored mediation. A mediator may be temporarily or permanently removed from the pool of mediators for good cause.

Prior to scheduling of a mediation session, the Chief Deputy or Chief Deputy's designee will ensure that each issue under consideration is eligible for the mediation procedure.

H. Mediation Procedure Rules

1. The following rules are to guide the mediation process
 - a. A party may not speak while the other party is speaking.
 - b. A party will not call another party by any derogatory name or use any other name aside from the person's true name or nickname.
 - c. A party will control the volume of his/ her voice and follow a request by a dispute resolution center staff member or the mediator to reduce his or her volume.
 - d. All parties to a mediation will participate in that mediation without representation unless a translator is required. In cases with multiple parties, each party will speak for themselves one at a time.
 - e. The mediation procedure is confidential and all applicable laws and policies governing confidentiality bind all participants. The confidentiality rules apply to all aspects of the mediation procedure including intake, interview, mediation session, caucus, and case processing by the staff of the alternative dispute resolution center.
 - f. All persons participating in mediation session are prohibited from bringing a weapon of any type into the mediation session. There are no exceptions to this rule.
 - g. Each participant in mediation will contact the Dispute Resolution Center (DRC) staff to confirm attendance at least 24 hours prior to the scheduled mediation.
 - h. Violations of any mediation procedure law, department policy, or mediation agreement, including confidentiality, during or after any mediation proceeding, will be grounds for disciplinary action.
 - i. If any participant fails or refuses to follow any mediation rule to the extent the mediator is unable to control the mediation, the mediation will be stopped.

I. Integrity of Mediation

A mediator will withdraw from service in a mediation session if his or her participation in the mediation session would violate a law or policy or if the mediator lacks sufficient experience to manage the issues in dispute.

Mediators and staff will not request or accept any gift or other form of personal benefit, directly or indirectly, from any participant in the mediation procedure where such benefit is for services provided in the mediation procedure, or for any other reason.

J. Ethical Considerations

Every person performing duties in connection with the dispute resolution process is required to know and abide by the ethical rules listed within this policy.

K. Confidentiality

The mediation procedure is confidential. All interviews, mediation sessions, and documents created during the procedure are confidential according to applicable law and Sheriff's Office policies.

If a mediation procedure participant has a question regarding whether a particular matter within his or her knowledge should be reported, the participant may consult with the mediator about the effect of the confidentiality guidelines without violating the confidentiality requirement.

All documents, materials, writings, or other recordings created during a mediation session, except an agreement between the parties, must be destroyed at the conclusion of the mediation. Only the parties to a mediation agreement may disclose their agreement pursuant to the disclosure agreement reached during mediation.

No photography, video, or audio recording is permitted during the mediation procedure, including any part of the mediation process, session, interview, or meeting.

No employee may be compelled to disclose or otherwise testify regarding any matter discovered during any mediation procedure, including an interview or mediation session, except as required by laws and policies. Documents created and information discovered prior to or subsequent to and outside the mediation procedure may be disclosed.

L. Exception to Confidentiality

The Dispute Resolution Center (DRC) staff and mediators are required to inform each participant in the mediation procedure of the exceptions to confidentiality.

Exceptions to the confidentiality rule include substantive allegations of child abuse or neglect and all substantive allegations of abuse, exploitation, or neglect of the elderly or disabled discovered during an interview or mediation session. These cases will be reported in accordance with the law and Sheriff's Office policies.

M. Conflict of Interest

Dispute Resolution Center (DRC) staff members and mediators will only serve in cases in which they have no personal interest in the outcome of the mediation.

N. Neutrality

Every mediator should be neutral while conducting a mediation session and should avoid the appearance of favoritism, prejudice, or bias. Prior to the mediation session, mediators will disclose any circumstances likely to create an appearance of bias.

O. Role of Mediator

The mediator will make a reasonable effort to conduct each mediation session in accordance with all laws, rules, and policies and in a manner as may be necessary to avoid undue harm to all parties participating in the mediation process.

P. Mediation Attendance

The Sheriff, Chief Deputy, or Chief Deputy's designee may mandate a participant's attendance in mediation.

Q. Mediation Session Attire

Each participant in a mediation session is required to dress appropriately for the mediation. Employees will wear business or casual business attire, or their county issued uniform. Employees will not wear jeans, shorts, beach attire, athletic shoes, or any clothing that distracts from the mediation process.

No participant will bring a weapon into a mediation session, even if the employee is in uniform.

R. Mediation Documents

All mediation case files are strictly confidential. Only a notice of referral and information originally received by the DRC will be returned to the Chief Deputy or Chief Deputy's designee. At the conclusion of the mediation procedure, all writings and forms generated as part of the mediation procedure will be destroyed except the mediation agreement and the original complaint or issue document or report.

The mediation records will be retained according to approved record retention guidelines

S. Mediation Agreements

Agreements made during a mediation session will be documented and may be reduced to writing. The agreement will be enforceable according to applicable laws and Sheriff's Office policies. Agreements may not violate or circumvent the law or department policy. Each party must possess the authority to agree to each provision of the agreement and possess the ability to abide by those provisions.

Mediation agreements may be disclosed only by the parties to the agreement pursuant to the disclosure agreement reached during mediation. The parties may agree among themselves to restrict disclosure of their agreement. However, parties may not restrict the right of enforcement or disclosure in cases involving a breach of the agreement or a breach of confidentiality. The DRC staff may release a copy of the agreement only to a party to the agreement.

T. Impasse

If a mediation results in an impasse or either party refuses mediation and is not ordered to participate, and the issue remains eligible for resolution through another Sheriff's Office process, the issue may be returned to the Chief Deputy or Chief Deputy's designee for handling. The rules of confidentiality also apply to cases ending in impasse. The issue may be

closed in DRC if the issue is not suited for resolution through any other department process. The Chief Deputy or designee must approve the closure of any issue.

U. Scheduling and Overtime

Whenever possible, mediations will be scheduled during the normal work shift of the participants. All employee participants to mediation will be compensated for participation according to Sheriff's Office policy.

V. Penalties

The mediation procedure is not punitive and participants will not be penalized or disciplined for participating. However, mediation cannot shield any employee from an investigation of a violation of the law, for any issue not resolved, or for any issue not eligible to be resolved in mediation. Any violation of the confidentiality laws or policies, breach of a mediation agreement, or any act of retaliation related to mediation will be investigated according to the Sheriff's Office policy and may be grounds for disciplinary action.

W. Issue Resolution

Issues resolved through the mediation procedure are closed and will not be eligible for resolution in any other Sheriff's Office process. Employees should be aware that some issues may be eligible for resolution only through mediation.