

## **In Praise of Mediation**

by Barbara Attard, Accountability Associates

Mediation changes lives. A successful mediation takes its participants to a place that they would not otherwise venture--it causes them to view the world from the perspective of the opposing party. As a civilian oversight professional, focused on police accountability, I was a hard sell to resolving cases through alternative dispute resolution processes. However, after having seen mediation produce dramatic results, I stand converted.

Investigations of police misconduct complaints have limited efficacy in some types of cases--particularly those that are one on one, and discourtesy/attitude based cases.

The majority of such cases result in a finding of "not sustained." Because there is no definitive finding, both sides feel that they have lost, that they have not been heard, and that the process did not work for them. Very often, even in civilian oversight investigations, both officers and civilians find themselves dissatisfied with the process because police misconduct cases are hard to prove.

Mediation is different. Mediation is powerful because both the complainant and the officer can gain an understanding of why the other person acted as he/she did. When the parties gain this knowledge, the other's behavior is put into a new context and it becomes comprehensible, it makes sense. They may not approve of what happened, but they can understand it. When mediation is successful, this understanding can, and often, leads to forgiveness and healing.

It is difficult to convince parties in police misconduct cases that mediation is a good idea because they do not have an ongoing relationship with each other. They are not part of the same family, or neighbors who must deal with each other for the long term--they do not have a vested interest in fixing the relationship. The last thing they want to do is sit down with the other person and bare their souls. It is almost always necessary to spend time convincing parties to agree to mediation. Officers are resistant even when offered the carrot of having the case come off of his/her record. However, when the parties agree and mediation occurs, the results are remarkable.

In one case that necessitated arm twisting to overcome the parties adamant opposition to mediation, I was amazed following the session to see them shaking hands, both sporting large grins, each genuinely appreciative of the other. The complainant offered to speak to other complainants about the mediation process. The officer, a San Francisco Police Officers Association board member, wrote an article touting mediation for the Association's Notebook.

There are several advantages to mediation. First, most of the cases that end up in mediation involve simple misunderstandings and, like any aspect of social interaction gone awry, are often best resolved with empathy, an apology, and a handshake. For an officer, this often translates into a learning experience that enables he or she to become a more effective and credible professional.

The goal in police misconduct investigations is determining and correcting errant behavior. While traditional discipline is an important and necessary tool in the process mediation is a much more powerful tool to bring about real change. And, as an added bonus, successful mediation brings the benefit that there is no losing side. Both parties feel good about the process and come away with a gift--genuine understanding.

There are conflicting opinions as to what types of cases should be involved in the mediation process. Some jurisdictions have strict rules disqualifying cases involving excessive force and racial or sexual slurs from being handled outside of the disciplinary system. Additionally, restrictions are sometimes set to prevent officers from using mediation repeatedly within a given

period of time. The rationale for these limitations is that some cases are too serious not to be handled as misconduct cases and registered in the officer's record (in many systems, mediated cases are removed from the officer's personnel file). Critics of these restrictions argue that mediation can be the more successful means of changing behavior, and particularly in these types of cases this option should be available.

*Barbara Attard is a police accountability consultant. She has worked in the accountability field since 1983. She retired as the San Jose Independent Police Auditor in 2008 and previously worked as director of the Berkeley Police Review Commission (PRC) was with the San Francisco Office of Citizen Complaints for sixteen years. [www.accountabilityassociates.org](http://www.accountabilityassociates.org)*