

CIVIL SERVICE DIVISION
REPRESENTATIVE GUIDE

Each party may have up to [two] 2 participants at the mediation that may participate in an active mediation setting:

- A. **For the Agency:** Legal Representative; HR Director; or Appointed Authority Designee
- B. **For the Complainant:** The Complainant; the Representative (i.e., Attorney or Non-Attorney); or a Moral Support Person.

Please be advised that pursuant to Oklahoma Administrative Code 260:130-3.2(e), “The mediator shall: (5) approve or deny the attendance of non-participating observers for training purposes...[the person training with the Agency will not take an active role and will be observing].”

Moral Support Person

Sometimes, Complainant may not have a representative at all whether it be an attorney or a non-attorney. Complainant may want to bring what CSD considers a “moral support person.” This person **DOES NOT** take an active role in the mediation as a representative would. This person is often but not always family. Complainant should notify CSD staff prior to the mediation of his or her request that including the name, relationship and email of their “moral support person.” Pursuant OAC 260:130-3-2(f), all persons, including the moral support person shall be subject to the confidentiality requirements of the mediation.

CSD will not allow employees of the same agency to sit in as a representative or moral support person due to actual or potential conflict. Nor can a representative or moral support person be a witness. OAC 260:130-3-2(f)(3). All moral support persons are approved by the CSD mediator and “conflict checked” with the Agency. If the “moral support person” appears the day of the mediation and wants to sit in, it will be up to the mediator and approval of the Agency at that time if no conflict exists.

NOTE: To appear at mediation, a non-attorney representative DOES NOT need to file a traditional Entry of Appearance (“EOA”) with CSD pursuant to the CSD rules. However, the Complainant will need to submit a written request to CSD staff for approval with the required information under OAC 260:130-5-6(7)** If the matter moves onto hearing, it is requested that an EOA form be filed out by the representative and the ALJ will rule on same***

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RESOURCES/CSD RULES

OAC 260:130-1-2. Definitions

“**Representative**” means the designated attorney of record, who shall be licensed to practice law in the state of Oklahoma identified in the complaint petition or through an entry of appearance or other written means, acting on behalf of a party. An individual other than an attorney licensed to practice law in the State of Oklahoma may act as the representative of the party if approved by the mediator leading the mediation or the ALJ presiding over the hearing or review process.

OAC 260:130-3-2(d) Representation.

Each party to the complaint may have a Representative, as defined within these Rules, accompany him or her to the mediation. Representatives will be expected to take an active role in mediation but will not be allowed to interrogate or question any party. As set forth above in 260:130-1-1, an individual other than an attorney licensed to practice law in the state of Oklahoma may act as the representative of the party if approved by the mediator leading the mediation or the ALJ presiding over the hearing or review process.

OAC 260:130-3-2. (e) Mediator.

The mediator shall:

- (1) take an active role in the mediation to aid the parties in the discussion of settlement and resolution of the complaint;
- (2) have the flexibility to adapt the mediation to the situation at hand;
- (3) have the authority to require any party to produce documents, limited to the disciplinary file as defined within these Rules, for review at the mediation if to do so will aid in the discussion of settlement and resolution of the complaint. Documents produced and reviewed at the mediation shall not become part of the complaint record at that time; and
- (4) terminate the mediation because of the disruptive behavior or conduct of a party or representative.
- (5) approve or deny the attendance of non-participating observers for training purposes;
- (6) reschedule the mediation if the party is determined to be impaired or otherwise unable to participate. All parties shall be required to attend the rescheduled mediation. The rescheduling of mediations pursuant to this provision shall conform to the statutory time requirements for conducting a hearing.

OAC 260:130-5-6. Complaint petition

(a) A complaint petition shall contain the following information:

- (1) the name, address and telephone number of the complainant. The complainant shall maintain a current address with the Civil Service Division throughout the complaint process. Failure to do so shall be cause for dismissal of the complaint.
- (2) the name of the agency against whom the complaint is filed;
- (3) the date the action (written reprimand, punitive transfer, suspension without pay, involuntary demotion, or termination) occurred;

- (4) if the action taken did not occur in person, a description of how the state employee was provided notice of the action;
- (5) the basis for the complaint stating the facts.
- (6) a statement of the remedy the complainant is seeking;
- (7) the name, address and telephone number of the complainant's representative, if any;
- (8) signature of the complainant and representative, if any;
- (9) a copy of the disciplinary action letter that was issued to the complainant.
- (b) Failure to provide any of the above listed information may result in immediate dismissal of the complaint.
- (c) Complaints shall not exceed twenty (20) pages inclusive of exhibits