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County of San Diego

CITIZENS' LAW ENFORCEMENT REVIEW BOARD

1168 UNION STREET, SUITE 400, SAN DIEGO, CA 92101-3819
TELEPHONE: (619) 238-6776 FAX: (619) 238-6775
www.sdcounty.ca.gov/clerb

REGULAR MEETING AGENDA

TUESDAY, JANUARY 11, 2011, 5:30 P.M.

San Diego County Administration Center

1600 Pacific Highway, Room 302/303, San Diego, 92101

The public portion of the meeting must be concluded in time to allow the public to vacate the building by 6:00 p.m.
(Free parking is available on the street or pay Ace Parking on the south side. Enter at the north entrance.)

Pursuant to Government Code Section 54954.2 the Citizens' Law Enforcement Review Board will conduct a meeting at the above time and place for the purpose of transacting or discussing business as identified on this agenda. Complainants, subject officers, representatives or any member of the public wishing to address the Board on any of today's agenda items should submit a "Request to Speak" form to the Administrative Secretary prior to the commencement of the meeting.

DISABLED ACCESS TO MEETING

A request for a disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting. Any such request must be made to Ana Becker at (619) 238-6776 at least 24 hours before the meeting.

1. ROLL CALL

2. MINUTES APPROVAL

- a) Minutes of the November 2010 Regular Meeting (*Attachment A*)

3. TRAINING / PRESENTATION

- a) WATCHFUL EYE: Kim Broderick, Deputy Chief Probation Officer and Captain Sherri Sarro, San Diego County Sheriff's Department

4. EXECUTIVE OFFICER'S REPORT

- a) Workload Report - Open Complaints/Investigations Report (*Attachment B*)
- b) One Year Summary Dismissals (*Attachment C*)
- c) Shiri Hoffman will replace Karen Landers as CLERB's County Counsel representative effective immediately

5. NEW BUSINESS

- a) Nomination Committee for CLERB Officers 2011 (CLERB Rule 3.5)
- b) Legal Opinion re: Abstentions
- c) SDSA response to CLERB Policy Recommendation 09-103/Montanez

6. UNFINISHED BUSINESS

- a) N/A

7. PUBLIC COMMENTS

This is an opportunity for members of the public to address the Board on any subject matter that is within the Board's jurisdiction. Each speaker should complete and submit a "Request to Speak" form to the Administrative Secretary. Each speaker will be limited to three minutes.

8. CLOSED SESSION

- a) **Discussion & Consideration of Complaints & Reports:** Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session).
- b) **Officer Discipline Recommendation** - Notice pursuant to Government Code Section 54957 for deliberations regarding consideration of subject officer discipline recommendation.
 - **10-010 / Ewing** (Sustained – Deputy 1)

DEFINITION OF FINDINGS	
Sustained	The evidence supports the allegation and the act or conduct was not justified.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Action Justified	The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.
Unfounded	The evidence shows that the alleged act or conduct did not occur.
Summary Dismissal	The Review Board lacks jurisdiction or the complaint clearly lacks merit.

CASES FOR SUMMARY HEARING (15)

ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE

09-116

- 1. Excessive Force/Impact Weapon - Deputy 1 hit the complainant several times in the ribs with his baton while the complainant was handcuffed and seated on a curb, causing bruising.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in

discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

2. Misconduct/Procedure: Deputy 1 and Deputy 2 denied the complainant medical treatment.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

09-122

1. False Arrest - Deputy 1 cited the complainant for honking her horn in “road rage” when the complaint only tooted her horn to warn a car that was backing up toward her car.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers’ Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

2. Misconduct/Procedure: Deputy 1 cited the complainant only out of vindictiveness and “true disdain” for the complainant and her family.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

09-128

1. Misconduct/Discourtesy – Deputy 2 told the complainant to “shut the fuck up.”

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers’ Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

2. Misconduct/Procedure – Deputy 2 angrily grabbed the complainant’s shirt, forced him to the ground, and pepper sprayed him in response to the complainant’s comments.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Excessive Force – Deputies 1 and/or 2 punched, kicked and slammed the complainant’s head into the ground causing neck pain, forehead swelling and a ruptured eardrum.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

09-129

1. Misconduct/Discourtesy – Deputy 1 made critical comments to a crime victim about her boyfriend.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

2. Misconduct/Discourtesy – Deputy 1 said the complainant's husband was "not a nice man."

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

09-134

1. Illegal Search & Seizure - Deputy 1 wrongly cited the complainant and had his recently purchased truck towed for an expired registration tag on the rear bumper, even though the current registration was taped to the front windshield.

Recommended Finding: Action Justified

Rationale: The complainant operated a 2003 Ford Explorer with registration tags expired 15 months. When asked to provide proof of current registration, he did not, offering only proof of registration for a different vehicle. California Vehicle Code requires that motor vehicles be currently registered for operation on the highway. It is the responsibility of the vehicle's operator to provide proof of this registration or other evidence of registration upon request of a peace officer. Moreover, if the registration expiration date is in excess of six months before the date it is found or operated on the highway, the California Vehicle Code provides for the removal of that vehicle. The action taken by the deputy was lawful, justified and proper.

09-135

1. Misconduct/Procedure - Deputy 1 refused to make an arrest or take a report of a battery, criminal threats and hate crime, in which the aggrieved was battered and suffered injury while the batterers made homophobic slurs.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

2. Discrimination/Other - Deputy 1 was biased against the complainant and the aggrieved – discounting injury, not taking photos, not interviewing witnesses, not reviewing video of the assault, not arresting suspects, ignoring the batterers' threats to harm the complainant and the aggrieved – because they are gay.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Misconduct/Procedure - Deputy 1 failed to arrest a batterer for a hate crime because he incorrectly interpreted hate crime laws.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Misconduct/Intimidation - Deputy 1 said if he made an arrest/wrote a crime report as requested he also would have to charge the aggrieved for spraying one of the batterers with a hose.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

5. Discrimination/Other - Deputy 1 was biased against the complainant because of her membership on an HOA board.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

6. Misconduct/Procedure - Deputy 1 accused the complainant and the HOA board of overzealousness about CC&R violations without cause.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

7. Criminal Conduct - Deputy 1 audio-taped an interview with the complainant and the aggrieved without their knowledge or permission.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

8. Misconduct/Procedure - Deputy 1 tried to block the complainant and the aggrieved from pursuing the incident by telling them that the District Attorney would not accept their case for prosecution.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

9. Misconduct/Procedure - Deputy 1's failure to take action emboldened a batterer to threaten to harm another woman.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

10. Misconduct/Procedure - Deputy did not enforce a violation of a restraining order, telling the suspect's mother that "he wasn't here; I'm just a reporter."

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

10-002

1. Discrimination/Religious – The Sheriff's Department failed to provide a Muslim/Kosher diet for the complainant.

Recommended Finding: Action Justified

Rationale: Inmate requests related to this issue were properly forwarded by deputies to the facility Chaplain who must conduct an interview with the complainant prior to authorizing religious meal requests. According to Sheriff's records, the Muslim diet (Halal) requests were forwarded but had not been approved because Halal diets are not provided by the Sheriff's Department. Currently, the complainant, per his request, is on a "Full Liquid" diet due to expire February 21, 2011. The evidence shows the alleged act is lawful, justified and proper.

2. Discrimination/Religious – Deputy 3 broke the complainant’s prayer session during “count.”

Recommended Finding: Action Justified

Rationale: Deputies are mandated to perform daily checks as required by Sheriff’s Policy & Procedure I.43, Inmate Count Procedure. During count, the complainant ignored the deputy’s verbal commands, became vocally upset and delayed operations. While religious expression is a civil right, safety of the institution takes precedence. According to Deputy 3, the complainant was in violation of numerous Inmate Rules & Regulation related specifically to this issue as well as others, which were addressed following completion of count. The evidence shows the alleged act was lawful, justified and proper.

3. Misconduct/Procedure – Deputies 1, 3, 4 and/or 5 failed to properly respond to the complainant’s numerous requests/grievances.

Recommended Finding: Unfounded

Rationale: As evidence, the complainant submitted three grievances concerning a request for a Muslim (Halal) and/or Kosher diet. All of these requests, answered individually by Deputies 1, 4 and 5 were responded to in accordance with Sheriff’s Policy and Procedure N.1, Grievance Procedure. Because the complainant does not agree with the responses does not make them improper. The evidence shows that the alleged act or conduct did not occur.

4. Misconduct/Intimidation – Deputy 2 made a hand gesture of pointing a gun and twice shooting the back of the complainant’s head.

Recommended Finding: Not Sustained

Rationale: Witnesses were unable to corroborate this action. While Deputy 2 did not specifically recall this incident, he refuted making the action. Deputy 2 further stated in his subsequent contact with the complainant they had no issues. The motion is subjective and without further evidence there is insufficient evidence to either prove or disprove the allegation.

10-010

1. Misconduct/Procedure - Deputy 1 opened a letter that was marked “confidential” and “legal mail.”

Recommended Finding: Sustained

Rationale: Deputy 1 acknowledges that he mistakenly opened the complainant’s confidential mail not in the complainant’s presence which is a violation of Sheriff’s Detentions Policy and Procedure, P.3 Inmate Mail and SDCJ Green Sheet P.3.C.1 Inmate Mail. The evidence supports the allegation and the act or conduct was not justified.

2. Misconduct/Procedure - Deputy 1 locked the complainant in his cell and took away all his privileges when the complainant confronted him about opening the letter.

Recommended Finding: Not Sustained

Rationale: After learning that his legal mail had been opened not in his presence the complainant was said to have become aggressive and boisterous, violating the Sheriff’s Policy and Procedure, O.3 Inmate Rules and Regulations resulting in all module inmates being locked down for a period of time. No discipline was imposed on the complainant for these infractions, nor was there any evidence of revocation of privileges. There was insufficient evidence to either prove or disprove the allegation.

10-016

1. Misconduct/Procedure – Deputy 1 allowed cars to park at an loading/unloading curb in front of the courthouse, preventing mobility challenged people from getting picked up and potentially allowing a car bomb to be parked in front of the courthouse.

Recommended Finding: Action Justified

Rationale: Primary responsibility for regulating parking and traffic enforcement in front of the Hall of Justice (HOJ)/County Court House (CCH) rests with the San Diego Police Department, Parking Enforcement Division. San Diego Court Services Bureau deputies do conduct visual inspections of facility perimeters, with emphasis on access doors and parking spaces, and are expected to take appropriate law enforcement action whenever a crime is committed that jeopardizes facility security or the security of person(s) conducting business with the court. Court Services Bureau Policy and Procedure F.25, Bureau Response to Homeland Security Advisory System, sufficiently addresses security postures for all courthouses commensurate with the Homeland Security Advisory System. The evidence shows the alleged act or conduct did occur but was lawful, justified, and proper.

2. Misconduct/Procedure – Deputy 1 is no longer allowed to enforce parking at the unloading/loading curb because proceeds from citations go the County (where deputies are employed) rather than the City (where the courthouse is located.)

Recommended Finding: Not Sustained

Rationale: As stated previously, primary responsibility for regulating parking and traffic enforcement in front of the HOJ/CCH rests with the San Diego Police Department, Parking Enforcement Division. However, Court Services Bureau deputies do have the discretion to issue parking citations or contact anyone for security reasons/parking violations within the parking zones outside HOJ/CCH. Their discretion can range from gaining compliance to have the affected party move their vehicle, issue a warning, or write a citation. The complainant did not identify the deputy she allegedly spoke with concerning this matter, and therefore there was insufficient evidence to either prove or disprove the allegation.

10-060

1. Death Investigation – Deputy 1 found Inmate Richard Farley deceased in his cell after he failed to respond to a call for a social visit.

Recommended Finding: Action Justified

Rationale: Deputies documented their hourly security checks in accordance with Sheriff's Policy & Procedure I.64, Security Checks of Housing Units and Holding Cells. The Medical Examiner certified Farley's sudden death as natural. The evidence shows the deputies' conduct was lawful, justified and proper.

10-068

1. Misconduct / Procedure – Deputies 1 and 2 failed to conduct and/or complete an investigation into an incident that occurred between the complainant and State Park officers.

Recommended Finding: Action Justified

Rationale: Deputy 1 conducted a preliminary investigation into the complainant's allegations against State Park Officers, determined that there was no substance to the alleged criminal charges, and referred the complainant to Department of Parks and Recreation as the law enforcement agency having investigatory jurisdiction in this matter. Deputy 2 was apprised of the preliminary investigation and findings, and communicated the Department's position to the complainant by mail. San Diego Sheriff and Department of Parks and Recreation have concurrent authority and jurisdiction in the Anza-Borrego Desert State Park. However, California State Park Rangers are designated as peace officers and granted law enforcement authority under California Natural Resources Code §5008 and California Penal Code §830.2. California Attorney General Opinion 67-187 concluded that State park officers designated as peace officers have authority to make arrests and to investigate

all public offenses in the State Park System, and that they are considered peace officers within the geographical limits of the State Park System. California Attorney General Opinion 97-1006 concluded that while a sheriff does have a general duty to investigate crimes in his jurisdiction and arrest those who have committed public offenses, the sheriff may exercise some degree of discretion in investigating criminal activity. A county sheriff may decline to investigate alleged criminal acts when a preliminary investigation shows the allegations to be without merit, or another law enforcement agency having jurisdiction over the matter can carry out the appropriate investigation. San Diego Sheriff's Department conducted a preliminary investigation and notified the complainant of their decision to decline any further investigation. Based on California Code and California State Attorney General Opinions the San Diego Sheriff's Department properly determined that the Department of Parks and Recreation was the appropriate agency with jurisdiction over this matter. Evidence shows the alleged act or conduct did occur but was lawful, justified, and proper.

2. Misconduct/Procedure – Staff failed to conduct and/or complete an investigation into an incident that occurred between the complainant and State Park officers.

Recommended Finding: Summary Dismissal

Rationale: Staff involved with this allegation was determined to be a non-sworn member of the Sheriff's Department over whom CLERB has no authority. The Review Board lacks jurisdiction based on CLERB Rules & Regulations, 4.1 Citizen Complaints: Authority.

3. Misconduct/Procedure – Deputy 1 failed to forward complaint to Deputy 3.

Recommended Finding: Action Justified

Rationale: See Allegation/Rationale #1. Deputy 1 did not deliver the complaint directly to Deputy 3, however he did properly notify his superiors of the complainants allegations, the results of his preliminary investigation, and the determination that there no criminal activity was present. Deputy 1's supervisors were in agreement that no crimes were committed within their jurisdiction and as such the investigation would not be pursued. Evidence shows the alleged act or conduct did occur but was lawful, justified, and proper.

4. Misconduct / Procedure – Deputy 3 failed to investigate allegations.

Recommended Finding: Action Justified

Rationale: See Allegation/Rationale #1. In addition to the above, this investigation confirmed that Deputy 3 was properly advised of the complainant's allegations, that Deputy 3 had approved of investigatory actions taken by Sheriff's Department representatives on his behalf, and that the Sheriff's Department sufficiently communicated its decisions to the complainant. Evidence shows the alleged act or conduct did occur but was lawful, justified, and proper.

10-105

1. Excessive Force – Deputy 1 grabbed and handcuffed the complainant for a misdemeanor violation.

Recommended Finding: Action Justified

Rationale: While alone, Deputy 1 contacted a group of four individuals who had been drinking alcohol, although all stated they were not under the influence. For officer safety, Deputy 1 handcuffed the complainant and issued a citation for open container in violation of Encinitas Municipal Code, Chapter 9.28 Possession Of Alcohol. The evidence shows Deputy 1's conduct was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 1 did not assess a “minor and peaceful” situation properly and overacted to the cooperative complainant.

Recommended Finding: Not Sustained

Rationale: The complainant and three witness accounts differed from Deputies 1 and 2's statements. Without further exculpatory evidence, there is insufficient evidence to either prove or disprove this incident, which is subjective and was not recorded in any way.

3. Misconduct/Discourtesy – Deputy 1 was rude, and his attitude and demeanor were “over-the-top” for the situation.

Recommended Finding: Not Sustained

Rationale: See Rationale #2.

10-108

1. Misconduct/Procedure – Deputy 1 failed to promptly respond to the aggrieved and/or complainant's requests for assistance to a vehicle burglary.

Recommended Finding: Action Justified

Rationale: The aggrieved called for assistance at 6:39 pm. Review of the Computer Aided Dispatch (CAD) records documented that the dispatcher informed the aggrieved, “it's been a very busy day in Encinitas and a lot of our deputies are tied up, so it might be awhile.” The dispatcher also suggested the incident could be handled over the telephone since it was “dark out and getting late.” Sheriff's Dispatch held the call on a pending status due to the “shift change” and notified Deputy 1 of the call at 7:34 pm. After attending briefing, Deputy 1 noted the call, contacted the dispatcher, and the call was referred to State Parks at 7:39 pm. The evidence shows Deputy 1 was justified and proper in referring this call for service to State Park Rangers and there was no delay on Deputy 1's part in clearing it within minutes of its reception to him.

10-116

1. The complainant submitted a complaint, signed under penalty of perjury, to the Citizens' Law Enforcement Review Board for incidents occurring from 1985 to the present. The complainant alleged Deputy 1 committed numerous crimes to include: Civil rights violations, conspiracy, unlawful surveillance, hate crime, police entrapment, manslaughter, conspiracy to commit murder, invasion of privacy, assault, abuse, and harassment. The complainant identified various prominent members of the community, none of which are current members of the Sheriff's Department. None of the allegations have a recognizable nexus to a San Diego County deputy or probation officer.

Recommended Finding: Summary Dismissal

Rationale: CLERB does not have authority to investigate this complaint based upon CLERB Rules & Regulations: Section 4: Authority, Jurisdiction, Duties and Responsibilities of Review Board, Section 9: Screening of Complaints, and Section 15: Summary Dismissal.

10-120

1. The co-complainants submitted signed complaints, involving numerous allegations against a Code Enforcement Officer for citations they received for land they purchased.

Recommended Finding: Summary Dismissal

Rationale: County Code Enforcement Officers have limited peace officer powers but do not fall within CLERB's jurisdiction. CLERB does not have authority to investigate this complaint based upon CLERB Rules & Regulations: Section 4: Authority, Jurisdiction, Duties and Responsibilities of Review Board.