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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

FINAL NOTICES

The Citizens' Law Enforcement Review Board made the following findings in the closed session portion of its February 14, 2012 meeting, held at the San Diego County Administration Center, 1600 Pacific Highway, Room 302/303, San Diego, CA 92101. Minutes of the open session portion of this meeting will be available following the Review Board's review and adoption of the minutes at its next meeting. Meeting agendas, minutes, and other information about the Review Board are available upon request or at www.sdcounty.ca.gov/clerb.

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).

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 (9)

ALLEGATIONS, FINDINGS & RATIONALE

10-121

- Misconduct/Discourtesy – Deputy 1 attempted to embarrass the complainant by forcing him to put on a shirt that was visibly three sizes too small, and refusing to provide a properly fitting shirt during laundry exchange.

Board Finding: Unfounded

Rationale: Deputy 1 provided the complainant the shirt size requested, but the complainant refused to try it on to ensure that it fit. The complainant's request that his laundry be "visit quality" implied to Deputy 1 that he wanted pants and shirts that were brand new, and this may have been the motivating factor behind his refusal to accept the laundry offered. That withstanding, there is no evidence to prove that Deputy 1 intended to embarrass the complainant, nor does it appear, through reports and video surveillance, that Deputy 1 failed to provide the complainant a properly fitting shirt. It appears, then, that the alleged misconduct did not occur.

- Misconduct/Procedure - Deputy 1 pressed the "Panic Button", without cause, initiating a use of force incident that was unnecessary.

Board Finding: Action Justified

Rationale: Deputy 1 did not report having pressed a "Panic Button," nor does the Watch Commander's Log or Area Activities Report show any emergency codes called at the time of the incident. A department information

source reported that an emergency call button is located in the Dayroom of George Bailey, however, deputies typically radio for assistance when needed. There were no reports of mechanical or radio alarms initiated which preceded the use of force. Deputy 1 had cause to increase the level of force when the complainant's behavior continued to escalate, and efforts to calm him down were unsuccessful. The complainant's refusal to comply with Deputy 1's instructions to return to his cell required the use of force to control him. The evidence shows that the alleged act or conduct did occur, but was lawful, justified and proper.

3. Excessive Force – Deputies 1, 2 and 3 grabbed the complainant by his wrist, wrestled him to the ground and placed their knees in his back when he was not resisting and was in compliance with their orders.

Board Finding: Action Justified

Rationale: Deputies 1, 2 and 3 used force to control the complainant when he began to argue and his anger escalated over a laundry dispute. Video surveillance of the scene corroborated the deputies' reports, and demonstrated that it was necessary to use hands-on control to overcome the complainant's resistance and aggressive behavior. The evidence shows that the alleged act or conduct did occur, but was lawful, justified and proper.

4. Excessive Force – Deputy 2 struck the complainant in the eye while he was lying on the ground and already in the control of 5 to 6 deputies.

Board Finding: Action Justified

Rationale: Deputy 2 reported that the complainant was resistant and not under control when he applied a fist strike to the left side of the complainant's head. There were non-compliant inmates in close proximity to the scuffle, asking the complainant if he needed help. The deputies in the module were outnumbered, so Deputy 2 applied a fist strike to end the struggle as quickly and safely as possible. The evidence shows that the alleged act did occur, but was lawful, justified and proper.

5. Misconduct/Procedure – Deputy 4 refused to take the complainant to medical the day after this incident, when his injuries were more visible, in order to be photographed and treated.

Board Finding: Action Justified

Rationale: Deputies 2 and 3 escorted the complainant to the Medical Dispensary immediately following the use of force incident, where he was seen by medical staff and treated for injuries sustained to his left eye. Photographs were taken approximately 1 ½ hours later to document his injuries. Deputy 4 was under no obligation to take the complainant to medical the next day unless a medical emergency was reported per policy M.5. Otherwise, the complainant could have accessed additional medical treatment through the Sick Call procedure outlined in M.15. The evidence shows that the alleged act did occur, but was lawful, justified and proper.

6. Misconduct/Discourtesy – Deputy 4 laughed at the complainant upon seeing his black and swollen eye.

Board Finding: Not Sustained

Rationale: Deputy 4 alleged to have laughed at the complainant, were never identified, nor could the complainant specify the time or location of where the alleged offense occurred. There is insufficient evidence to either prove or disprove the allegation.

11-004

1. Misconduct/Procedure – Deputies 1 and 2 did not “keep the peace” while observing the complainant's ex-husband yell, scream and curse at the complainant.

Board Finding: Not Sustained

Rationale: Deputy 1 asserted that he intervened within seconds after hearing the complainant's ex-husband yell and curse at her, immediately quelling the confrontation. The complainant and a witness to the incident

reported that 2-3 minutes transpired before Deputy 1 intervened. Deputy 2 was on scene, but had vague memories about the incident. In the absence of video surveillance or an audio recording of this incident, it cannot be determined how long this confrontation ensued before the deputies acted. There was insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Procedure - Deputies 1 and 2 did not intervene while observing the complainant's ex-husband act abusively toward his children, causing the complainant to fear for the children's physical and emotional safety.

Board Finding: Unfounded

Rationale: Deputies 1 and 2 denied observing the complainant's ex-husband act abusively toward his children. A witness for the complainant reported that he did not observe the complainant's ex-husband yell or curse at their children; that his outburst was directed solely toward the complainant. The complainant's own report of abuse is unsupported, and only offered that her ex-husband took their child's toy away and yelled in their presence. The evidence shows that the alleged conduct did not occur.

3. Misconduct/Procedure – Deputy 1 refused to write a report of the incident as requested by the complainant.

Board Finding: Action Justified

Rationale: Deputy 1 was not obligated to write a report about this incident because, in his assessment, no crime had been committed. Pursuant to 6.71 of the San Diego County Sheriff's Department Policies and Procedures Manual, deputies have the discretion to write an Officer's Report to report a miscellaneous incident or provide supplemental information when they deem it appropriate. Deputy 1 opted to document this incident in Event and Unit Histories. The evidence shows the alleged act did occur, but was lawful, justified and proper

11-006

1. Excessive Force – Deputy 1 “pushed the handcuffed complainant into a wall resulting in a concussion.”

Board Finding: Action Justified

Rationale: During a welfare check requested by family members, the mentally ill complainant was found to be delusional and a danger to others. Deputy 1 handcuffed the complainant for officer safety, but denied using any type of force to effect the detention. Witnesses disputed the action alleged by the complainant and denied that they observed the complainant lose consciousness. While at County Mental Health, the complainant was verbally abusive and attempted to leave the facility approximately eight times. Deputy 1 used downward force on the complainant's shoulder and also pulled on his arm to secure him in a chair. The evidence shows the actions taken by Deputy 1 were lawful, justified and proper.

11-007

1. Illegal Search and Seizure – Deputies 2-8 executed a probation search at the complainant's residence while the probationer with the 4th amendment waiver was incarcerated.

Board Finding: Action Justified

Rationale: Deputies 2-8 conducted a probation search of the complainant's residence because deputies believed that the probationer may have been involved in a vehicle burglary two days prior to his being taken into custody. The probationer's terms required submission to a search at any time with or without a warrant, and with or without reasonable cause, when required by probation officers or other law enforcement officers. California case law further holds that it is never necessary for the probationer to be physically present when a search is conducted, and that the probation search conditions remain in effect until probation is formally revoked even if the probationer is in custody awaiting revocation proceedings. Prior to conducting the search Deputy 8 confirmed that the probation terms had not been revoked and remained in effect. The evidence shows the alleged act did occur but was lawful, justified and proper.

2. Misconduct/Intimidation – Deputy 5 threatened to kick in the door and arrest the complainant’s son, the probationer’s brother, if he did not open the door.

Board Finding: Action Justified

Rationale: Deputy 5 told the complainant’s son that deputies were present to conduct a 4th amendment waiver search of the probationer’s room and common areas, and that they had the authority to enter the residence by any means. After being refused entry, Deputy 5 told the complainant’s son that if he did not open the door and prevented the deputies from carrying out the probation search that he would be arrested for obstructing peace officers in their duties. The complainant’s son was aware of the deputies’ authority and the announced purpose for the search, and eventually granted access to the residence. No arrests were made during the search. Deputy 5 acted within California Penal Codes §148(a)(1) and §1531, and department policies and procedures. The evidence shows the conduct did occur but was lawful, justified, and proper.

3. Excessive Force – Deputy 9 told the complainant’s son to “shut up” and sit down, then pushed him toward a couch.

Board Finding: Not Sustained

Rationale: Deputies 2, 6, and 7 denied making this statement or pushing the complainant’s son. Deputies 3, 4, 5, and 8 denied hearing any deputy make the statement or see the complainant’s son pushed to the couch. The complainant’s son and a witness could not be sure which of the male deputies in the room might have uttered the remark or pushed the complainant’s son toward a couch. There was insufficient evidence to either prove or disprove the allegation.

4. Misconduct/Discourtesy - Deputy 9 told the complainant’s son to “shut the fuck up” and “shut the fuck up, we’ll leave when we’re good and ready”.

Board Finding: Not Sustained

Rationale: Deputies 2, 6, and 7 denied making these statements or hearing any other deputy make these statements. Deputies 3, 4, 5, and 8 denied hearing any deputy make these statements. The complainant’s son and a witness could not be sure which of the male deputies in the room might have uttered the remark. There was insufficient evidence to either prove or disprove the allegation.

5. Misconduct/Discourtesy - Deputy 9 asked the complainant’s son “who the fuck are you”.

Board Finding: Not Sustained

Rationale: Deputies 2, 6, and 7 denied making this statement or hearing any other deputy make the statement. Deputies 3, 4, 5, and 8 denied hearing any deputy make the statement. The complainant’s sons and a witness could not be sure which of the male deputies in the room might have uttered the remark. There was insufficient evidence to either prove or disprove the allegation.

6. Misconduct/Procedure – Deputies 2-8 did not have a search warrant and refused to leave the complainant’s property upon advice of her attorney.

Board Finding: Action Justified

Rationale: Deputies 2-8 did not need a search warrant to conduct the probation search of the complainant’s property. Deputies believed that the probationer may have been involved in a vehicle burglary two days prior to his being taken into custody. The complainant’s son, a probationer, resided in the home and was subject to terms which required him to submit to search at any time with or without a warrant, and with or without reasonable cause, when required by probation officer or other law enforcement officer. Deputies entered the residence, conducted the search, and departed upon completion of the search. Deputies executed a legal probation search and were under no obligation to leave the property prior to completing the search. The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.

7. Illegal Search and Seizure – Deputies 3, 5, and 8 conducted a 4th amendment waiver search outside the legal parameters.

Board Finding: Action Justified

Rationale: Deputies 3, 5, and 8 denied that the probation search was conducted outside of their legal authority. Deputies entered the residence and conducted a protective sweep of the entire residence, including the non-probationer's quarters, to determine if there were any other individuals in the residence. Upon completion of the protective sweep Deputies 3, 5, and 8 conducted a probation search of the probationer's quarters and common areas of the residence. The evidence shows the conduct did occur but was lawful, justified, and proper.

8. Illegal Search and Seizure – Deputies 3, 5, and 8 left the search areas in shambles.

Board Finding: Not Sustained

Rationale: Deputies 3, 5, and 8 denied leaving the complainant's residence in disarray. Deputies entered the residence and conducted a protective sweep of the entire residence, including the non-probationer's quarters, to determine if there were any other individuals in the residence. Upon completion of the protective sweep Deputies 3, 5, and 8 conducted a probation search of the probationer's quarters and common areas of the residence. Photographic evidence provided by the complainant showed bed linens removed from mattresses and some clothing strewn about; common areas such as the kitchen and bathroom revealed cabinets or drawers left open. It could not be determined whether or not the clothing on the floor had been caused by the Deputies conducting the search. There was insufficient evidence to either prove or disprove the allegation.

9. Misconduct/Discourtesy – Deputy 1 said to the complainant's son that "if we have to come back here tonight we're arresting everyone because you're being a dick."

Board Finding: Not Sustained

Rationale: Deputy 1 denied having any contact with or making the alleged statement to the complainant's son. Deputy 1 was not present when deputies returned to the residence later and arrested two individuals for violating the Social Host Ordinance and Drunk in Public and another individual for Drunk in Public. There was insufficient evidence to either prove or disprove the allegation.

10. Misconduct/Harassment – Deputy 9 targeted and harassed the complainant and her family.

Board Finding: Not Sustained

Rationale: The complainant cited twenty instances during the period July 6-August 4, 2010 where Deputy 9 were alleged to have parked their patrol vehicles near the complainant's residence, driven by the complainant's residence at slow speed with and without running lights, pulled into the complainant's driveway, spotlighted the complainant's residence, or contacted the complainant to request documents. Automatic Vehicle Location information failed to reveal Deputy 9 at or near the complainant's residence on the dates and times cited by the complainant that were not in an official capacity. It could not be determined whether or not any unnecessary patrol activity occurred in the vicinity of the complainant's residence at the reported times and dates which may have constituted harassment, therefore, there was insufficient evidence to prove or disprove the allegation.

11-044

1. Misconduct/Procedure – Deputy 2 failed to update the Protective Order system to reflect a modified Court Order dated July 11, 2008.

Board Finding: Action Justified

Rationale: Deputy 2 in San Diego Sheriff's Department Court Services Bureau properly processed the complainant's modification to a Protective Order at the San Diego Superior Court (East). Evidence showed that the modified Protective Order was properly filed and documented with the Courts Services Bureau on July 11, 2008. The evidence shows the alleged actions of the Court Services Bureau did occur but were lawful, justified and proper.

2. Misconduct/Procedure – Deputy 1 refused evidence the complainant offered regarding a modified Protective Order.

Board Finding: Action Justified

Rationale: Deputy 1 was told by the complainant that the modified Protective Order was in her residence. However, because the residence was viewed as untidy and the complainant could not readily locate and produce the document, Deputy 1 used alternative Department-approved procedures to verify the terms of the Protective Order. The protected party in the Protective Order was also at the residence and failed to offer any evidence that the Protective Order had been modified. The evidence shows the alleged act did occur but was lawful, justified and proper.

3. Misconduct/Discourtesy - Deputy 1 called the complainant a "liar."

Board Finding: Not Sustained

Rationale: Deputy 1 denied calling the complainant a liar. Contact with the complainant, witnesses, and the protected party was unsuccessful and therefore there were no independent witnesses to this allegation. There was insufficient evidence to either prove or disprove the allegation.

4. False Arrest – Deputy 1 arrested the complainant on December 5, 2010, for violating a Court Order not in effect since July 11, 2008.

Board Finding: Action Justified

Rationale: Deputy 1 contacted San Diego Sheriff's Dispatch to determine the validity of a Criminal Protective Order and the terms/stipulations therein. Deputy 1 was told by Sheriff's Dispatch that the Criminal Protective Order included "no contact" provisions to which he requested clarification. Sheriff's Dispatch again responded that the Order included "no contact" provisions. Based on the information provided by San Diego Sheriff's Dispatch, the severity of the incident which precipitated the Criminal Protective Order, the untidiness of the residence, and the inability to easily locate the Protective Order, Deputy 1 took the complainant into custody. The evidence shows the alleged act did occur but was lawful, justified and proper.

5. False Arrest – Deputy 2 caused the complainant to be arrested on December 5, 2010, for violating a Court Order not in effect since July 11, 2008.

Board Finding: Summary Dismissal

Rationale: Deputy 1 was told by Sheriff's Dispatch that the Criminal Protective Order included "no contact" provisions to which he requested clarification. Sheriff's Dispatch restated that the Order included "no contact" provisions. The Criminal Protective Order modified and properly filed on July 11, 2008 to allow peace contact between the parties was misquoted by Sheriff's Dispatch non-sworn professional staff. Evidence showed that Sheriff's Dispatch had information which indicated that the "...restrained person can contact the protected person ..." but failed to relay this information to Deputy 1. CLERB Rules & Regulations 4.1 states the Review Board shall only have authority to receive, review, investigate, and report on citizen complaints filed against peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department. The Review Board lacks jurisdiction over the non-sworn professional staff and the matter has been referred to the Sheriff's Department.

6. Misconduct/Procedure – Deputy 1 refused to provide explanation to the complainant's mother regarding her arrest.

Board Finding: Not Sustained

Rationale: Deputy 1 recalled speaking with the complainant's parents after placing the complainant under arrest but did not remember the content of the discussion. Attempts to contact individuals involved with this allegation were unsuccessful and therefore there was insufficient evidence to either prove or disprove the allegation.

11-053

1. False Reporting – Deputy 1 falsified details in a crime report in order to justify illegally towing the complainant's vehicle.

Board Finding: Action Justified

Rationale: Deputy 1 denied falsifying any details of his report in order to justify towing the complainant's vehicle. The evidence presented by eye witnesses, as well as statements made by the complainant herself, provided sufficient cause for Deputy 1 to legally tow the complainant's vehicle, pursuant to California Vehicle Code 22655, Impounding Vehicle for Investigation. No information was provided that contradicted Deputy 1's reports. The evidence shows that the alleged act did not occur.

2. Illegal Search or Seizure – Deputy 1 sent Deputy 2 to the complainant's home where they illegally seized the complainant's vehicle, causing her to pay a \$328.00 impound fee.

Board Finding: Action Justified

Rationale: Deputy 1 obtained evidence that provided the legal basis, per California Vehicle Code 22655, Impounding Vehicle for Investigation, to tow the complainant's vehicle. That Deputy 2 was directed to execute this impound was immaterial. The evidence shows the alleged act did occur, but was lawful, justified and proper.

3. Misconduct/Truthfulness – Deputy 1 made a false statement to the complainant, informing her that her vehicle could be held for 72 hours for an inspection.

Board Finding: Action Justified

Rationale: Deputy 1 provided the complainant conflicting information, informing her that her vehicle could be held for 48 and 72 hours. Pursuant to California Vehicle Code 22655.5(b), Impounding for Evidence, there is no limit on how long a vehicle can be held for the collection of evidence. Deputy 1's statements to the complainant were not shown to be intended to deceive and do not, therefore demonstrate that he conducted himself improperly. The evidence shows the alleged act did occur, but was lawful, justified and proper.

4. Misconduct/Procedure – Deputy 1 viewed a surveillance video with witnesses without the complainant being present in order to "attest to the veracity of the witnesses' account."

Board Finding: Action Justified

Rationale: Deputy 1 contacted and interviewed witnesses during the course of his investigation of a hit and run collision. According to the California Peace Officers Legal Sourcebook (CPOLS) 7.67, a statement should always be taken from all witnesses, whether friendly or hostile, as soon as possible. There is no requirement to have the suspect present when these witnesses are questioned. The evidence shows the alleged act did occur, but was lawful, justified and proper.

11-078

1. False Reporting – Deputy 5 wrote a report stating the complainant's stolen documents were "lost".

Board Finding: Summary Dismissal

Rationale: This complaint does not allege facts establishing a prima facie showing of misconduct, and is so clearly without merit that no reasonable person could sustain a finding based on the facts. As such, it is referred to the Review Board for Summary Dismissal.

2. Misconduct/Procedure – Deputies 4 and/or 5 refused to revise Deputy 4's report from "missing to stolen".

Board Finding: Summary Dismissal

Rationale: See Rationale #1

3. Misconduct/Procedure – Deputies 2, 3 and/or 4 refused to provide the necessary documentation and/or rationale to the complainant for denial of Victim's Assistance funds.

Board Finding: Summary Dismissal

Rationale: See Rationale #1

4. Misconduct/Procedure – Deputy 6, in “reckless” pursuit, caused the complainant’s vehicle to swerve on July 2, 2011.

Board Finding: Summary Dismissal

Rationale: See Rationale #1

(CLERB Investigator’s note: Other events provided by the complainant are a part of the case file, but as currently known, do not have a direct relationship to the Sheriff’s Department and are not included in these allegations.)

11-082

1. Misconduct/Procedure – Deputies 1 and 2 failed to recognize, report, and respond to the complainant’s emergency medical needs.

Board Finding: Not Sustained

Rationale: Deputies 1 and 2 did not recall receiving any reports of illness while preparing and transporting inmates to the South Bay Court House on April 13, 2011. The complainant was unsure if he exhibited any outward signs of distress which would have prompted deputies to take any action prior to departing the detention facility, but remembered telling Deputy 2 that he felt ill prior to boarding the bus and he was then advised to get on the bus, have a seat and get some air. As deputies were offloading the bus at the South Bay Court House the complainant was found on the floor of the bus in distress. Deputies 1 and 2 followed department procedure, immediately contacted emergency medical services and the complainant was transported by paramedics to Sharp Chula Vista Hospital where he was admitted for treatment. Investigative attempts to contact and interview inmate witnesses that may have been in proximity to the complainant were not successful. There was insufficient evidence to either prove or disprove the allegation.

11-141

1. False Arrest – Deputy 1 arrested the complainant without cause.

Board Finding: Summary Dismissal

Rationale: The complainant was arrested by the San Diego Police Department. CLERB does not have authority to investigate this complaint based upon the following CLERB Rules & Regulations: Section 4: Authority, Jurisdiction, Duties, and Responsibilities of Review Board, Section 9: Screening of Complaints, and Section 15: Summary Dismissal.

2. Misconduct/Procedure - Deputy 1 refused to provide a reason to the complainant for her arrest until she had been detained for over 2 hours.

Board Finding: Summary Dismissal

Rationale: See Rationale #1

3. Misconduct/Procedure - Deputy 1 failed to conduct a breathalyzer, blood, or urine test on the complainant.

Board Finding: Summary Dismissal

Rationale: See Rationale #1

4. Misconduct/Discourtesy - Deputy 1 stated to the complainant, “God, shut up already.”

Board Finding: Summary Dismissal

Rationale: See Rationale #1

5. Misconduct/Procedure - Deputy 1 kept the complainant cuffed with zip ties for over 3 hours.

Board Finding: Summary Dismissal

Rationale: See Rationale #1

6. Misconduct/Procedure - Deputy 1 failed to Mirandize the complainant.

Board Finding: Summary Dismissal

Rationale: See Rationale #1
