

RULE XV

FORMER RULE XV COUNTY EMPLOYEES TRANSFERRED,
WAS REPEALED;

NEW RULE XV – APPEAL OF CLERB “SUSTAINED” FINDING
ADOPTED 6-10-03

SECTION 15.1.1 PEACE OFFICERS’ ADMINISTRATIVE APPEAL TO CIVIL SERVICE
COMMISSION FROM ADVERSE CITIZENS’ LAW ENFORCEMENT REVIEW
BOARD (CLERB) FINDING

Upon a finding by the San Diego County Citizens’ Law Enforcement Review Board (“CLERB”) sustaining a complaint that a peace officer employed by the County in the Sheriff’s Department or the Probation Department has committed or engaged in any of the following conduct as set forth in County Administrative Code Section 340.9:

- a. Use of excessive force,
- b. Discrimination or sexual harassment in respect to members of the public,
- c. The improper discharge of firearms,
- d. Illegal search or seizure,
- e. False arrest,
- f. False reporting,
- g. Criminal conduct,
- h. Misconduct, or
- i. Any punitive action as defined by the Public Safety Officers Procedural Bill of Rights Act, Government Code section 3300 et seq., (items a through i hereinafter collectively referred to as “improper conduct”),

the peace officer may request an administrative appeal by filing a written request with the Civil Service Commission (“Commission”), and serving a copy of the request upon CLERB, within fifteen (15) days of receipt of the CLERB finding. The written request for an administrative appeal shall specify the allegation(s) sustained by CLERB which is (are) being appealed.

SECTION 15.1.2 HEARING ASSIGNMENT

The Commission may assign one of its members to hear the administrative appeal and submit findings and a proposed decision to the Commission regarding whether the evidence presented demonstrates that the incident or act, which was the basis for the complaint sustained by CLERB, did or did not constitute improper conduct.

SECTION 15.1.3 WRITTEN STATEMENT

At least fifteen (15) days prior to the hearing, CLERB shall serve upon the peace officer, and file a copy thereof with the Commission, a written statement of (a) the specific improper conduct which CLERB found was sustained and which is being appealed, and (b) a summary of the evidence supporting the finding of sustained. The written statement may include any report or findings adopted by CLERB.

SECTION 15.1.4 RIGHT TO REVIEW FILE

Upon request to CLERB, the peace officer shall have the right to review and receive a copy of all items contained in the CLERB file, except for any evidence that cannot be so made available because its disclosure to the peace officer is prohibited by law.

SECTION 15.1.5 SUBPOENAS

The Commission, pursuant to County of San Diego Charter Section 907, has the power to subpoena and require the attendance of witnesses and the production of documents and papers pertinent to the hearing. The President or the Executive Officer of the Commission shall sign subpoenas for witnesses upon written request of CLERB or the peace officer. Persons who are subpoenaed, other than County employees, are entitled to the same witness fees and mileage as witnesses in a civil action in the courts of this state. Such fees shall be paid by the party requesting the subpoena. The President or Executive Officer may require the peace officer to prepay such costs. County employees who are subpoenaed shall not be entitled to any witness fees but shall be entitled to paid service time.

SECTION 15.1.6 CLOSED HEARING

A hearing shall be closed to the public if requested by the peace officer, except as otherwise permitted by law.

SECTION 15.1.7 BURDEN OF PROOF

The burden of proof shall be on CLERB to demonstrate through a preponderance of the evidence that the incident or act, which was the basis for the complaint sustained by CLERB, occurred and did constitute improper conduct.

SECTION 15.1.8 FAILURE TO APPEAR

If the peace officer requesting the administrative appeal fails to appear for the appeal, the Commission shall dismiss the administrative appeal, unless good cause for nonappearance is shown by the peace officer.

SECTION 15.1.9 ADMINISTRATIVE APPEAL RIGHTS

For purposes of the administrative appeal, peace officers and CLERB representatives shall have the following rights:

- a. To subpoena witnesses and documents.
- b. To appear personally and be represented by counsel.
- c. To present testimony and documentary evidence.
- d. To cross-examine witnesses.

SECTION 15.1.10 SELF INCRIMINATION

At the hearing, the peace officer may be examined, and if the peace officer refuses to answer any question propounded upon examination after being directed by the hearing officer to answer, the Commission may order that the hearing on the appeal be stayed until the order is obeyed or may dismiss the appeal, provided however, if the reason given for refusing to answer a question is the privilege against self-incrimination, the Commission may not order that the hearing be stayed or dismiss the appeal, but may consider the invocation of the privilege in making its decision.

SECTION 15.1.11 EVIDENCE AND WITNESSES

All testimony shall be under oath. Technical rules relating to evidence and witnesses shall not apply to the administrative appeal. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action. No informality in any of the proceedings or in the manner of taking testimony shall invalidate any finding or decision of the Commission.

SECTION 15.1.12 FINDINGS

The findings and decision of the Commission shall be final and not subject to reconsideration. The findings and decision of the Commission shall be certified to CLERB, to the peace officer who appealed, and to the County department employing the peace officer. A decision by the Commission that the peace officer did not commit or engage in the improper conduct that CLERB determined had been sustained shall be binding upon all County departments, offices and agencies, and such CLERB finding shall not be used for any personnel decision or action regarding the peace officer. A decision by the Commission that the peace officer did commit or engage in the improper conduct that CLERB determined had been sustained shall not change the advisory nature of the CLERB findings or recommendations to the County related thereto.

RULE XVI
COMPULSORY RETIREMENT
REPEALED (8-20-96)