CITIZENS LAW ENFORCEMENT REVIEW BOARD
RULES AND REGULATIONS

Adopted by CLERB on March 9, 1992
Last Revision May 18, 2021

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SECTION 1: VISION, MISSION, AND PURPOSE

1.1 Vision. To ensure the San Diego Sheriff's Department and San Diego Probation Department provide fair, impartial, and compassionate services with full transparency to the communities they serve and persons under their care.

~~1.1~~1.2 Mission. CLERB's mission is to increase public confidence in and accountability of ~~peace officers~~all persons employed by the Sheriff's Department ~~or~~and the Probation Department, and of Medical Service Providers by conducting independent, thorough, timely, and impartial reviews of Complaints of misconduct ~~and~~, deaths, and ~~other specified incidents~~Specified Incidents, arising out of or in connection with actions of ~~peace officers~~persons employed by the Sheriff's Department and the Probation Department and Medical Service Providers and by auditing, monitoring, and performing analyses of Sheriff's Department and Probation Department policies and patterns in practice.

~~1.2~~1.3 Purpose. The purpose of these Rules and Regulations is to facilitate the operation of the Citizens' Law Enforcement Review Board (hereinafter referred to as CLERB), including the review of Complaints filed against ~~peace officers or custodial officers employed by~~ any employee of the ~~County of~~ San Diego ~~in the~~County Sheriff's Department or the County Probation Department and Medical Service Providers, as authorized by San Diego County Ordinance #7880, as amended (Article XVIII, Section 340-340.15 of the San Diego County Code of Administrative Ordinances). Complaints subject to review are those that allege improper or illegal conduct of ~~peace officers or custodial officers~~employees of the Sheriff's Department or Probation Department, or Medical Service Providers, arising out of the performance of their duties or the exercise of peace officer authority, within the jurisdiction of CLERB, as more fully described in Section 4 below.

CLERB shall ~~receive, review, investigate and report on Complaints~~perform its duties in accordance with these Rules and Regulations~~. These rules are to provide for the independent, thorough, timely, and impartial investigation of Complaints, deaths of individuals arising out of or in connection with actions of peace officers and custodial officers employed by the Sheriff's Department or the Probation Department, and other specified incidents~~ and in a manner that a) protects both the public and the County Departments~~, Sheriff and Probation,~~ that are involved in such ~~Complaints~~Cases, and b) enhances the relationship and mutual respect between the Departments and the public they serve.

CLERB shall publicize the review process to the extent permitted by law in a manner that encourages and gives the public confidence that they can come forward when they have a legitimate Complaint regarding the conduct of ~~peace officers~~employees, or ~~custodial officers~~Medical Service Providers designated above. CLERB shall also make every effort to ensure public awareness of the seriousness of the process, and that fabricated Complaints will neither be tolerated nor reviewed. The statutory and constitutional rights of all parties shall be safeguarded during the review process.

SECTION 2: DEFINITIONS

Wherever used in these Rules and Regulations, unless plainly evident from the context that a different meaning is intended, the following terms mean:

2.1	"Aggrieved Person"	Any person who appears from a Complaint to have suffered injury, harm, humiliation, indignity, or any other damage as a result of actions by ~~a peace officer or custodial officer~~ an employee of the Sheriff's Department or County Probation Department or by a Medical Service Provider in the performance of official duties or the exercise of peace officer authority.
2.2	"Audit"	A formal process following professional guidelines to answer specific questions regarding specific operations.
2.3	"Case"	A Complaint or investigation of an incident not requiring a Complaint.

2.4	"Chair"	The Chairperson of CLERB or the Vice Chairperson if the Chairperson is not able to preside.
2.5	"CLERB"	The 11 member Citizens' Law Enforcement Review Board nominated and appointed inaccordance with the provisions of the Ordinance.
2.6	"Complainant"	Any person who files a Complaint regarding the conduct of ~~a peace officer or custodial officer in the employ~~ an employee of the Sheriff's Department or Probation Department or of Medical Service Providers arising in the performance of official duties or the exercise of peace officer or custodial officer authority and who files a Complaint with CLERB.
2.7	"Complaint"	A complaint received from any person without regard to age, citizenship, residence, criminal record, incarceration, or any other characteristic of the Complainant alleging an improper act or misconduct, as further defined in Section 4.1 of ~~a peace officer or custodial officer~~ an employee of the Sheriff's Department or the Probation Department or a Medical Service Provider in the performance of official duties or the exercise of peace officer authority.
2.8	"County"	County of San Diego, California
2.9	"Criminal Conduct"	Conduct punishable under any applicable criminal law.
2.10	"Filed"	The status of a Complaint signed under penalty of perjury.
2.11	"Investigative Hearing Panel"	A three (3) member subcommittee of CLERB selected to conduct an Investigative Hearing of a Complaint, and make appropriate findings and recommendations to CLERB based on the hearing.
2.12	"Lodged"	The status of a Complaint not signed under penalty of perjury.
2.13	"Medical Service Provider"	Any person providing medical care or mental health services in County detention facilities.
2.14	"Monitoring"	Direct observation, discussions with staff and the public, and review of records, in order to identify problem areas or to ensure compliance with existing laws, policies, and other imposed obligations.
2.15	"Ordinance"	County Ordinance #7880, as amended, Article XVIII (commencing with Section 340)of the San Diego County Code of Administrative Ordinances adopted by the Board ofSupervisors of the County of San Diego, California, which became effective on May 2, 1991.
2.16	"Preponderance of the Evidence"	Evidence that has more convincing force than that opposed to it.
2.17	"Presiding Member"	The member of a three person Investigative Hearing Panel appointed by the

Chair topreside at an Investigative Hearing.

2.18 "Specified Incident" — An incident that CLERB may investigate without a Complaint as set forth in Section 4.3.

2.19 "Subject ~~Officer~~of Investigation" — The~~peace officer or custodial officer employed by the County of San Diego in~~ employee of the Sheriff's Department or Probation Department or the Medical Service Provider against whom a Complaint has been filed alleging improper or illegal conduct as set forth in Section 4.1 or about whom an investigation of a Specified Incident is undertaken ~~without the filing of a Complaint as set forth in Section 4.3~~.

SECTION 3: ORGANIZATION AND MEETINGS

3.1 Composition of CLERB. CLERB shall consist of 11 members nominated by the Chief Administrative Officer and appointed by the Board of Supervisors. Each CLERB member shall be a qualified elector of San Diego County and shall possess a reputation for integrity and responsibility and have demonstrated an active interest in public affairs and service.

3.2 Term of Membership. Each member shall serve a term of three years. A member shall serve on CLERB until a successor has been appointed. A member shall be appointed for no more than two consecutive full terms. Appointment to fill a vacancy shall constitute appointment for one term. The term for all members shall begin on July 1 and end on June 30. The terms for all persons who are the initial appointees to CLERB shall be deemed to commence on July 1, 1991.

Members of CLERB serve at the pleasure of the Board of Supervisors and may be removed from CLERB at any time by a majority vote of the Board of Supervisors.

3.3 Vacancies on CLERB. A vacancy on CLERB shall occur as a result of any of the following events before the expiration of the member's term:

(a) Death of the incumbent,

(b) Resignation of the incumbent,

(c) Ceasing of the incumbent to be a resident of the County of San Diego,

(d) Absence of the member from three consecutive regular meetings of CLERB, or,

(e) Failure to attend and satisfactorily complete the required training course as defined in Section 3.6 within three months of the beginning of a member's term or of the member's appointment to fill a vacancy.

When a vacancy occurs, the Board of Supervisors and, where appropriate, the CLERB member shall be notified of the vacancy by the Chair. Vacancies shall be filled within 45 days for the balance of the unexpired term, and in the same manner as the position was originally filled.

3.4 Compensation. Members of CLERB shall serve without compensation, except that they shall be reimbursed for expenses incurred in performing their duties in accordance with provisions of the County Code of Administrative Ordinances regulating reimbursement to County officers and employees.

3.5 Officers of CLERB. The members of CLERB shall elect annually from its membership the following officers: a Chair, a Vice Chair, and a Secretary. The term of office shall be for one year or until the successor has been elected. No member shall hold more than one office at a time, and no member shall be eligible to serve more than two consecutive terms in the same office. The duties of the Officers shall be as follows:

(a) Chair: The Chair shall preside over all meetings of CLERB and shall have the right to vote on all questions. The Chair shall ensure that the laws of the County pertaining to the activities of CLERB and the rulings of CLERB are faithfully executed. The Chair or his or her designee shall act as the spokesperson in all matters pertaining to CLERB including dealings with the media.

The Chair shall sign all documents on behalf of CLERB, with the exception of Meeting Minutes, after the same have been approved by CLERB and shall perform such other duties and delegated responsibilities as may be imposed upon him or her by CLERB. The Chair shall designate all members of subcommittees and be an ex-officio voting member of all subcommittees.

(b) Vice-Chair: In the absence of the Chair, the Vice-Chair shall perform all the duties of the Chair with the same force and effect as if performed by the Chair.

(c) Chair Pro Tem: If both Chairs are absent at any meeting of CLERB and have not selected a Chair Pro Tem, CLERB shall select a Chair Pro Tem who shall perform all the duties of the Chair.

(d) Secretary: The Secretary or designee shall keep a true and correct record of all proceedings of CLERB. The Secretary or designee shall have custody of all reports, books, papers, and records of CLERB. The Secretary or designee keeps the roll, certifies the presence of a quorum, and maintains a list of all active members.

(e) Secretary Pro Tem: In the absence of the Secretary, CLERB may appoint a Secretary Pro Tem.

3.6 Orientation and Training. The ~~Chief Administrative~~Executive Officer is responsible for the establishment of an orientationand training program for the members of CLERB. Each member of CLERB shall attend and satisfactorily complete a training course within three months of the beginning of the member's term, or of the member's appointment to fill a vacancy. Failure to attend and satisfactorily complete the course within the prescribed time shall result in the member'sremoval from CLERB and automatically create a vacancy.

The orientation and training program includes familiarization with the following:

(a) County Government structure and CLERB operations;

(b) County Charter, County Code of Administrative Ordinances, Brown Act, and State Law pertaining to procedural conduct of CLERB;

(c) State Law relating to Peace Officers' rights and privacy;

(d) Operations of the Sheriff's Department and the Probation Department;

(e) Disciplinary process for Deputy Sheriffs and Probation Officers;

(f) Sheriff and Probation Departments' training programs;

(g) Community perspective on Law Enforcement;

(h) Constitutional and civil rights law relating to police misconduct and community rights;

(i) Memoranda of Agreement between the County of San Diego and the Deputy Sheriff's Association or San Diego Probation Officers' Association;

(j) Diversity and inclusion; and implicit, or unconscious, bias

3.7 Transaction of Business. CLERB shall establish a regular meeting schedule and shall give public notice of the time and place of the meetings. ~~The address of CLERB shall be posted on CLERB's official website:~~

~~https://www.sandiegocounty.gov/clerb.html~~

~~All regular and special meetings of CLERB shall be held at the County Administration Center, Room 302/303, 1600 Pacific Highway, San Diego, or at any other public place as designated by the Chair.~~

The meetings and business of CLERB will be conducted in accordance with the following:

(a) The agenda for each meeting will normally be provided to all members in time to be received at least one week prior to the regularly scheduled meeting. Items for the agenda for any regular meeting of CLERB may be included on the agenda only with the approval of the Chair; provided, however, CLERB members may file an item for the agenda for a regular meeting directly with the Executive Officer.

(b) The agenda for each meeting will be posted, distributed, and otherwise made public in accordance with the requirements of the Ralph M. Brown Act, Section 54950 et seq., of the California Government Code.

(c) All meetings shall be held in accordance with the requirements of the Ralph M. Brown Act, Section 54950, et seq., of the California Government Code.

(d) A majority of members currently appointed to CLERB shall constitute a quorum.

(e) The affirmative vote of the majority of the members currently appointed to CLERB shall be required to carry a motion or proposal.

(f) CLERB's legal counsel will normally be present for all meetings of CLERB.

(g) In all procedures not provided for by these Rules and Regulations, or the Ordinance, CLERB shall be governed by Robert's Rules of Order, Newly Revised.

(h) CLERB shall keep written minutes of all meetings and a copy shall be filed with the Clerk of the Board of Supervisors.

(i) Subcommittees may be established by CLERB as appropriate; however, no subcommittee shall consist of a quorum of CLERB.

(j) Members and the chairperson of each subcommittee shall be designated by the Chair of CLERB.

(k) As noted in Section 3.3 above, a member's absence from three consecutive regular meetings of CLERB shall result in the member's automatic removal from CLERB.

(l) Normally, the order of business for CLERB meetings shall be as follows:

1. Roll Call.
2. Approval of Minutes.
3. Public Comments.
4. Presentation/Training.
5. Executive Officer's Report.
6. Chair's Report.
7. New Business.
8. Unfinished Business.
9. Board Member Comments
10. Sheriff/Probation Liaison Query.
11. Recess to closed session, if appropriate.
12. Adjourn.

3.8 Special Meetings of CLERB. Special meetings may be held at the call of the Chair, or the Vice-Chair in the absence of the Chair. In addition, upon petition of a quorum of CLERB, the Chair shall call a special meeting of CLERB. CLERB members will be given at least a twenty-four hour notice prior to any special meeting. The notice and agenda for any special meeting will be distributed in accordance with Section 54956 of the Government Code. No business other than that specified in the special meeting agenda shall be considered.

3.9 CLERB Staff. CLERB shall appoint personnel in support of CLERB as may be authorized by the Board of Supervisors. The Board of Supervisors has also authorized the hiring of outside, independent legal counsel for CLERB.

CLERB delegates its authority to the Executive Officer to fill, manage, and discipline all staff positions. Once appointed, all unclassified personnel will serve at the pleasure of the Executive Officer. Once appointed, all classified personnel may be disciplined by the Executive Officer, subject to the County of San Diego's Civil Service Rules. The Executive Officer shall promulgate internal office procedures and prepare necessary standardized forms for the conduct of the investigations and the receipt of Complaints. The daily operations of CLERB, including the conduct of investigations, shall be managed by the Executive Officer who shall oversee the regular functioning of the staff assigned to help carry out the duties of CLERB.

CLERB shall conduct an annual performance evaluation of the Executive Officer.

SECTION 4: AUTHORITY, JURISDICTION, DUTIES AND RESPONSIBILITIES OF CLERB

4.1 Complaints: Authority. Pursuant to the Ordinance, CLERB shall have authority to receive, review, investigate, and report on Complaints filed against ~~peace officers or custodial officers employed by the County in~~employees of the Sheriff's Department ~~or the~~and Probation Department, and Medical Service Providers that allege:

(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; and/or

(h) Misconduct.

4.1.1 Complaints: Prerequisite. Except as provided in Section 4.3 below, CLERB shall have no authority with respect to improper activities as set forth in Section 4.1 above to take action in regard to incidents for which no Complaint has been filed with CLERB.

4.1.2 Complaints: Jurisdiction. CLERB shall have jurisdiction in respect to all Complaints arising out of incidents occurring on or after November 7, 1990. ~~Notwithstanding the foregoing, CLERB shall not have jurisdiction to take any action in respect to Complaints received more than one year after the date of the incident giving rise to the Complaint, except that if the person filing the Complaint was incarcerated or physically or mentally incapacitated from filing a Complaint following the incident giving rise to the Complaint, the time duration of such incarceration or incapacity shall not be counted in determining whether the one year period for filing the Complaint has expired.~~

~~The Complainant shall bear the burden of demonstrating that he/she was prevented from timely filing a Complaint by reason of incarceration or physical or mental incapacity. Mental incapacity shall be proven by qualified medical opinion, and not based on the Complainant's unskilled observations or general averments. Physician's declarations should contain a comprehensive diagnosis of the Complainant's condition during the filing period and, additionally, should focus on whether the incapacity prevented the Complainant from filing a Complaint.~~

~~The statement submitted to CLERB pursuant to this section shall be in writing and attested to under penalty of perjury as provided by Section 5.5 of these rules.~~

4.1.3 Complaints: Notification of Disposition. CLERB shall notify in writing any person having filed a Complaint with CLERB of the disposition of the Complaint. The Chief Administrative Officer shall also receive appropriate notification of the disposition of Complaints. Such notifications shall be in writing and shall contain the following statement: "In accordance with Penal Code section 832.7, this notification shall not be conclusive or binding or admissible as evidence in any separate or subsequent action or proceeding brought before an arbitrator, court or judge of California or the United States."

4.2 "Misconduct" Defined. "Misconduct," as referred to in section 4.1 (h) above, is defined to mean and include :

4.2.1 any alleged improper or illegal acts, omissions, or decisions directly affecting the person or property of a specific person arising out of the performance of the ~~peace officer's or custodial officer's official duties~~official duties of employees of the Sheriff's Department or the Probation Department or Medical Service Providers by reason of:

(a) An alleged violation of any general, standing, or special orders or guidelines of the Sheriff's Department or the Probation Department; or,

(b) An alleged violation of any state or federal law; or,

(c) Any act otherwise evidencing improper or unbecoming conduct by ~~a peace officer or custodial officer employed by~~an employee of the Sheriff's Department or the Probation Department or a Medical Service Provider.

4.2.2 and, for purposes of Medical Service Providers, a deviation from standard of care, error, or omission related to medical care or mental health services.

4.3 Complaint Not Required: Jurisdiction with Respect to Specified Incidents. CLERB shall have authority to review, investigate, and report on the following categories of incidents, regardless of whether a Complaint has been filed~~:~~ ("Specified Incidents"): investigation is required to determine whether a death arose out of connected to

(a) The death of any individual arising out of or in connection with actions of ~~peace officers or custodial officers employed by the County in the~~ Sheriff's Department or ~~the~~ Probation ~~Department~~department employees, or Medical Service Providers, arising out of the performance of official duties. CLERB shall have jurisdiction in respect to all deaths of individuals coming within the provisions of this subsection occurring on or after November 7, 1990~~. Notwithstanding the foregoing, CLERB may not commence review or investigation of any death of an individual coming within the provisions of this Section 4.3 (a) more than one year after the date of the death, unless the review and investigation is commenced in response~~, including deaths determined to ~~a Complaint filed within the time limits set forth herein.~~be due to natural causes.

(b) Incidents involving the discharge of a firearm by ~~peace officers or custodial officers employed by the County~~a Sheriff's Department or ~~the~~ Probation Department employee.

(c) The use of force by ~~peace officers or custodial officers employed by the County Sheriff's Department or custodial officers employed by the County~~ an employee of the Sheriff's Department or the Probation Department resulting in great bodily injury.

(d) The use of force by ~~peace officers or custodial officers employed by the County~~an employee of the Sheriff's Department or the Probation Department at protests or other events protected by the First Amendment.

4.4 Other Duties and Responsibilities. CLERB shall have authority to:

(a) Conduct Audits of Sheriff's Department and Probation Department operations.

(b) Monitor Sheriff's Department and Probation Department operations.

(c) Perform analyses of Sheriff's Department and Probation Department policies and patterns in practice for the purpose of identifying systemic issues and trends which are not identified by investigations into complaints, deaths, and Specified Incidents.

~~(a)~~(d) Prepare reports, including at least the Sheriff or the Chief Probation Officer as recipients, on the results of any investigations conducted by CLERB in respect to the activities of ~~peace officers or custodial officers~~employees or Medical Service Providers, including recommendations relating to any trends in regard to employees involved in Complaints. CLERB is not established to determine criminal guilt or innocence.

~~(b)~~(e) Prepare an annual report to the Board of Supervisors, the Chief Administrative Officer, the Sheriff and the Chief Probation Officer summarizing the activities and recommendations of CLERB including the tracking and identification of trends in respect to all Complaints received and investigated during the reporting period and the results of all audits, monitoring activities, and analyses or policies and patterns in practice and present the annual report to the Board of Supervisors within 60 days of its adoption by CLERB.

~~(c)~~(f) Review and make recommendations on policies and procedures of the Sheriff and the Chief Probation Officer to the Board of Supervisors, the Sheriff, and the Chief Probation Officer.

~~(d)~~(g) Annually inspect County adult detention facilities and annually file a report of such visitations together with pertinent recommendations with the Board of Supervisors.

~~(e)~~(h) Establish necessary rules and regulations for the conduct of its business, subject to approval of the Board of Supervisors.

SECTION 5: PROCEDURES REGARDING COMPLAINTS

5.1 Policy. The following shall provide a framework for the receipt, screening, review, investigation, reporting on, and disposition of Complaints regarding alleged activity set forth in Section 4.1 by ~~peace officers or custodial officers~~employees of the ~~County of San Diego in the Sheriff's~~Sheriff's Department ~~and the~~or Probation Department, or by Medical Service Providers:

(a) It is the policy of CLERB to encourage persons who have complaints concerning the conduct of ~~peace officers or custodial officers employed by the County in~~employees of the Sheriff's Department or the Probation Department, or Medical Service Providers to bring the same to the attention of CLERB. CLERB will attempt to assist and accommodate Complainants regarding the Complaint filing process.

(b) The investigation of Complaints shall be conducted in an ethical, independent, thorough, timely, fair, and impartial manner.

(c) Complaints will be screened, reviewed, and investigated (where appropriate), and disposed of in accordance with the procedures set forth in these Rules and Regulations.

(d) As promptly as possible, Complaints received by CLERB shall be transmitted by the Executive Officer to the Sheriff or the Chief Probation Officer.

(e) CLERB will make every effort to consider and to respond to Complaints against ~~peace officers or custodial officers~~employees of the Sheriff's Department or the Probation Department, or Medical Service Providers and investigate when necessary.

(f) The right of any Complainant to bring a Complaint shall be absolute and unconditional. The reluctance or refusal of the Complainant to prepare a Complaint form shall not impair the right to lodge a Complaint. Notwithstanding the foregoing, no Complaint shall be investigated, however, until a written Complaint has been received by CLERB or a member of its staff, which Complaint has been signed and the truth of the Complaint attested to, under penalty of perjury, by the Complainant.

(g) The investigation of a Complaint will be conducted in a manner designed to avoid unnecessary inconvenience or embarrassment to the Complainant, the Aggrieved Person, the witnesses, the Subject ~~Officer~~of Investigation, and any agency or instrumentality of the County.

(h) To the extent possible consistent with its duties and responsibilities, CLERB shall coordinate its activities with other public officers, such as the Sheriff, the District Attorney, the Grand Jury, the U. S. Attorney, and the Public Defender, so that the other public officers and CLERB can fully and properly perform their respective duties.

5.2 Lodging and Filing of Complaints. Complaints may be lodged in writing, in person, by telephone, or by any other means of communication. A Complaint may be lodged with CLERB by a person on behalf of himself or herself or on behalf of an Aggrieved Person by any interested person or group. A Complaint shall be considered received by CLERB at the time it is lodged. However, no Complaint will be deemed to have been filed with CLERB unless and until (i) the Complaint has been reduced to writing on CLERB's complaint form with the truth of the Complaint attested to under penalty of perjury and (ii) all other forms required by this Section have been completed and signed by the Complainant in accordance with the following procedures:

(a) Required forms consist of the following, which may be modified from time to time by the Executive Officer:
1. CLERB's Complaint form
2. Request for Investigation of Complaint & Agreement Not to Subpoena Citizens' Law Enforcement Review Board Personnel or Records, and
3. Authorization to Use or Disclose Protected Health Information, if applicable.

(b) If the Complaint is lodged in person, CLERB employee shall furnish the Complainant with a blank Complaint form. The Complainant shall be asked to fill out the form and to sign the form in the space provided. A copy of the completed form shall be given to the Complainant to serve as a record of the filing of the Complaint.

(c) If the Complaint is lodged by mail, the Complaint form shall be completed by CLERB staff on the basis of the information contained within the correspondence. CLERB staff shall mail a copy of the completed Complaint to the Complainant as a record of the lodging of the Complaint, together with a request that the Complainant review the Complaint form for accuracy, and if accurate, sign the same and return it to the CLERB office.

(d) If the Complaint is lodged by telephone, CLERB staff shall fill out an original Complaint form and prepare one duplicate copy of the Complaint form as a record of the lodging of the Complaint. The CLERB employee taking the Complaint shall give his or her name to the Complainant. The CLERB staff shall furnish the Complainant with a copy of the completed form, together with a request for verification of the accuracy and a signature.

(e) In those cases where the Complainant is incarcerated in a detention facility in the County of San Diego, the Complaint will be handled as outlined in (c) or (d) above.

5.3 Who May File Complaint. Complaints shall include Complaints received from any person without regard to age, citizenship, residence, criminal record, incarceration, or any other characteristic of the Complainant.

5.4 Time Limitations for Filing Complaints. ~~All Complaints shall be received within one year after the date of the incident giving rise to the Complaint, except that if the person filing the Complaint was incarcerated or physically or mentally incapacitated from filing a Complaint following the incident giving rise to the Complaint, the time duration of such incarceration or physical or mental incapacity shall not be counted in determining whether the one year period for filing the Complaint has expired, subject to the provisions of Section 4.1.2 of these Rules and Regulations.~~There is no time limit to file a Complaint.

5.5 Complaint Form. CLERB shall cause all Complaints received by it to be reduced to writing. Unless CLERB has received another writing setting forth the substance of the Complaint signed by the Complainant, CLERB shall furnish the Complaint form to the Complainant advising that the Complaint will not be deemed to have been filed with CLERB until and unless it is reduced to writing. In order for a Complaint to be deemed filed, the Complainant shall attest to the

truthfulness of a written Complaint under penalty of perjury in the following manner, or by words of similar effect: "I hereby certify under penalty of perjury under the laws of the State of California that to the best of my knowledge, the statements made herein are true."

5.6 Recording of Complaints. CLERB shall cause a central register of all Complaints filed with it to be maintained in its office. The central register shall record actions taken on each Complaint. Disclosure of information from the central register shall be in compliance with applicable law. The central register shall contain the following:

(a) Name of the Complainant, the Aggrieved Person, and the Subject ~~Officer~~of Investigation,

(b) CLERB-assigned Complaint Number,

(c) Date Complaint was filed,

(d) A brief description of the subject matter of the Complaint,

(e) Date the Complaint was transmitted to the Sheriff's Department or the Probation Department,

(f) Date the Investigative Report was completed, if applicable,

(g) Results of CLERB's consideration and/or investigation, if any,

(h) Date and content of the final disposition of the Complaint.

5.7 Withdrawal of Complaints. A Complaint may be withdrawn from further consideration at any time by a written notice of withdrawal signed and dated by the Complainant. The effect of such withdrawal will normally be to terminate any further investigation of the Complaint of conduct, unless the Executive Officer or a CLERB member recommends that the investigation continue and CLERB, in its discretion, concurs.

5.8 Termination, Resignation, or Retirement of ~~Subject Officer.~~Subjects of Investigation. CLERB shall have the discretion to continue or terminate an investigation, if, after a Complaint is filed and before CLERB completes its investigation, the Subject ~~Officer~~of Investigation terminates employment with the Sheriff's Department or the Probation Department. The Sheriff or the Chief Probation Officer or the Subject ~~Officer~~of Investigation shall notify CLERB when the Subject ~~Officer's~~of Investigation's employment is terminated.

SECTION 6: COOPERATION AND COORDINATION

In the discharge of its duties, CLERB shall receive complete and prompt cooperation from all officers and employees of the County. and contract service providers. CLERB and other public officers, including the Sheriff, the District Attorney, and the Grand Jury, shall coordinate their activities so that the other public officers and CLERB can fully and properly perform their respective duties. Such cooperation shall include, but not be limited to, the following:

6.1 ~~Such cooperation shall include~~ responding to written questions during the investigation~~,~~;
6.2 appearing at and answering questions during interviews~~, appearing at~~ and ~~answering questions during~~ hearings~~,~~;
6.3 assisting with access to physical evidence;
6.4 responding in writing to CLERB policy recommendations within 60 days, or if a response cannot reasonably be provided within 60 days, providing a status report on such response;
6.5 notifying CLERB of the death of any individual arising out of or in connection with actions of Sheriff's Department or Probation Department employees, or Medical Service Providers, including the death of any

individual in custody or on probation, and ~~cooperation~~the occurrence of Specified Incidents;

6.6 providing access to Critical Incident Review Board reports, findings, and summaries;

6.7 providing direct access to Sheriff's Department and Probation Department reporting systems for the purpose of auditing, monitoring, and conducting analyses of policies and patterns in practice; and

~~6.1~~6.8 cooperating with any other relevant investigation procedures.

CLERB shall attempt to avoid contacting any Subject ~~Officer~~of Investigation at home. CLERB shall attempt to get the Subject ~~Officer's~~of Investigation's work schedule prior to scheduling an interview or investigative hearing. CLERB shall attempt to avoid scheduling interviews or investigative hearings on a Subject ~~Officer's~~of Investigation's regular days off, scheduled vacation or authorized leave of absence. Representatives assigned by the Sheriff's and Probation Department as liaisons to CLERB will coordinate therequested interviews.

SECTION 7: SUBPOENAS AND OATHS

CLERB shall, pursuant to the Charter of the County of San Diego, Section 606, subd. (d), have the power to subpoena and require the attendance of witnesses and the production of documents and papers pertinent to its investigations; and shall have the power to administer oaths. A subpoena issued under this Section 7 shall be issued and signed by the Executive Officer or his or her designee.

SECTION 8: CONFIDENTIALITY OF RECORDS

~~Any~~All personnel records, Complaints ~~against peace officers or custodial officers in the Sheriff's Department or the Probation Department~~, and information obtained from these records~~,~~ or during the course of an investigation that are in the possession of CLERB or its staff, shall be confidential and shall not be disclosed to any member of the public, including the Complainant, except in accordance with applicable law.

Copies of such records ~~and Complaints of CLERB~~ shall be made available to the Sheriff or the Chief Probation Officer upon completion of ~~the~~CLERB's investigation ~~of CLERB~~ unless prohibited by applicable law.

The disclosure of information, including, but not limited to, the identification of the Subject ~~Officer~~of Investigation, in CLERB's meeting agenda, public documents, and other public reports shall be in compliance with applicable law.

SECTION 9: INVESTIGATION OF CASES

9.1 Screening and Prioritization of ~~Complaints~~Cases.

(a) ~~Filed ComplaintsThe Executive Officer will then assign the Case for investigation.~~ Each Complaint will be initially screened by staff for jurisdiction ~~and priority~~. Cases shall then be referred to the Supervising Special Investigator, or designee, for prioritization in accordance with CLERB Policies and Procedures, which shall prioritize death investigations above all other cases.

(b) The Supervising Special Investigator will then assign the Case for investigation.

(c) The Executive Officer may periodically advise CLERB as to the progress and status of each ~~Complaint~~Case.

(d) CLERB staff ~~may~~will periodically advise the Complainant and the Subject ~~Officer (s)~~of Investigation of Investigation as to the status of a ~~Complaint.~~ Case

9.2 Scope of Investigation. The investigation of a ~~Complaint~~Case may include, but need not be limited to, the following:

(a) Interviews with the Complainant, the Aggrieved Person, each Subject ~~Officer~~of Investigation, and witnesses or other persons likely to have information concerning the ~~Complaint~~Case;

~~(b) Sheriff's Department and Probation Department employee response forms;~~

(b) Responses to CLERB's written or oral inquiries;

(c) Examination of the scene of the alleged incident;

(d) Viewing and analyzing physical evidence associated with the alleged incident;

(e) Review, analysis, and preservation of other physical evidence including videos and photographs~~.~~;

(f) Review of relevant medical records;

(g) Consultation with medical subject matter experts, as needed.

Such investigations must be conducted in a manner that will not obstruct the criminal investigations conducted by the Sheriff, District Attorney, or other law enforcement agencies. In the event that the Subject ~~Officer~~of Investigation is compelled to cooperate in an investigation, departmental personnel shall provide the Subject ~~Officer~~of Investigation with the "Lybarger warning" when required under the appropriate circumstances.

9.3 Documenting Investigative Activities. It shall be the responsibility of the investigator to document each step in the investigation and the result thereof in an investigation report.

9.4 Written Statements. CLERB investigators shall attempt to secure written statements signed under penalty of perjury from all participants in and witnesses to the alleged incident. Where any witness or participant is unwilling to make a signed written statement, the assigned investigator shall prepare a written summary of the oral statement, if any, provided by such participant or witness. Where a written statement is given and signed by a participant or witness, the assigned investigator shall provide the person making such statement with a copy of the statement.

9.5 Recording of Interviews. Interviews and statements may be ~~tape~~ electronically recorded by the CLERB investigator. Such recordings shall be kept and preserved until the case is completed by CLERB and its findings distributed to any appropriate agency or official as may be required by law.

9.6 Deferment of Investigation. CLERB may toll its investigation of a ~~Complaint~~Case pursuant to applicable tolling exemptions under the Peace Officers' Procedural Bill of Rights (POBR). CLERB reserves the right to commence immediate investigations, or to defer investigations, in all other cases depending upon CLERB priorities and available resources.

9.7 Investigative Report. At the conclusion of the investigation and prior to placement on a CLERB agenda, the CLERB investigator shall complete an Investigative Report that sets forth the names of the Complainant, the Aggrieved Person, the Subject ~~Officer~~of Investigation, in compliance with applicable law, and a summary of the investigation.

9.8 CLERB Options After Receipt of Investigative Report. After receipt of the Investigative Report, CLERB shall take action it deems appropriate for disposition of the allegations of the ~~Complaint~~Case, including the following options:

(a) Review and determine the ~~Complaint~~Case based on the Investigative Report and the evidence in the investigative file, but without an Investigative Hearing, pursuant to Section 9.9; or

(b) Summarily dismiss the ~~Complaint~~Case, in whole or in part, pursuant to Section 15; or

(c) Refer the ~~Complaint~~Case back to staff for further investigations; or

(d) Defer further action on the ~~Complaint~~Case; or

(e) Any other appropriate action or disposition, consistent with the Ordinance, or

(f) Conduct an Investigative Hearing or Hearings, pursuant to Sections 10-14.

9.9 Disposition by CLERB without an Investigative Hearing. If CLERB decides to review and determine a ~~Complaint~~Case based on the Investigative Report and investigative file evidence, but without an Investigative Hearing, CLERB shall apply the standard of proof set forth in Section 14.8 and shall follow the Final Report process set forth in Sections 16.1-16.4. If the Executive Officer recommends that CLERB make a determination on a ~~Complaint~~Case without an Investigative Hearing, the Subject ~~Officer~~of Investigation and representative and Complainants shall have an opportunity to: (a) review the Investigative Report in compliance with applicable law and; (b) submit additional evidence prior to the determination of the ~~Complaint~~Case by CLERB.

9.10 File Accessibility. Every member of CLERB shall have full access to all ~~Complaints~~Cases and completed investigation files maintained by CLERB or its staff.

9.11 Notification to Parties. Upon completion of the Investigative Report, CLERB staff shall provide the Complainant, Aggrieved Person, and each Subject ~~Officer~~of Investigation the following:

(a) Written notice that the Complaint will be considered by CLERB including an explanation of the process.

(b) The content of the Investigative Report to the extent permitted by applicable law. A notification that all additional statements, records, reports, exhibits, and other items contained in the file will be available on request, except for any evidence that cannot be so made available because its disclosure is prohibited by law.

(c) Written notice that the parties may consult an attorney if desired, and that an attorney or other representative may represent ~~him/her~~them at any hearing, but that an attorney or other representative is not mandatory.

(d) A copy of or a link to these Rules and Regulations.

9.12 Procedural Rights and Protections. CLERB shall provide to all Subjects of Investigations the rights and protections CLERB is required by law to provide to peace officers, including, without limitation, POBR.

SECTION 10: DETERMINING WHEN AN INVESTIGATIVE HEARING IS NECESSARY

10.1 Requests for Investigative Hearing. The Complainant, Subject ~~Officer~~of Investigation, Executive Officer, or a member ofCLERB may request an Investigative Hearing (as set forth in Sections 12-14) for some or all of the allegations of a Case.

10.2 When an Investigative Hearing is Necessary. An Investigative Hearing will be conducted, in accordance with the procedures for such hearings set forth in Sections 11-15, when CLERB determines that such a hearing may facilitate the fact-finding process.

An Investigative Hearing may be deemed to facilitate the fact-finding process when:

(a) There has been an undue lapse of time since the occurrence of the incident that is the subject of the ~~Complaint~~Case; or

(b) There are additional witnesses, evidence, or information that contradicts or supplements, or is not disclosed by the Investigative Report; or

(c) There is reason to question the conclusion of the Investigative Report; or

(d) An Investigative Hearing would advance public confidence in the ~~Complaint~~investigative process; or

(e) An appearance in person by the parties would facilitate the fact-finding process.

10.3 Scope of the Investigative Hearing. The scope of an Investigative Hearing may vary. It may consist of a single, narrowly drawn issue; of multiple issues; or of the entire ~~Complaint~~Case. The scope should be determined by CLERB whenauthorizing an Investigative Hearing, and all interested parties to the ~~Complaint~~Case shall be informed of any limitation in scope when notified of the Investigative Hearing.

SECTION 11: NO CONTEST RESPONSE

A Subject ~~Officer~~of Investigation may enter a written response of "no contest" at any time prior to an Investigative Hearing. A responseof "no contest" indicates that the Subject ~~Officer~~of Investigation accepts the allegations of the ~~Complaint~~Case as substantially true in fact and interpretation. The Subject ~~Officer~~of Investigation shall be bound by the terms of the "no contest" response in any further consideration of the ~~Complaint~~Case by CLERB.

SECTION 12: INVESTIGATIVE HEARING

12.1 Composition of Investigative Hearing. Except as otherwise provided in this Section 12.1, an Investigative Hearing will be performed by an Investigative Hearing Panel of CLERB, which shall consist of three members of CLERB, selected pursuant to Section 12.2 below, with one member designated as the Presiding Member. In cases involving the death of a person, and in such other cases as CLERB shall decide, CLERB will sit as a Board of the Whole with a minimum of six Board members present.

12.2 Selection of Three-Person Investigative Hearing Panels.

(a) Selection of three-person Investigative Hearing Panels under this section shall be made by rotation among CLERB members, as appointed by the Chair, using any basis (including lottery) that balances the workload among CLERB members. A CLERB member may request that he or she be temporarily excused to equalize caseload, avoid conflicts of interest, or for other good cause. In the event a CLERB member is so excused, another CLERB member shall be reassigned by the Chair.

(b) If an Investigative Hearing Panel is unable to meet to convene an Investigative Hearing on a scheduled

date due to the unavailability for any reason of one or more of its members, or if an Investigative Hearing Panel agrees to reschedule an Investigative Hearing due to the unavailability for any reason of the Complainant(s) or Subject ~~Officer~~of Investigation(s) or legal counsel for either, the case or cases assigned to such Investigative Hearing Panel may be re-assigned to another Investigative Hearing Panel. However once an Investigative Hearing of a case has been convened by an Investigative Hearing Panel, the same Investigative Hearing Panel shall consider the case to final disposition.

12.3 Challenges of CLERB Members.

(a) Challenge for Conflict of Interest or Bias. A CLERB member sitting on an Investigative Hearing Panel shall consider all Complaints in a fair and impartial manner. A CLERB member who has a personal bias or prejudice, or the appearance thereof, in the outcome of a Complaint shall not sit on the Investigative Hearing Panel hearing that Complaint. Personal interest in the outcome of a Complaint does not include holding or manifesting any political or social attitude or belief, where such belief or attitude does not preclude objective consideration of a case on its merits. Examples of personal bias include, but are not limited to:

1. Familial relationship or close friendship with parties material to the inquiry;

2. Witnessing events material to the inquiry from a non-neutral perspective;

3. Being a party to the inquiry;

4. Having a financial interest in the outcome of the inquiry; and/or

5. Holding a bias against a particular party that is sufficient to impair the CLERB member's impartiality.

(b) Procedure for Challenges. Within five calendar days after the date on which CLERB furnishes notice of an Investigative Hearing, including the names of the CLERB members constituting that Investigative Hearing Panel, any party to the Complaint may file a written challenge for cause to any CLERB member hearing the Complaint. Challenges for conflict of interest or bias must substantiate the challenge in terms of the standard set forth in Section 12.3 (a) above.

When a challenge for cause is filed, the Chair shall contact the challenged CLERB member as soon as possible, and if the CLERB member agrees that the challenge is for good cause, or otherwise agrees, the Chair shall ask another CLERB member to serve. If the challenged CLERB member does not agree that the challenge is for good cause, the Chair may poll the other two members of the Investigative Hearing Panel, and if both agree that the challenge is for good cause, the Chair shall so notify the challenged CLERB member and ask another to serve. If a challenge to a CLERB member is rejected and the member serves, the written challenge and the CLERB member written response shall be incorporated in the investigative case file as part of the record of the Complaint.

(c) Replacement of Challenged CLERB Member. Any CLERB member removed, or who removes him/her self, from the Investigative Hearing Panel due to a challenge for cause shall be replaced by the Chair with another CLERB member.

12.4 Public Comments. CLERB members shall avoid public comment on the substance of particular pending complaints and investigations and shall preserve the confidentiality of closed session meetings in accordance with applicable law.

SECTION 13: INVESTIGATIVE HEARING PROCEDURES

13.1 Schedule of Investigative Hearings. Investigative Hearings may be scheduled by the Chair for any regular or special meeting of CLERB; or, as to Investigative Hearings before an Investigative Hearing Panel, by the Presiding Member for any other appropriate time.

13.2 Notice Requirements. Ten days' notice of an Investigative Hearing shall be given to the Complainant, each Subject ~~Officer~~of Investigation, and any other person whose attendance CLERB deems appropriate. The notice shall state the date, time,and place of the Investigative Hearing, and the names of the Investigative Hearing Panel members.

13.3 Hearings, Open or Closed to the Public. The nature of Investigative Hearings, open or closed, will be in compliance with legal standards existing at the time of the Investigative Hearing, unless the Subject ~~Officer~~of Investigation requests anopen Investigative Hearing.

13.4 Authority to Compel Appearance. The authority of CLERB's subpoena may be used to compel the appearance of witnesses, including Subject ~~Officers~~of Investigations, and/or the production of documents. Subpoenas may be requested through theChair of CLERB.

13.5 Conduct of the Investigative Hearing. Investigative Hearings should be informal, and should be conducted in the following manner unless the Chair or Presiding Member orders otherwise:

(a) The Presiding Member or Chair, as applicable, will conduct the Investigative Hearing subject to being overruled by a majority of the Investigative Hearing Panel or CLERB, as applicable. Members of the Investigative Hearing Panel or CLERB, as applicable, shall be primarily responsible for obtaining testimony. One Investigative Hearing Panel member or CLERB member may be assigned by the Presiding Member or the Chair to perform the initial questioning of witnesses during an Investigative Hearing convened for a Case. Additional questions may be asked by any Investigative Hearing Panel member or CLERB member, or by a Subject ~~Officer~~of Investigation or his or her representative, or by an assigned CLERB staff member.

(b) At the discretion of CLERB or the Investigative Hearing Panel, opening statement(s) may be made on behalf of the Complainant and the Subject ~~Officer~~of Investigation(s) involved.

(c) The Investigative Hearing will generally then proceed pursuant to the provisions detailed in Section 14.1. In the event that the Subject ~~Officer~~of Investigation is compelled to cooperate in an Investigative Hearing, departmental personnel shall provide the Subject ~~Officer~~of Investigation with the "Lybarger warning" when required under the appropriate circumstances. After the Investigative Hearing Panel has taken all relevant evidence, each party may, at the discretion of the Presiding Member or the Chair, be given an opportunityto make a closing statement.

(d) At the conclusion of any witness testimony, either the Complainant or the Subject ~~Officer~~of Investigation may request that CLERB or the Investigative Hearing Panel cover any additional areas of inquiry they feel need to be covered. The Chair or Presiding Member shall determine whether any further questions will be asked.

(e) Unless otherwise ordered by the Chair or Presiding Member, the entire Investigative Hearing on a given Complaint should be conducted on one occasion. However, if CLERB or the Investigative Hearing Panel determines that additional evidence is necessary to reach its findings, it will continue the Investigative

Hearing to a future date unless the parties agree to allow CLERB or the Investigative Hearing Panel to receive such material in writing without reconvening.

13.6 Deliberation. After obtaining evidence, CLERB or the Investigative Hearing Panel will deliberate in closed session. CLERB or the Investigative Hearing Panel shall not consider any information not received as part of the Investigative Hearing. CLERB or the Investigative Hearing Panel may reconvene in the presence of all parties to ask further questions, and each party shall have the opportunity to respond to any such questions.

13.7 Finding and Report by Three-Member Investigative Hearing Panel. At the conclusion of an Investigative Hearing before an Investigative Hearing Panel, the Panel members shall, by majority vote, adopt a recommended Finding with respect to the Complaint. The Investigative Hearing Panel shall not consider evidence or information obtained outside of the Investigative Hearing. The Investigative Hearing Panel shall then prepare a written report summarizing the evidence, the recommended Finding, the reasons for the recommended Finding, any dissenting opinion, and any other information that may be useful to the full CLERB in its consideration of the case. The Investigative Hearing Panel shall take into account any rule, regulation, or policy of the Subject ~~Officer's~~of Investigation's employing department brought to its attention by the Subject ~~Officer~~of Investigation or representative that the Investigative Hearing Panel determines to be pertinent to the Complaint being investigated.

13.8 Submission to Full CLERB. The written Investigative Hearing Panel report referred to in Section 13.7 shall be forwarded to all members of CLERB, and the matter calendared as soon as possible at a scheduled regular or special CLERB meeting.

A copy of the written Investigative Hearing Panel report referred to in Section 13.7, above, shall be forwarded to the extent permitted by applicable law to each Complainant and Subject ~~Officer~~of Investigation, together with a notice of the time and placeof the CLERB meeting at which the Complaint will be considered. All Complainants and Subject ~~Officers~~of Investigations shall be notified that CLERB may accept written objections to the Investigative Hearing Panel report within 10 days of the dateof the report.

13.9 Consideration by CLERB. CLERB shall consider the report of the Investigative Hearing Panel and any other information that may be brought to its attention at the meeting. Thereafter, CLERB may:

(a) Vote to conclude the matter without further investigation, review, or hearings;

(b) Request further information or review by staff, by the Investigative Hearing Panel, or through other appropriate means;

(c) Vote to conduct further proceedings on the matter before the entire CLERB;

(d) Take such other or additional action as it deems necessary and appropriate, such as the making of recommendations regarding policy or rule changes, referral to appropriate agencies, or other appropriate action;

(e) Accept the Investigative Hearing Panel report as the Final Report of CLERB.

13.10 Investigative Hearings before entire CLERB. In cases that are initially heard before the entire CLERB, the interim steps required when a case is heard before a three-member Investigative Hearing Panel are not applicable.

13.11 Record of Investigative Hearing. All Investigative Hearings shall be recorded by CLERB. At the option of the Investigative Hearing Panel Presiding Member, a stenographic record may be kept, and, if kept, shall be available upon payment of the cost of duplicating or transcribing the same, to a Complainant or Subject ~~Officer~~of Investigation requesting a transcript,to the extent permitted by applicable law. Any record of the Investigative Hearing shall become

part of the CLERB file.

SECTION 14: EVIDENCE FOR INVESTIGATIVE HEARINGS

14.1 What Evidence May be Considered. The Investigative Hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of such evidence over objection in civil actions.

Hearsay evidence may be used for the purpose of supplementing or explaining other evidence.

Evidence shall be taken in accordance with the following provisions:

(a) Each party and the Investigative Hearing Panel shall have the following rights:
1. to call and examine witnesses;
2. to introduce exhibits;
3. to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination;
4. to impeach any witness regardless of which party first called the witness to testify; and
5. to rebut the evidence against the party.

If the Subject ~~Officer~~of Investigation does not testify in his/her own behalf he/she may be called and examined as ifunder cross-examination.

(b) Oral evidence shall be taken only under oath or affirmation.

(c) Upon the request of either party, a CLERB member, or the Investigative Hearing Panel, witnesses may be excluded from the Investigative Hearing until they are called to testify.

(d) Irrelevant and unduly repetitious evidence shall be excluded.

(e) The rules governing privileged communications shall be effective to the extent that they are otherwise required by constitution or statute to be recognized at hearings before CLERB or the Investigative Hearing Panel.

14.2 Representatives. Each party and any witness shall have the right to have a representative of his or her choice present at all times during his or her own fact-finding interviews or Investigative Hearings conducted by or on behalf of CLERB. The representative shall not be a witness or a person subject to the same investigation.

14.3 Interpreters. The Chair shall have discretionary authority to provisionally qualify and utilize interpreters. Each party in need of an interpreter shall give notice to the Chair within seven days of receipt of the notice of hearing so that appropriate arrangements can be made.

14.4 Authority to Compel Appearance. The authority of a CLERB subpoena may be used to compel the production of documents and/or the appearance of witnesses, including the Subject ~~Officer~~of Investigation.

14.5 Failure to Appear. When either the Complainant or the Subject ~~Officer~~of Investigation fails to appear, the Investigative HearingPanel may receive statements from those persons present and relying on the evidence received, continue with the Investigative Hearing.

14.6 Confidentiality of CLERB Records. CLERB shall not disclose to the general public any reports, statements, files, records, documents, tapes, or other items whose confidentiality is protected by law. This confidentiality may be

waived in accordance with applicable law, statute, ordinance, or legal proceedings. Moreover, evidence contained in CLERB's investigative file may be disclosed to the Complainant and the Subject ~~Officer~~of Investigation, but only to the extent and in the manner authorized by these Rules and Regulations and by ~~then existing~~applicable law.

14.7 Discovery.

(a) By CLERB. CLERB, through its staff and agents, may utilize whatever formal or informal methods for the discovery of evidence as are authorized and available under federal, state, or local law.

(b) By the Parties. Prior to an Investigative Hearing, each Subject ~~Officer~~of Investigation may have access to or receive copies of evidence contained in CLERB's investigative file for the Complaint, except for any evidencethat cannot be made available because its disclosure is prohibited by law. Parties seeking such discoverymust give at least 48 hours advance notice to CLERB, either in writing or by telephone.

14.8 Standard of Proof. No finding with respect to an allegation of a Complaint shall be sustained unless it is proven by a Preponderance of the Evidence presented at the Investigative Hearing(s) or otherwise contained in the investigative record.

SECTION 15: SUMMARY DISMISSAL

After reviewing the Investigative Report and records, CLERB may summarily dismiss a Case, ("Summary Dismissal") upon recommendation of the Executive Officer, its own motion, or that of the Subject ~~Officer.~~of Investigation. Parties to the ~~Complaint~~Case shall be notified of a proposed Summary Dismissal, and may appear to argue for or against Summary Dismissal. Summary Dismissal may be appropriate in the following circumstances:

(a) CLERB does not have jurisdiction over the subject matter of the Complaint.

~~(b) CLERB does not have jurisdiction because the Complaint was not timely filed.~~

~~(c)~~(b) Lack of cooperation by the Complainant such that CLERB is unable to continue its investigation, such as a failure by the Complainant to respond to repeated inquiries when such response is necessary to the ongoing investigation.

~~(d)~~(c) The Subject ~~Officer~~of Investigation is no longer employed by the Sheriff or Probation Departments.

~~(e)~~(d) The Complaint is so clearly without merit that no reasonable person could sustain a finding based on the facts.

~~(f)~~(e) Case investigation is not completed within one year, not including applicable tolling exemptions; Staff shall submit the Case to CLERB for Summary Dismissal.

SECTION 16: CLERB FINDINGS AND RECOMMENDATIONS

16.1 Final Report by CLERB. At the conclusion of a matter before the entire CLERB, CLERB shall deliberate and adopt a final report ("Final Report") with respect to the Case or matter under consideration. This report shall include Findings as to the facts relating to any allegations set forth in the Complaint or potential misconduct discovered during the course of CLERB's investigation of the Case~~, as well as~~. The Final Report for Specified Incident investigations

shall include an overall conclusion as to ~~any~~the Case ~~as specified in Section 16.2 below.~~

Dissenting CLERB members may set forth reasons for their dissent in writing and provide the written dissent to the Executive Officer within five days of adoption of the Final Report, and any such dissent(s) shall be included in the Final Report.

16.2 ~~Conclusions in Final Report.~~Findings. The Final Report of CLERB shall contain an overall finding ("Finding") as to each allegation of the Case in the following manner:

(a) If the investigation clearly established that the allegation is not true, the Finding shall be "Unfounded."

(b) If the investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation, the Finding shall be "Not Sustained."

(c) If the investigation shows the alleged act did occur but was lawful, justified, and proper, the Finding shall be "Action Justified."

(d) If the investigation disclosed evidence sufficient to prove the allegation by a Preponderance of the Evidence, the Finding shall be "Sustained."

(e) If CLERB lacks jurisdiction or the allegation clearly lacks merit, the Finding shall be "Summary Dismissal."

A Finding of "Sustained" should include an explanation of the finding of improper conduct and may include recommendations relating to:

(a) the imposition of discipline, including the facts relied on in making such recommendations;
(b) any trends in regard to ~~employees~~Subjects of Investigation involved in ~~Complaints~~Cases.

16.3 Consideration of Subject ~~Officer's~~of Investigation's Disciplinary History. Only after a finding of "Sustained" with respect to an allegation of improper or illegal conduct by a Subject ~~Officer~~of Investigation, should CLERB consider the Subject ~~Officer's~~of Investigation's disciplinary history (including prior CLERB Sustained findings) in determining the appropriate recommendation for discipline. The details of the Subject ~~Officer's~~of Investigation's disciplinary history will be held confidential by CLERB and will not be made a part of the Final Report.

16.4 Transmittal of Final Report. The Final Report adopted by CLERB shall be forwarded to the Board of Supervisors, the Sheriff or Chief Probation Officer, the Complainant, and each Subject ~~Officer~~of Investigation, to the extent permitted by applicable law.

16.5 Reconsideration of Final Report. Upon request by the Complainant, Subject ~~Officer~~of Investigation, or ~~his or her~~their representatives,the Final Report may be re-opened for reconsideration by CLERB provided that:

(a) previously unknown relevant evidence is discovered that was not available to CLERB before it issued its Final Report~~, and~~;

(b) there is a reasonable likelihood the new evidence will alter the Findings ~~and~~, recommendations, or overall conclusions contained inthe Final Report; and

~~(b)~~(c) if applicable, the requirements of Government Code section 3304(g) are met.

A Final Report may also be re-opened for reconsideration by CLERB at the request of the Board of Supervisors or upon initiative of CLERB when such reconsideration is in the public interest.

Every party to the proceeding or their representative(s) shall be notified of any request or proposal for reconsideration and shall be given the opportunity to respond to the CLERB before the request or proposal is acted upon.

SECTION 17: PROCEDURES WHEN NO COMPLAINT IS REQUIRED

In cases not requiring a Complaint as set forth in Section 4.3 above, the review, investigation, including the Investigative Hearing procedures for such cases, and adoption of a Final Report shall otherwise proceed in the same manner, pursuant to these Rules and Regulations, as in cases initiated by a Complaint.

SECTION 18: DELEGATION OF FUNCTIONS TO EXECUTIVE OFFICER

CLERB may, in its discretion, delegate to the Executive Officer certain of the procedural and administrative functions or duties assigned to CLERB by these Rules and Regulations. CLERB shall not, however, delegate to the Executive Officer any functions, duties or responsibilities that are required by the Ordinance to be performed by CLERB.

SECTION 19: AMENDMENTS TO RULES AND REGULATIONS

These Rules and Regulations are subject to approval by the Board of Supervisors of the County of San Diego, as required by the Ordinance. Once approved, these Rules and Regulations may only be amended by a majority vote of CLERB, and any such amendments are subject to approval by the Board of Supervisors. These Rules and Regulations will be subject to review by CLERB at least every four years from the last revision date.

ORDINANCE NO. _____(N.S.)

AN ORDINANCE AMENDING SECTIONS 340, 340.9, and 340.14 OF THE SAN DIEGO COUNTY CODE OF ADMINISTRATIVE ORDINANCES PERTAINING TO THE DUTIES AND JURISDICTION OF THE CITIZENS LAW ENFORCEMENT REVIEW BOARD

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1. Section 340 is hereby amended to read in its entirety as follows:

SEC. 340. PURPOSE AND INTENT.

It is the purpose and intent of the Board of Supervisors to establish a Citizens Law Enforcement Review Board of the County of San Diego to advise the Board of Supervisors, the Sheriff and the Chief Probation Officer on matters related to the handling of ~~citizen~~ complaints which charge persons employed by the Sheriff's Department or Probation Department, or any person providing medical care or mental health services in County detention facilities ("Medical Service Providers") ~~peace officers and custodial officers employed by the County in the Sheriff's Department or the Probation Department~~ with misconduct arising out of the performance of their duties. The Citizens Law Enforcement Review Board is also established to receive and investigate specified ~~citizen~~ complaints and incidents and to investigate deaths arising out of or in connection with activities of persons employed by the Sheriff's Department or Probation Department, or Medical Service Providers~~peace officers and custodial officers employed by the County in the Sheriff's Department or the Probation Department~~. In addition, the Citizens Law Enforcement Review Board is to audit, monitor, and perform analyses of Sheriff's Department and Probation Department policies and patterns in practice and make appropriate recommendations relating to matters within its jurisdiction, report its activities, and provide data in respect to the disposition of ~~citizen~~ complaints received by the Citizens Law Enforcement Review Board. It is the purpose and intent of the Board of Supervisors in constituting the Citizens Law Enforcement Review Board that the Review Board will be advisory only and shall not have any authority to manage or operate the Sheriff's Department or the Probation Department or direct the activities of any County officers or employees in the Sheriff's Department or the Probation Department. The Review Board shall not decide policies or impose discipline against officers or employees of the County in the Sheriff's Department or the Probation Department.

Section 2. Section 340.9 is hereby amended to read in its entirety as follows:

SEC. 340.9. DUTIES AND RESPONSIBILITIES.

The Review Board shall have the authority to:

(a) Receive, review and investigate ~~citizen~~ complaints filed against persons employed by the Sheriff's Department or Probation Department, or Medical Service Providers providing medical care in County detention facilities, ~~peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department~~ which

allege: (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; or (H) misconduct. The Review Board shall have jurisdiction in respect to all ~~citizen~~ complaints arising out of incidents occurring on or after November 7, 1990~~; provided, however, that the Review Board shall not have jurisdiction to take any action in respect to complaints received more than one year after the date of the incident giving rise to the complaint, except that if the person filing the complaint was incarcerated or physically or mentally incapacitated from filing a complaint following the incident giving rise to the complaint, the time duration of such incarceration or physical or mental incapacity shall not be counted in determining whether the one year period for filing the complaint has expired~~. All ~~action~~ complaints shall be in writing and the truth thereof shall be attested under penalty of perjury. "~~Citizen c~~Complaints" shall include complaints received from any person whatsoever without regard to age, citizenship, residence, criminal record, incarceration, or any other characteristic of the complainant. "Misconduct" is defined to mean and include any alleged improper or illegal acts, omissions or decisions directly affecting the person or property of a specific ~~citizen~~ person by reason of:

(1) An alleged violation of any general, standing or special orders or guidelines of the Sheriff's Department or the Probation Department; or

(2) An alleged violation of any state or federal law; or

(3) Any act otherwise evidencing improper or unbecoming conduct by a person employed by the Sheriff's Department or Probation Department, or a Medical Service Provider providing medical care in County detention facilities~~ peace officer or custodial officer employed by the Sheriff's Department or the Probation Department~~;

For purposes of Medical Service Providers, "Misconduct" also includes a deviation from standard of care, error, or omission related to medical care or mental health services.

The Review Board shall have no authority pursuant to this subdivision to take action in regard to incidents for which no ~~citizen~~ complaint has been filed with the Review Board.

(b) Investigate the following incidents regardless of whether a ~~citizen~~ complaint regarding such incident has been filed:

(1) The death of any individual arising out of or in connection with actions persons employed by the Sheriff's Department or Probation Department, or Medical Service Providers~~of peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department~~. The Review Board shall have jurisdiction in respect to all deaths of individuals coming within the provisions of this subdivision occurring on or after November 7, 1990, including deaths determined to be due to natural causes~~; provided, however, that the Review Board may not commence review or investigation of any death of an~~

~~individual coming within the provisions of this subdivision more than one year after the date of the death, unless the review and investigation is commenced in response to a complaint filed within the time limits set forth in subdivision (a) of this section~~.

(2) Incidents involving the discharge of a firearm by peace officers or custodial officers employed by the County Sheriff's Department or the Probation Department.

(3) The use of force by ~~peace officers or custodial officers employed by~~ an employee of the County Sheriff's Department or the Probation Department resulting in great bodily injury.

(4) The use of force by ~~peace officers or custodial officers employed by~~ an employee of the County Sheriff's Department or the Probation Department at protests or other events protected by the First Amendment.

(c) Conduct audits of Sheriff's Department and Probation Department operations. An "audit" is defined to mean and include "a formal process following professional guidelines to answer specific questions regarding specific operations."

(d) Monitor Sheriff's Department and Probation Department operations. "Monitor" is defined to mean and include "direct observation, discussions with staff and the public, and review of records, in order to identify problem areas or to ensure compliance with existing laws, policies, and other imposed obligations."

(e) Perform analyses of Sheriff's Department and Probation Department policies and patterns in practice for the purpose of identifying systemic issues and trends which are not identified by investigations into complaints, deaths, and specified incidents.

(f) Annually inspect County adult detention facilities and annually file a report of such visitations together with pertinent recommendations with the Board of Supervisors.

(g) Review and make recommendations on policies and procedures of the Sheriff's Department and the Probation Departments to the Board of Supervisors, the Sheriff, and the Chief Probation Officers.

(h) Prepare reports, including at least the Sheriff or the Probation Officer as recipients, on the results of any investigations conducted by the Review Board in respect to the activities of employees or Medical Service Providers~~peace officers or custodial officers~~, including recommendations relating to the imposition of discipline, including the facts relied on in making such recommendations, and recommendations relating to any trends in regard to employees involved in ~~citizen~~ complaints. The Review Board is not established to determine criminal guilt or innocence.

(i) Prepare an annual report to the Board of Supervisors, the Chief Administrative Officer, the Sheriff and the Probation Officer summarizing the activities and recommendations of the Review Board including the tracking and identification of trends in respect to all complaints received and investigated during the reporting period and the results of all audits, monitoring activities, and analyses of policies and patterns in practice and present the annual report to the Board of Supervisors within 60 days of its adoption by the Review Board.

(j) Notify in writing any ~~citizen~~person having filed a complaint with the Review Board of the disposition of his or her complaint. The Chief Administrative Officer shall also receive appropriate notification of the disposition of ~~citizen~~ complaints. Such notifications shall be in writing and shall contain the following statement: "In accordance with Penal Code section 832.7, this notification shall not be conclusive or binding or admissible as evidence in any separate or subsequent action or proceeding brought before an arbitrator, court, or judge of California or the United States."

(k) Establish necessary rules and regulations for the conduct of its business, subject to approval of the Board of Supervisors.

Section 3. Section 340.14 is hereby amended to read in its entirety as follows:

SEC. 340.14. RECORDS.

Any personnel records, ~~citizen~~ complaints against persons employed by the Sheriff's Department or Probation Department, or Medical Service Providers providing medical care in County detention facilities ~~County personnel in the Sheriff's Department or the Probation Department~~, and information obtained from these records, which are in the possession of the Review Board or its staff, shall be confidential and shall not be disclosed to any member of the public, except in accordance with applicable law. Copies of records and complaints of the Review Board shall be made available to the Sheriff or the Probation Officer upon completion of the investigation of the Review Board unless prohibited by applicable law.

Section 4. This ordinance shall take effect and be in force thirty days after its passage, and before the expiration of fifteen days after its passage, a summary hereof shall be published once with the names of the members of this Board voting for and against it in the Daily Transcript, a newspaper of general circulation published in the County of San Diego.

APPROVED AS TO FORM AND LEGALITY
COUNTY COUNSEL

BY: Shiri Hoffman, Chief Deputy