

**CITIZENS' LAW ENFORCEMENT REVIEW BOARD**

**RULES AND REGULATIONS**

Adopted by ~~the~~ CLERB on March 9, 1992

Last Revision June 27, 2017

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**SECTION 1: MISSION AND PURPOSE**

**1.A Mission:**

~~We increase citizen~~public confidence in and accountability of peace officers employed by the ~~San Diego County law enforcement~~Sheriff's Department or the Probation Department by conducting independent, thorough, timely, and impartial reviews of ~~both citizens' Complaints of misconduct and deaths in custody~~arising out of or in connection with actions of peace officers.

**1.B Purpose:**

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

~~In order that this purpose can be achieved, the Citizens Law Enforcement Review Board, hereafter referred to as the Review Board, CLERB shall receive, review, investigate and report on citizen~~Complaints in accordance with these Rules and Regulations. These rules are to provide for the fair, impartial, independent, and prompt investigation of ~~citizen~~Complaints and deaths arising out of or in connection with actions of peace officersthat occur in custody in a manner which a) protects both the public and the Departments, Sheriff and Probation, which are involved in such Complaints, and b) enhances the relationship and mutual respect between the Departments and the public they serve.

~~The Review Board shall CLERB~~ publicizes the review process as permitted by law in a manner which encourages and gives the public confidence that they can come forward when they have a legitimate Complaint regarding the conduct of peace officers or custodial officers designated above. ~~The Review Board~~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:

- |      |  |  |
|------|--|--|
| 2.21 | "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 in the performance of <u>his or her</u> official duties or the exercise of peace officer authority.  |
| 2.42 | "Chair"                                  | The Chairperson of <del>the Citizens Law Enforcement Review Board</del> <u>CLERB</u> , or the Vice Chairperson if the Chairperson is not able to preside.  |
| 2.3  | " <del>Citizen</del> 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 sections 4.1 and 4.2 below, of a peace officer or custodial officer in the performance of <del>his or her</del> official duties or the exercise of peace officer authority. |
| 2.84 | " <del>Review Board</del> <u>CLERB</u> " | The eleven (11) members of the Citizens' Law Enforcement Review Board nominated and appointed in accordance with the provisions of the Ordinance.  |
| 2.5  | "Complainant"                            | Any individual who files a Complaint regarding the conduct of a peace officer or custodial officer in the employ of the Sheriff's Department or the Probation Department arising in the performance of <del>his or her</del> official duties or the exercise of peace officer authority and who files a Complaint with the Review Board.   |
| 2.6  | "County"                                 | County of San Diego, California  |
| 2.7  | " <u>Criminal Conduct</u> "              | <u>Conduct constituting misdemeanors or felonies under applicable law.</u>   |
| 2.98 | " <u>Investigative</u> Hearing Panel"    | A three (3) member subcommittee of <del>the Review Board</del> <u>CLERB</u> selected to conduct an <del>in</del> investigative <del>hearing</del> of a <del>citizen</del> Complaint, and make appropriate findings and recommendations to <del>the Review Board</del> <u>CLERB</u> based on the hearing.   |

2.79 "Ordinance" County Ordinance #7880, as amended, Article XVIII (commencing with Section 340) of the ~~Administrative Code of the County of San Diego~~ County Code of Administrative Ordinances adopted by the Board of Supervisors of the County of San Diego, California, which became effective on May 2, 1991.

2.10 "Preponderance of the Evidence" Evidence that has more convincing force than that opposed to it.

2.4011 "Presiding Member" The member of a three person Investigative Hearing Panel appointed by the Chair to preside at an Investigative Hearing.

2.412 "Subject Officer" The peace officer or custodial officer employed by the County of San Diego in the Sheriff's Department or the Probation Department against whom a Complaint has been filed a ~~Citizen complaint~~ alleging improper or illegal conduct as set forth in sections 4.1 and 4.2 or about whom an investigation is undertaken without the filing of a Complaint as set forth in section 4.6. Rules regarding the identification of The Subject Officer shall be identified in the Review Board CLERB's agenda, its public documents and public reports, and at any public meetings or hearings will comply with the legal standards existing at the time of the release of the documents and reports or the public meeting or hearing.

### SECTION 3: ORGANIZATION AND MEETINGS

3.1 Composition of the Review Board CLERB. ~~The Review Board CLERB~~ shall consist of eleven (11) members nominated by the Chief Administrative Officer and appointed by the Board of Supervisors. Each Review Board 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 (3) years. A member shall serve on the Review Board CLERB until a successor has been appointed. A member shall be appointed for no more than two (2) ~~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 the Review Board shall be deemed to commence on July 1, 1991.

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

3.3 Vacancies on the Review Board CLERB. A vacancy ~~shall occur~~ on the Review Board CLERB on the happening 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 the Review Board CLERB, or,
- (e) Failure to attend and satisfactorily complete the required training course within three (3) 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 forty-five (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 the Review Board CLERB shall serve without compensation, except that they shall be reimbursed for necessary expenses incurred in performing their duties in accordance with provisions of the ~~County Administrative Code~~ County Code of Administrative Ordinances.

3.5 Officers of the Review Board CLERB. The members of the Review Board CLERB shall elect annually from its membership a Chair, a Vice Chair, and a Secretary. The term of office shall be for one year for a maximum of two years or until the successor has been elected. The duties of the Officers shall be as follows:

- A. Chair: The Chair shall preside over all meetings of the Review Board 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 the Review Board CLERB and the rulings of the Review Board CLERB are faithfully executed. The Chair or his or her designee shall act as the spokesperson in all matters pertaining to the Review Board CLERB including dealings with the media.

The Chair shall sign all documents on behalf of the Review Board CLERB, with the exception of Meeting Minutes, after the same have been approved by the Review Board CLERB and shall perform such other duties and delegated responsibilities as may be imposed upon him or her by the Review Board CLERB. The Chair shall appoint all subcommittees, and, be an ex-officio, be a 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 ~~the Review Board~~ CLERB and have not selected a Chair Pro Tem, ~~the Review Board~~ 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 ~~the Review Board~~ CLERB. The Secretary or designee shall have custody of all reports, books, papers, and records of ~~the Board~~ CLERB.
- E. Secretary Pro Tem: In the absence of the Secretary, ~~the Review Board~~ CLERB may appoint a Secretary Pro Tem.

3.6 Orientation and Training. The ~~Chief Administrative Officer~~ Executive Officer is responsible for the establishment of an orientation and training program for the members of ~~the Review Board~~ CLERB. Each member of ~~the Review Board~~ 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's removal from ~~the Review Board~~ CLERB and automatically create a vacancy.

The orientation and training program includes familiarization with the following:

- (a) County Government structure and ~~the Review Board~~ CLERB operations;
- (b) County Charter, County Code of Administrative Ordinances, Brown Act, and State Law pertaining to ~~the Review Board~~ 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 citizen's-community rights; and;
- (i) Memoranda of Agreement between the County of San Diego and the Deputy Sheriff's Association or San Diego Probation Officers' Association.

3.7 Transaction of Business. ~~The Review Board~~ CLERB shall establish a regular meeting schedule and shall give public notice of the time and place of the meetings. The official address of ~~the Review Board~~ CLERB is:

Citizens' Law Enforcement Review Board  
~~1168 Union Street, Suite 400~~ 555 West Beech Street, Suite 505  
 San Diego, CA ~~92101-3819~~ 92101-2940

All regular and special meetings of ~~the Review Board~~ CLERB shall be held at the County ~~Administrative Administration~~ Center, or at any other public place as designated by the Chair.

The meetings and business of ~~the Review Board~~ 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 ~~the Review Board~~ CLERB may be included on the agenda only with the approval of the Chair; provided, however, ~~Review Board~~ 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 State and County law applicable to advisory boards.
- (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 ~~the Review Board~~ CLERB shall constitute a quorum.
- (e) The affirmative vote of the majority of the members currently appointed to ~~the Review Board~~ CLERB shall be required to carry a motion or proposal.
- (f) ~~The Review Board~~ CLERB's legal counsel will normally be present for all meetings of ~~the Review Board~~ CLERB.

- (g) In all procedures not provided for by these Rules, or the enabling Ordinance #7880, as amended, ~~the Review Board~~CLERB shall be governed by Robert's Rules of Order, Newly Revised.
- (h) ~~The Review Board~~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 ~~the Review Board~~CLERB as appropriate, however, no more than five (5) members of ~~the Review Board~~CLERB (including the Chair as an ex-officio member) shall serve on any one subcommittee.
- (j) Members and the Chair of each subcommittee shall be designated by the Chair of ~~the Review Board~~CLERB.
- (k) As noted in Section 3.3 above, a member's absence from three (3) consecutive regular meetings of ~~the Review Board~~CLERB shall result in the member's automatic removal from ~~the Review Board~~CLERB.
- (l) Normally, the order of business for ~~the Review Board~~CLERB meetings ~~shall be as follows~~may include but not be limited to ~~the following~~:
  1. Roll Call.
  2. Approval of Minutes.
  3. ~~Special order of business; announcements; communications.~~Presentation / TrainingPublic Comments.
  4. ~~Public comment.~~Executive Officer's Report Presentation/Training.
  5. ~~Executive Officer's report.~~New BusinessExecutive Officer's Report.
  6. ~~General policy items.~~Unfinished BusinessChair's Report.
  7. ~~Subcommittee reports.~~Board Member CommentsNew Business.
  8. ~~Unfinished business.~~Public CommentsUnfinished Business.
  9. ~~New business.~~Sheriff / Probation Liaison QueryBoard MemberBoard Member Comments-
  10. ~~Recess to closed session for discussion~~Discussion and consideration of Complaints and reportsSheriff/Probation Liaison Query.
  11. Recess to closed session, if appropriate.
  12. Adjourn.

3.8 ~~Special Meetings of~~ ~~the Review Board~~CLERB. Special meetings may be held at the call of the Chair, or the vice-Chair in the absence of the Chair. Upon petition of six (6) members of ~~the Review Board~~CLERB, the Chair shall call a meeting of ~~the Review Board~~CLERB within one (1) week. ~~Review Board~~CLERB members will be given at least twenty-four (24) ~~hours notice~~hours' 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 ~~Review Board~~CLERB Staff. ~~The Review Board~~CLERB shall appoint personnel in support of ~~the Review Board~~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 ~~the Review Board~~CLERB.

The Executive Officer shall recommend to ~~the Review Board~~CLERB ~~a specific candidate to the filling of any a~~ staff position for approval by ~~the Review Board~~CLERB. ~~The Review Board~~CLERB delegates its authority to the Executive Officer to 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 ~~citizen~~Complaints. The daily operations of ~~the Review Board~~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 ~~the Review Board~~CLERB.

~~The Review Board~~CLERB shall conduct an annual performance evaluation of the Executive Officer.

#### SECTION 4: AUTHORITY, JURISDICTION, DUTIES AND RESPONSIBILITIES OF ~~REVIEW BOARD~~CLERB

4.1 ~~Citizen Complaints: Authority~~. Pursuant to Ordinance #7880, as amended, (Article XVIII, Section 340-340.9 of the San Diego County ~~Administrative Code~~Code of Administrative Ordinances), ~~the Review Board~~CLERB shall 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, 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; and/or
- (h) Misconduct.

4.2 "Misconduct" Defined. "Misconduct", as referred to in section 4.1 (h) above, 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 arising out of the performance of the peace officer's or custodial officer's official duties or the exercise of peace officer authority 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 county ordinance or state or federal law; or,
- (c) Any act otherwise evidencing improper or unbecoming conduct by a peace officer or custodial officer employed by the Sheriff's Department or the Probation Department.

4.3 Citizen-Complaints: Pre-requisite Prerequisite. The Review Board/CLERB shall have no authority with respect to alleged improper activities and misconduct, as set forth in sections 4.1 and 4.2 above, to take action in regard to incidents for which no citizen-Complaint has been filed with the Review Board/CLERB.

4.4 Citizen-Complaints: Jurisdiction. The Review Board/CLERB 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, 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 period of 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 incarcerated or physically or mentally incapacitated from filing a Complaint within one year from the incident giving rise to the Complaint by submitting a written statement to the Review Board/CLERB. ~~Prior to determining whether it has jurisdiction over the Complaint, the Review Board will notify the subject officer, provide him/her with a copy of the Complaint and the Complainant's statement, and give him/her the opportunity to submit a statement limited solely to the issue of whether there was such an incarceration or physical or mental incapacity. This matter shall be scheduled for consideration by the Review Board at its regular meeting and the agenda materials distributed prior to the meeting shall include the written statements submitted by the Complainant and subject officer. Mental incapacity shall be proven by qualified medical opinion. 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 written statement submitted to the Review Board/CLERB pursuant to this section shall be attested to under penalty of perjury as provided by Section 5.5 of these rules.

4.5 Citizen-Complaints: Notification of Disposition. The Review Board/CLERB shall have authority to notify in writing any citizen-person having filed a Complaint with the Review Board/CLERB 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."

4.6 Citizen-Complaint Not Required: Jurisdiction with Respect to Actions Involving Death. The Review Board/CLERB shall have authority to review and investigate 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, arising out of the performance of his or her official duties or the exercise of peace officer authority, regardless of whether a citizen-Complaint regarding such death has been filed with the Review Board/CLERB. The Review Board/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; ~~provided however, that the Review Board, CLERB~~ may not commence review or investigation of any death of an individual coming within the provisions of this subsection 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 section 4.4.

4.7 Other Duties and Responsibilities. The Review Board/CLERB shall have authority to:

- (a) Prepare reports, including at least the Sheriff or the Chief Probation Officer as recipients, on the results of any investigations conducted by the Review Board/CLERB in respect to the activities of peace officers or custodial officers, including recommendations relating to any trends in regard to employees involved in citizen-Complaints. The Review Board/CLERB is not established to determine criminal guilt or innocence.
- (b) 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 the Review Board/CLERB including the tracking and identification of trends in respect to all Complaints received and investigated during the reporting period.
- (c) 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) Annually inspect county ~~adult~~-detention facilities and annually file a report of such visitations together with pertinent recommendations with the Board of Supervisors, the Presiding Judge of the Superior Court, the Sheriff, the Board of Corrections, and the Attorney General. Inspections shall be concerned with the conditions of inmate employment, detention, care, custody, training, and treatment on the basis of, but not limited to, the minimum standards established by the Board of Corrections.
- (e) 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, processing, and disposition of ~~citizen~~ Complaints regarding alleged illegal or improper conduct (set forth in Sections 4.1 and 4.2) by employees of the County of San Diego in the Sheriff's Department and the Probation Department:

- (a) It is the policy of ~~the Review Board~~CLERB to encourage ~~citizens~~-people who have Complaints concerning the conduct of peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department to bring the same to the attention of ~~the Review Board~~CLERB. ~~The Review Board~~CLERB will attempt to assist and accommodate Complainants regarding the Complaint filing process.
- (b) The investigation of Complaints shall be conducted in ~~a fair, impartial, objective and ethical manner~~an ethical, independent, thorough, timely, and impartial manner.
- (c) Complaints will be considered, investigated (where appropriate), and disposed of in accordance with the procedures set forth herein.
- (d) As promptly as possible, ~~citizen~~ Complaints received by ~~the Review Board~~CLERB shall be transmitted by the Executive Officer to the Sheriff or the Chief Probation Officer.
- (e) ~~The Review Board~~CLERB will make every effort to ensure that no adverse consequences will result to any person or witness as a result of having brought a Complaint or having provided information in any investigation of a Complaint.
- (f) ~~The Review Board~~CLERB will make every effort to consider and to respond to ~~citizens'~~ Complaints against peace officers or custodial officers, and, ~~where investigation is~~ investigate when necessary, ~~will conduct an impartial and fair investigation into any such Complaints in accordance with the procedures set forth herein~~.
- (g) 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 ~~his or her~~the right to lodge a Complaint. No Complaint shall be investigated, however, until a written Complaint signed under penalty of perjury by or on behalf of the person aggrieved has been received by ~~the Review Board~~CLERB or a member of its staff.
- (h) 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~~-Subject Officer, and any agency or instrumentality of the County.
- (i) To the extent possible consistent with its duties and responsibilities, ~~the Review Board~~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 Defenders-Office, so that the other public officers and ~~the Review Board~~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 ~~the Review Board~~CLERB on behalf of oneself or on behalf of another person by any interested person or group. A Complaint shall be considered received by ~~the Review Board~~CLERB at the time it is lodged. However, no Complaint will be deemed to have been filed with the Review Board unless and until all required forms have been signed and the Complaint it has been reduced to writing, and signed under the penalty of perjury by the Complainant or his/her representative, in accordance with the following procedures:

~~No complaint will be deemed to have been filed with the Review Board unless and until it has been reduced to writing, and signed by the complainant or his/her representative, in accordance with the following procedures:~~

- (a) Required forms consist of the following:
  - ~~(a)~~1. Description of Incident/Statement of Complaint, signed under penalty of perjury,
  - ~~(b)~~2. Request for Investigation of Complaint & Agreement Not to Subpoena Citizens' Law Enforcement Review Board Personnel or Records, and
  - ~~(c)~~3. Authorization to Use or Disclose Protected Health Information, if applicable.
- (~~a~~b) If the Complaint is lodged in person, ~~the Review Board~~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.

- (bc) If the Complaint is lodged by mail, the Complaint form shall be completed by ~~the Review Board~~CLERB staff on the basis of the information contained within the correspondence. ~~The Review Board~~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 ~~Review Board~~CLERB office.
- (ed) If the Complaint is lodged by telephone, ~~the Review Board~~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 Review Board~~The CLERB employee taking the Complaint shall give his or her name to the Complainant. The ~~Executive Officer~~~~Review Board~~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.
- (de) 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 (bc) or (ed) above.

5.3 Who May File Complaint. ~~Citizen~~-Complaints shall include Complaints received from any person ~~what so ever~~~~whatsoever~~ 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 4.4 of these Rules and Regulation, ~~pursuant to the provisions of Section 4.4 of these rules.~~

5.5 Complaint Form. ~~The Review Board~~CLERB shall cause all Complaints received by it to be reduced to writing on the Complaint form. Unless ~~the Review Board~~CLERB has received another writing setting forth the substance of the Complaint and signed by the Complainant, the completed form shall be furnished to the Complainant advising that the Complaint will not be deemed to have been filed with ~~the Review Board~~CLERB until and unless it is reduced to writing. The truthfulness of a written Complaint shall be attested to under penalty of perjury in the following manner, or by words of similar effect: "I hereby certify that, to the best of my knowledge, and under penalty of perjury, the statements made herein are true".

5.6 Recording of Complaints. ~~The Review Board~~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 will be in accordance with the legal standards existing at the time of the disclosure. The central register shall contain the following:

- (a) Name of the Complainant, the Aggrieved Party, and the Subject Officer,
- (b) Number of Complaint,
- (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.
- (fg) Results of ~~the Review Board~~CLERB's consideration and/or investigation, if any,
- (gh) 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 ~~Complained~~ Complaint of conduct, unless the Executive Officer or a ~~Review Board~~CLERB member recommends that the investigation continue and ~~the Review Board~~CLERB, in its discretion, concurs.

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

## SECTION 6: COOPERATION AND COORDINATION

In the discharge of its duties, ~~the Review Board~~CLERB shall receive complete and prompt cooperation from all officers and employees of the County. ~~The Review Board~~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 ~~the Review Board~~CLERB can fully and properly perform their respective duties.



Such cooperation shall include responding to written questions during the investigation, appearing at and answering questions during interviews, appearing at and answering questions during hearings, assisting with access to physical evidence, and cooperation with any other relevant investigation procedures.

~~The Review Board~~CLERB shall attempt to avoid contacting any ~~subject~~ Subject officer ~~Officer~~ at ~~his or her~~ his or her home. ~~The Review Board~~CLERB shall attempt to get the ~~subject~~ Subject officer's ~~Officer's~~ work schedule prior to scheduling an interview or investigative hearing. ~~The Review Board~~CLERB shall attempt to avoid scheduling interviews or investigative hearings on an officer's regular days off, scheduled vacation or authorized leave of absence. The Sheriff's and Probation Department representatives will act as liaison and coordinate the requested interviews.

## SECTION 7: SUBPOENAS, OATHS

~~The Review Board~~CLERB shall, pursuant to the Charter of the County of San Diego, section 606(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. CLERB subpoenas shall be issued and signed by the Executive Officer or his or her designee.

## SECTION 8: CONFIDENTIALITY OF RECORDS

Any personnel records, ~~citizen~~ Complaints against County personnel in the ~~Sheriff's~~ Sheriff's Department or the Probation Department, and information obtained from these records, which are in the possession of ~~the Review Board~~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.

Complainants may only receive copies of documents they submitted to CLERB. Any other documents must be obtained directly from the originating agencies pursuant to applicable laws.

Copies of records and Complaints of ~~the Review Board~~CLERB shall be made available only to the Sheriff or the Probation Officer upon completion of the investigation of ~~the Review Board~~CLERB unless prohibited by applicable law.

Rules regarding the identification of ~~The Subject Officer~~ shall be identified in the ~~Review Board~~CLERB's agenda, its public documents and public reports, and at any public meetings or hearings will comply with the legal standards existing at the time of the release of the documents and reports or the public meeting or hearing.

## SECTION 9: INVESTIGATION OF COMPLAINTS

9.1 Transmittal of Complaints. ~~Citizen~~ Complaints filed with ~~the Review Board~~CLERB shall be transmitted forthwith to the Sheriff or the Chief Probation Officer.

9.2 Screening of Complaints.

(a) Complaints shall be referred to the Executive Officer for investigation. Each Complaint will be initially screened by staff and classified as follows:

1. ~~1.~~ "Category I" Complaint against a peace officer or custodial officer employed by the County in the Sheriff's Department or the Probation Department or death investigation, which requires an immediate and thorough investigation. Category I cases include, but are not limited to:
  - a. Death investigations,
  - b. Cases involving perishable evidence, such as visible physical injuries, video that may be erased, and witnesses who may become unavailable, and
  - a-c. Allegations of excessive force resulting in physical injury.
2. "Category II" Complaint which does not warrant an immediate ~~and full~~ investigation, ~~and/or is appropriate for deferral.~~
3. ~~"Category III" Miscellaneous. Essentially a request for information. Complainant needs satisfied after explanation of County Sheriff's Department or Probation Department operations.~~
3. "Category III" Complaints against peace officers or custodial officers employed by the County in the Sheriff's Department or Probation Department not alleging facts establishing a prima facie showing of misconduct, not timely filed, or those considered frivolous or retaliatory. Such Complaints may be referred to CLERB for Summary Dismissal as set forth in section 15.
4. ~~"Category IV" Complaint not within the jurisdiction of the Review Board. Such Complaints will be referred to the Review Board for Summary Dismissal.~~
5. ~~"Category V" complaints not alleging facts establishing a prima facie showing of misconduct. Such complaints may be referred to the Review Board for Summary Dismissal.~~
4. "Category IV" Miscellaneous. Essentially a request for information -- Complainant needs satisfied after explanation of County Sheriff's Department or Probation Department operations.

5. "Category V" Complaint not within the jurisdiction of CLERB. Such Complaints may be referred to CLERB for Summary Dismissal.

~~(b)~~ The classification of each Complaint, as set forth in section 9.2(A) (1) (5), must be reviewed and approved by the Review Board before significant further action is taken by staff with respect to such Complaint.

~~(e)(b)~~ The Executive Officer ~~shall~~ may periodically advise ~~the Review Board~~ CLERB as to the progress and status of each Complaint.

~~(d)(c)~~ The Executive Officer ~~Review Board~~ CLERB staff may periodically advise the Complainant and the subject officer(s) as to the status of a Complaint.

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

~~(a)~~ (a) — Interviews with the Complainant, the aggrieved party, each Subject Officer, and witnesses or other persons likely to have information concerning the Complaint;

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

~~(c)~~ examination of the scene of the incident;

~~(d)~~ viewing and analyzing physical evidence, if any, associated with the alleged incident;

~~(e)~~ review, analysis, and preservation of other physical evidence including videos and photographs, if any.

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 is compelled to cooperate in an investigation, the Subject Officer shall be provided the "Lybarger warning" when required under the appropriate circumstances.

9.4 Documenting Investigative Activities ~~(b)~~ — It shall be the responsibility of the investigator to ~~record~~ document each step in the investigation and the result thereof in an investigation report which shall be made a part of the Complaint file.

9.5 Written Statements ~~(c)~~ — ~~The Review Board~~ CLERB investigators shall attempt to secure written statements signed under ~~oath~~ 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 ~~verbatim transcript or~~ 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.

9.6 Recording of Interviews ~~(d)~~ — Interviews and statements may be tape-recorded by the investigator. Such recordings shall be kept and preserved until the case is ~~finally disposed of~~ completed by ~~the Review Board~~ CLERB and its findings ~~reviewed by the Board of Supervisors or other appropriate agency or official, or for such longer period~~ distributed to any appropriate agency or official as may be required by law.

9.7 Deferment of Investigation ~~(e)~~ — ~~The general policy of the Review Board will normally be to~~ CLERB may defer its investigation of a Complaint for the period of time during which formal criminal proceedings relating to the subject matter of the Complaint are pending against the Subject Officer. ~~The Review Board~~ CLERB reserves the right to commence immediate investigations, or to defer investigations, in all other cases depending upon ~~Review Board~~ CLERB priorities and available resources.

9.48 Investigation—Investigative Report. At the conclusion of the (pre-hearing) investigation, the investigator shall complete ~~an appropriate~~ written report, ~~that setting sets~~ forth the names of the Complainant, ~~and~~ the aggrieved party, ~~and~~ the Subject Officer, in compliance with then existing law, and summarizing what investigation was conducted and what information was disclosed by the investigation, and a summary of the investigation. ~~The report shall also contain a procedural recommendation by the Executive Officer to the Review Board as to what further action should be taken by the Review Board, such as whether the Complaint is reviewed and determined without an investigative hearing, an investigative hearing before a three member Hearing Panel is appropriate, or before the full Review Board, or whether the case is appropriate for Summary Dismissal, or any other appropriate action or disposition.~~

~~The Investigative Report shall be submitted to the Chair of the Review Board who may attach his or her own recommendation and submit the entire report to the Review Board, either orally or in writing, or both.~~

9.59 Review Board ~~CLERB~~ Options After Receipt of Investigative Report. After receipt of the Investigative Report, ~~the Review Board~~ CLERB shall take whatever ~~further~~ action it deems appropriate for disposition of the allegations of the Complaint, including the following options:

~~(a)~~ Conduct an investigative hearing or hearings, pursuant to Sections 10-16; or

~~(b)(a)~~ Review and determine the Complaint based on the Investigative Report and the evidence in the investigative file, but without an ~~investigative~~ H ~~hearing~~, pursuant to Section 9.610; or

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

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

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

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

(f) ~~Conduct an Investigative Hearing or Hearings, pursuant to Sections 10-164.~~

9.106 ~~Disposition By Review Board~~CLERB without an Investigative Hearing. If ~~the Review Board~~CLERB decides to review and determine a Complaint based on the Investigative Report and investigative file evidence, but without an ~~Investigative h~~Investigative ~~H~~Hearing, ~~the Review Board~~CLERB shall apply the standard of proof set forth in Section 14.9-8 and shall follow the Final Report process set forth in Sections 16.51-16.84. If the Executive Officer recommends that ~~the Review Board~~CLERB make a determination on a Complaint without an ~~Investigative H~~Investigative ~~H~~Hearing, the Subject Officer and representative ~~and~~ Complainants shall have an opportunity to: (a) review the Investigative Report ~~in compliance with then existing law~~ and; (b) submit additional evidence prior to the determination of the Complaint by ~~the Review Board~~CLERB.

9.117 ~~File Accessibility~~. Every member of ~~the Review Board~~CLERB shall have full access to all Complaints and files maintained by ~~the Review Board~~CLERB or its staff.

9.128 ~~Notification to Parties~~. Upon completion of the Investigative Report, ~~the Chair Review Board~~CLERB staff shall provide the Complainant, aggrieved party, and each Subject Officer the following:

(a) Written notice that the Complaint will be considered by ~~the Review Board~~CLERB ~~including; and~~ an explanation of the process ~~to be utilized by the Review Board~~.

~~(b)~~ Any recommendations dealing solely with summary ~~disposition~~dismissal or procedural matters.

~~(c)~~ ~~A copy of the Investigative Report and the summary supplied to the Review Board. The content of the Investigative Report as permitted by then existing 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 can-not be so made available because its disclosure is prohibited by law.

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

~~(f)~~ ~~A summary or copy of these rules and regulations, and any other similar informational items appropriate to the individual case.~~

## SECTION 10: DETERMINING WHEN AN INVESTIGATIVE HEARING IS NECESSARY

10.1 Requests for Investigative Hearing. The Complainant, Subject Officer, Executive Officer, or a member of ~~the Review Board~~CLERB may request an ~~Investigative h~~Investigative ~~H~~Hearing (as set forth in Sections 12-14) for some or all of the allegations of a Complaint.

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

An ~~Investigative h~~Investigative ~~H~~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 which is the subject of the Complaint; 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 hHearing would advance public confidence in the Complaint 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. The scope should be determined by ~~the Review Board~~CLERB when authorizing an Investigative hHearing; and all interested parties to the Complaint shall be informed of any limitation in scope when notified of the Investigative hHearing.

## SECTION 11: NO CONTEST RESPONSE

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

## SECTION 12: INVESTIGATIVE HEARING PANELS

12.1 Composition of Investigative Hearing Panel. An Investigative Hearing Panel of ~~the Review Board~~CLERB shall normally consist of three (3) members of ~~the Review Board~~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 ~~the Review Board~~CLERB shall decide, ~~the Review Board~~CLERB will sit ~~as a Board of the Whole~~ with a minimum of six (6) ~~Board member~~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 ~~the Review Board~~ CLERB members, as appointed by the Chair using any basis (including lottery) that balances the workload among ~~Board member~~ Board Members. A ~~Review Board~~ 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 ~~Review Board~~ CLERB member is so excused, another ~~Board member~~ Board Member shall be reassigned by the Chair.
- (b) If ~~An an~~ Investigative Hearing Panel is unable to meet to convene an Investigative ~~H~~ 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 ~~H~~ Hearing due to the unavailability for any reason of the Complainant(s) or subject officer(s) or legal counsel for either, the case or cases assigned to such Investigative Hearing ~~p~~ Panel may be re-assigned to another Investigative Hearing Panel. However once an Investigative ~~H~~ 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 Board Members.

- (a) Challenge for Conflict of Interest or Bias. A ~~Board member~~ Board Member sitting on an Investigative Hearing Panel shall consider all Complaints in a fair and impartial manner. A ~~Board Member~~ Board 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 ~~Board member~~ Board Member's impartiality.
- (b) Procedure for Challenges. Within five (5) calendar days after the date on which ~~the Review Board~~ CLERB furnishes notice of An Investigative Hearing, including the names of the ~~Board Member~~ Board Members constituting that Investigative Hearing Panel, ~~either~~ any party to the Complaint may file a written challenge for cause to any ~~Board Member~~ Board 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 ~~person~~ shall contact the challenged ~~Board Member~~ Board Member as soon as possible, and if the ~~Board~~ Member agrees that the challenge is for good cause, or otherwise agrees, the Chair ~~person~~ shall ask another ~~Board Member~~ Board Member to serve. If the challenged ~~Board Member~~ Board Member does not agree that the challenge is for good cause, the Chair ~~person~~ ~~shall~~ may poll the other members of the Investigative Hearing Panel, and if both agree that the challenge is for good cause the Chair ~~person~~ shall so notify the challenged ~~Board member~~ Board Member and ask another to serve. If a challenge to a ~~Board member~~ Board Member is rejected and the member serves, the written challenge and the ~~Board member~~ Board Member written response shall be incorporated in the investigative packet as part of the record of the Complaint.

- (c) Replacement of Challenged Board Member. Any ~~Board member~~ Board 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 ~~Board member~~ Board Member.

## 12.4 Public Comments. ~~Board member~~ Board Members shall avoid public comment on pending Complaints, ~~i~~ Investigations, and Investigative ~~H~~ Hearings.

### SECTION 13: INVESTIGATIVE HEARING PROCEDURES

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

13.2 Notice Requirements. Ten (10) days notice of an ~~i~~ Investigative ~~H~~ Hearing shall be given to the Complainant, each Subject Officer, and any other person whose attendance ~~the Review Board~~ CLERB deems appropriate. The notice shall state the date, time, and place of the ~~i~~ Investigative ~~H~~ Hearing, and the names of the Investigative Hearing Panel members.

~~13.3~~ Hearings, Open or Closed to the Public. ~~The nature of All Investigative Hearings, open or closed, will be in compliance with legal standards existing at the time of the Investigative Hearing, shall be open closed to the public, to the extent permitted by law unless the Subject Officer requests an open Investigative Hearing. CLERB Staff may be present during the entirety of the any closed Investigative Hearing.~~

~~13.4~~ Authority to Compel Appearance. The authority of ~~the Review Board~~CLERB's subpoena may be used to compel the appearance of witnesses, including Subject Officers, and/or the production of documents. Subpoenas may be requested through the Chair of ~~the Review Board~~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 will conduct the ~~i~~Investigative ~~H~~Hearing subject to being overruled by a majority of the Investigative Hearing Panel. Members of the ~~Board~~Investigative Hearing Panel shall be primarily responsible for obtaining testimony. One ~~Board~~Investigative Hearing Panel member may be assigned by the Chair or Presiding Member to do the initial questioning of witnesses ~~during an Investigative Hearing convened for a~~when a Complaint is called for iInvestigative ~~H~~Hearing. Additional questions may be asked by any ~~Board~~Investigative Hearing Panel member, or by ~~a party or party's~~a Subject Officer or theiris or her representative, or by an assigned CLERB staff members.
- (b) At the discretion of ~~the Review Board~~CLERB, opening statement(s) may be made on behalf of the Complainant and the Subject Officer(s) involved.
- (c) The ~~investigative~~Investigative hearingHearing will generally then proceed as follows: The Complaint will be presented, and witnesses, if any will be introduced. The ~~Board~~Investigative Hearing Panel may assign a CLERB staff member or counsel to assist in the presentation of a Complaint where such assistance appears necessary to facilitate a fair and orderly hearing of the Complaint. The Subject Officer may then respond to the Complaint, and introduce witnesses, if any. Each person testifying, and each party to the Complaint, may be questioned by the Board and by the parties or their attorneys. In the event that the Subject Officer is compelled to cooperate in an ~~investigative~~Investigative hearingHearing, the Subject Officer shall be provided the "Lybarger warning" when required under the appropriate circumstances. After the ~~Board~~Investigative Hearing Panel has taken all relevant evidence, each party may, ~~in at~~ the discretion of the Presiding Member, be given an opportunity to make a closing statement.
- (d) At the conclusion of any witness' testimony, either the Complainant or the Subject Officer ~~involved~~may request that the Investigative Hearing Panel cover any additional areas of inquiry they feel need to be covered. The Presiding Member shall determine whether any further questions will be asked.
- (e) Unless otherwise ordered by the Chair or Presiding Member, the entire ~~i~~Investigative ~~H~~Hearing on a given Complaint should be conducted on one occasion. However, if the Investigative Hearing Panel determines that additional evidence is necessary to reach its findings, it will continue the ~~i~~Investigative ~~H~~Hearing to a future date unless the parties agree to allow the Investigative Hearing Panel to receive such material in writing without reconvening.

~~13.6~~ Deliberation. After obtaining evidence, the Investigative Hearing Panel will deliberate in closed session. ~~The~~ Investigative Hearing Panel shall not consider any information not received as part of the ~~investigative~~Investigative hearingHearing. 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 deliberate in closed session and, by majority vote, adopt a recommended Finding with respect to the Complaint. ~~The Investigative Hearing Panel shall not obtain or consider personnel records, including internal affairs reports, or information obtained from personnel records in connection with an i~~Investigative ~~H~~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 employing department brought to its attention by the Subject Officer 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 in compliance with then existing law to each Complainant and Subject Officer, together with a notice of the time and place of the CLERB meeting at which the Complaint will be considered. All Complainants and Subject Officers shall be notified that CLERB may accept written objections to the Investigative Hearing Panel report within ten (10) days of the date of 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.

16.4 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.

14.8-13.11 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 requesting a transcript, in compliance with then existing law. Any record of the Investigative Hearing shall become part of the case file.

## SECTION 14: EVIDENCE

14.1 What Evidence May be Considered. The ~~i~~Investigative ~~h~~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 which 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) ~~(a)~~ — Each party ~~and The Review Board~~ Investigative Hearing Panel and the Subject Officer shall have ~~these the~~ 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 does not testify in his/her own behalf he/she may be called and examined as if under cross-examination.

- (b) Oral evidence shall be taken only under oath or affirmation.
- (c) Upon the request of either party or ~~a the Investigative Hearing Panel Board member~~ Board Member the Review Board and the Subject Officer, witnesses may be excluded from the Investigative hHearing until they are called to testify.
- (d) Irrelevant and unduly repetitious evidence shall be excluded.
- (e) The rules ~~of privilege governing privileged communications~~ shall be effective to the extent that they are otherwise required by constitution or statute to be recognized at hearings before the Review Board Investigative Hearing Panel.

14.2 Representatives. ~~The Complainant, aggrieved party, Subject Officer, 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 ~~i~~Investigative ~~h~~Hearings conducted by or on behalf of ~~the Review Board~~ 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 (7) 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 ~~Review Board~~ CLERB subpoena may be used to compel the production of documents and/or the appearance of witnesses, including the Subject Officer.

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

14.6 Confidentiality of Review Board CLERB Records. ~~The Review Board~~ 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 ~~a Review Board~~ CLERB's investigative file may be disclosed to the Complainant and the Subject Officer, but only to the extent and in the manner authorized by these Rules and Regulations and by then existing law.

14.7 Discovery.

- (a) ~~By the Review Board~~CLERB. ~~The Review Board~~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, ~~the Complainant and~~ each Subject Officer may have access to or receive copies of evidence contained in ~~the Review Board~~CLERB's investigative file for the Complaint, except for any evidence that ~~can not~~cannot be ~~so~~ made available because its disclosure is prohibited by law. Parties seeking such discovery must give at least forty eight (48) hours advance notice to the Review Board, either in writing or by telephone.

~~14.8 Record of Investigative Hearing. All hearings shall be tape recorded by the Review Board. At the option of the Chair, 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 requesting a transcript. Any record of the investigative hearing shall become part of the case file.~~

~~14.9~~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 hearingHearing(s) or otherwise contained in the investigative record.

#### SECTION 15: SUMMARY DISMISSAL

After reviewing the Investigative Report and records, ~~the Review Board~~CLERB may summarily dismiss a Complaint by majority vote, upon recommendation of the Executive Officer, its own motion, or that of the Subject Officer. Parties to the Complaint shall be notified of a proposed summary dismissal, and may appear to argue for or against ~~s~~Summary ~~d~~DispositionDismissal. Summary ~~d~~Dismissal will be appropriate in the following circumstances:

- (a) ~~The Review Board~~CLERB does not have jurisdiction over the subject matter of the Complaint.
- (b) ~~The Review Board~~CLERB does not have jurisdiction because the Complaint was not timely filed.
- (c) ~~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) ~~The Subject Officer is no longer with the Sheriff or Probation Departments and therefore no longer subject to discipline.~~
- (e) ~~The Complaint is so clearly without merit that no reasonable person could sustain a finding based on the facts.~~
- ~~(d)~~(f) ~~If the Complaint investigation is not completed within one year, not including applicable tolling exemptions, Staff will~~shall submit the case to ~~the Review Board~~CLERB for closure.

#### SECTION 16: REVIEW BOARD FINDINGS AND RECOMMENDATIONS

~~16.1 Finding and Report by Three Member Hearing Panel. At the conclusion of an investigative hearing before a Hearing Panel, the Panel members shall deliberate in closed session and, by majority vote, adopt a recommended finding with respect to the Complaint. The 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 Review Board in its consideration of the case. The Panel shall take into account any rule, regulation, or policy of the subject officer's employing department brought to its attention by the subject officer or representative that the Panel determines to be pertinent to the Complaint being investigated.~~

~~16.2 Submission to full Review Board. The written Panel report referred to in Section 16.1 shall be forwarded to all members of the Review Board, and the matter placed on the next scheduled regular or special meeting of the Review Board.~~

A copy of the written Panel report referred to in section 16.1, above, shall be forwarded to each Complainant and Subject Officer, together with a notice of the time and place of the Review Board meeting at which the Complaint will be considered. All Complainants and Subject Officers shall be notified that the Review Board may accept written objections to the panel report within ten (10) days of the date of the report.

~~16.3 Consideration by full Review Board. The Review Board shall consider the report of the Hearing Panel and any other information that may be brought to its attention at the meeting. Thereafter, the Review Board may:~~

- (a) ~~Vote to conclude the matter without further investigation, review, or hearings;~~
- (b) ~~Request further information or review by staff, by the Hearing Panel, or through other appropriate means~~
- (c) ~~Vote to conduct further proceedings on the matter before the entire Review Board;~~
- (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 governmental agencies, or other appropriate action.~~
- (e) ~~Accept the Panel report as the Final Report of the Review Board.~~

~~16.4 Investigative Hearings before entire Review Board. In cases that are initially heard before the entire Review Board, the interim steps required when a case is heard before a three member Hearing Panel are inapplicable.~~

16.51 Final Report by Review Board/CLERB. At the conclusion of a matter before the entire Review Board/CLERB, ~~the Board/CLERB~~ shall deliberate and, by majority vote, shall adopt ~~and prepare~~ a final report with respect to the Complaint or matter under consideration. This report shall include ~~findings~~ as to the facts relating to any Complaint, as well as an overall conclusion as to any Complaint as specified in Section 16.62 below.

Dissenting CLERB members may set forth reasons for their dissent in writing and any such dissent(s) shall be included in the final report.

16.62 Conclusions in Final Report. The Final Report of ~~the Review Board/CLERB~~ shall contain an overall ~~finding~~ as to each allegation of the Complaint in the following manner:

- (a) If the investigation ~~shows the alleged act did not occur~~ clearly established that the allegation is not true, the ~~finding~~ shall be "Unfounded".
- (b) If the investigation ~~fails/failed to support the allegations but the allegations cannot be shown as false~~ 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~~ clearly established that the actions of the personnel that formed the basis of the complaint are not a violation of law or agency policy, the ~~finding~~ shall be "Action Justified/Exonerated".
- (d) If the investigation ~~supports the allegations and the action is not justified~~ disclosed sufficient evidence to prove the truth of allegation by a preponderance of evidence, the ~~finding~~ shall be "Sustained".
- (e) If the Review Board/CLERB lacks jurisdiction or the allegation clearly lacks merit, the finding shall be "Summary Dismissal".

A ~~finding~~ of "Sustained" should include:

- (a) ~~\_\_\_\_\_~~ -an explanation of the ~~finding~~ of improper conduct;
- (b) and may include recommendations relating to the imposition of discipline, including the facts relied on in making such recommendations;
- (~~a~~)(c) and may include recommendations relating to any trends in regard to employees involved in ~~citizen~~ Complaints; ~~and/or recommendations for remedial changes in policies or practices where appropriate.~~

~~16.716.3~~ Consideration of Subject Officer's Disciplinary History. Only after a finding of "Sustained" with respect to an allegation of improper or illegal conduct by a Subject Officer, should ~~the Review Board/CLERB~~ consider the Subject Officer's disciplinary history in determining the appropriate recommendation for discipline. The details of the Subject Officer's disciplinary history will be held confidential by ~~the Review Board/CLERB~~ and will not be made a part of the Final Report. The Review Board/CLERB may also consider its own investigative findings when investigating new cases of similar (reported) misconduct, or in the rare case where the Review Board/CLERB recommends disciplinary action for very serious misconduct.

~~16.8416.4~~ Transmittal of Final Report. The final report adopted by ~~the Review Board/CLERB~~ shall be immediately forwarded to the Board of Supervisors, the Sheriff or Chief Probation Officer, the Complainant, and each Subject Officer, as permitted by then existing law.

~~16.916.5~~ Reconsideration of Final Report. Upon request by the Complainant, Subject Officer, or ~~their-his/her~~ representatives, the Final Report may be re-opened for reconsideration by ~~the Review Board/CLERB~~ provided that:

- (a) previously unknown relevant evidence is discovered which was not available to ~~the Review Board/CLERB~~ before it issued its Final Report, and;
- (b) there is a reasonable likelihood the new evidence (b) will alter the ~~findings~~ and recommendations contained in the Final Report.

A Final Report may also be re-opened for reconsideration by ~~the Review Board/CLERB~~ at the request of the Board of Supervisors or upon initiative of ~~the Review Board/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 ~~Review Board/CLERB~~ before the request or proposal is acted upon.

~~16.10616.6~~ Appeals to the Civil Service Commission. A Subject Officer may appeal a "Sustained" Finding to the Civil Service Commission in accordance with Civil Service Commission Rule XV – Appeal of CLERB "Sustained" Findings.

16.7 Policy and Procedure Recommendations. CLERB may recommend remedial changes in policies or procedures to the Sheriff's Department and/or Probation Department where appropriate.

## SECTION 17: PROCEDURES WHEN NO ~~CITIZEN~~ COMPLAINT IS REQUIRED

In cases involving death arising out of or in connection with activities of peace officers or custodial officers employed by the County, and in such other matters where ~~the Review Board/CLERB~~ is authorized to act pursuant to Ordinance #7880, as amended (Article XVIII, Sections 340.9(c)-(h) of the San Diego County ~~Administrative Code/Code of Administrative Ordinances~~), ~~the Review Board/CLERB~~ has the authority to review and investigate regardless of whether a ~~citizen~~ Complaint has been filed.



In such cases,

- (a) ~~The Review Board will undertake such review and investigation when a Board member requests the action and a majority of the Review Board then votes to initiate the review and investigation.~~
- (b) The review and investigation, including the ~~i~~Investigative ~~h~~Hearing procedures for such cases, shall otherwise proceed in the same manner, pursuant to these ~~rules~~Rules ~~and regulations~~Regulations, and in cases initiated by a ~~citizen~~Complaint.

#### SECTION 18: DELEGATION OF FUNCTIONS TO EXECUTIVE OFFICER

~~The Review Board~~CLERB may, in its discretion, ~~from time to time~~ delegate to the Executive Officer certain of the procedural and administrative functions or duties assigned to ~~the Review Board~~CLERB by these Rules and Regulations. ~~The Review Board~~CLERB shall not, however, delegate to the Executive Officer any functions, duties or responsibilities ~~which that~~ are required by the Ordinance to be performed by ~~the Review Board~~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 ~~the Review Board~~CLERB, and any such amendments are subject to approval by the Board of Supervisors. These Rules and Regulations are subject to review at least every four (4) years from the last revision date.