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# County of San Diego

## CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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### REGULAR MEETING AGENDA

### TUESDAY, OCTOBER 11, 2016, 5:30 P.M.

### San Diego County Administration Center

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

(Free parking is available in the underground parking garage, on the south side of Ash Street, in the 3-hour public parking spaces.)

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

#### DISABLED ACCESS TO MEETING

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

#### WRITINGS DISTRIBUTED TO THE BOARD

Pursuant to Government Code 54957.5, written materials distributed to CLERB in connection with this agenda less than 72 hours before the meeting will be available to the public at the CLERB office located at 555 W Beech Street, Ste. 505, San Diego, CA.

#### 1. ROLL CALL

#### 2. MINUTES APPROVAL

- a) Minutes of the September 2016 Regular Meeting (*Attachment A*)

#### 3. PRESENTATION / TRAINING

- a) N/A

#### 4. EXECUTIVE OFFICER'S REPORT

- a) Workload Report - Open Complaints/Investigations Report (*Attachment B*)

#### 5. NEW BUSINESS

- a) N/A

## 6. UNFINISHED BUSINESS

a) Executive Officer pending items:

- 2015 Annual Report
- Rules & Regulations updates
- Review Board questions from the May 10, 2016 meeting:
  - Timeline for employee discipline associated with CLERB Death case investigations;
  - Departmental responses to Sustained findings - assurance that appropriate disciplinary action was taken. e.g. date discipline was imposed;
  - If an employee does not cooperate with the agreed upon CLERB process e.g. SERF response, what, if any, disciplinary action(s) will be taken by the department;

## 7. BOARD MEMBER COMMENTS

## 8. PUBLIC COMMENTS

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

## 9. SHERIFF / PROBATION LIAISON QUERY

## 10. CLOSED SESSION

a) **Discussion & Consideration of Complaints & Reports:** Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session). Notice pursuant to Government Code Section 54957 for deliberations regarding consideration of subject officer discipline recommendation (if applicable).

- 15-051 / Andrade (Sustained – Deputy 1 x2)
- 15-053 / McElrath (Sustained – Deputy 1 x2)
- 15-067 / Sobel (Deputy 3)

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

## CASES FOR SUMMARY HEARING (7)

### ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE

#### 15-054

1. Misconduct/Intimidation – Deputy 1 allegedly threatened the complainant with arrest if he had to return to the complainant’s residence again.

Recommended Finding: Action Justified

Rationale: The complainant said that Deputy 1 told her that if he was called to her residence again, he was going to arrest her. On 5/26, Deputy 1 was dispatched to investigate a violation of PC§ 415, Disturbing the Peace. The reporting party lived on the same property as the complainant, and reported that complainant threatened him, and had put a threatening note under his door. Prior to this call for service, deputies had been called to the complainant’s address for at least 16 calls for service preceding the 5/26 incident, including reports of an explosion, shots fired, a suspicious person, a reported stolen vehicle, multiple restraining order violations, and multiple disturbances. Deputy 1 contacted both parties, and was told by the reporting party additional evidence would be provided to support his claim. Pending receipt of the additional evidence, and prior to departing the property, Deputy 1 told the complainant that once he had the additional evidence to support an arrest, he would return and take her into custody. The statement was reasonable based on the circumstances, and was not a violation of department policies or procedures.

2. False Arrest – Deputy 1 allegedly arrested the complainant without probable cause.

Recommended Finding: Action Justified

Rationale: The complainant stated that she had gone to the Sheriff’s Station to file a complaint against Deputy 1, and was arrested without probable cause. On 5/31, after another call for service, Deputy 1 consulted with a station detective, and it was determined that there was enough probable cause to arrest the complainant. Deputies drove to the complainant’s address and attempted to make an arrest but the complainant did not answer the door. On 6/1, the complainant and her minor daughter went to the Sheriff’s Station to file a complaint against Deputy 1. While at the Sheriff’s Station, the complainant was contacted by Deputy 1 and arrested for violation of PC§ 166(a)(4), Criminal Contempt: In Presence of Court (violation of a Temporary Restraining Order), and PC§ 664/459, Attempted Burglary. The evidence showed that the arrest did occur, but was lawful, justified and proper.

3. Illegal Search – Deputy 1 allegedly conducted an illegal search of the complainant.

Recommended Finding: Action Justified

Rationale: The complainant stated that Deputy 1 requested a female deputy to search the complainant, but then he searched her anyway. Sheriff’s Department Policies and Procedures require that arrestees be searched prior to transporting them to jail facilities in order to prevent contraband from entering into the jails. Deputy 1 reported that he did call for a female deputy to perform a more thorough search of the complainant, and prior to her arrival conducted a pat search of the complainant. Deputy 1 stated that while conducting the pat search, he used the back of his right hand across the complainant’s front and rear waist line. The method of the search as described was in compliance with acceptable procedures for males searching females.

4. Misconduct/Procedure – Deputy 1 allegedly placed the complainant’s property items into safe keeping, rather than turning them in with her personal property at the jail.

Recommended Finding: Not Sustained

Rationale: The complainant said she told Deputy 1 that she needed her car keys, debit card and ID after she was released, but believed she may have been confused about the difference between personal property and property held for safekeeping. The complainant had in her possession a computer and a computer bag, which were

entered into safekeeping at the patrol station, because they were too large to be included with jail property. The Safekeeping Property Notification and Property Release Form, signed by Deputy 1 and the complainant, itemized the contents as: computer, computer bag, misc. items, paperwork and charging cords. Deputy 1 stated that he believed the complainant's car keys, identification, and debit card were placed in the complainant's sealed personal property bag at the jail; however, the complainant's Booking Intake/Personal Property Inventory did not include an inventory of items submitted in the sealed bag. Upon her release from jail the complainant signed for her jail property, and then went to the patrol station to retrieve her property from safekeeping. The Night Shift Patrol Sergeant did not release the complainant's property, and advised that the complainant would need to return during normal business hours to retrieve the property. The Patrol Sergeant reported she attempted to assist the complainant retrieve medications alleged to have been with the property, but the one medicine bottle in the property was empty. Without further information about the complainant's understanding of the difference between Safekeeping Property and Personal Property, and more detailed listings of the property contents, there was insufficient evidence to prove or disprove the allegation.

5. Misconduct/Intimidation – Deputy 1 allegedly questioned and intimidated the complainant's minor child.

Recommended Finding: Not Sustained

Rationale: The complainant said that Deputy 1 attempted to question her minor child, and intimidated her by saying the complainant had been arrested for breaking into a residence and threatening the resident. Deputy 1 reported that he did not believe he talked with the complainant's minor child, other than to explain what had occurred during the complainant's arrest. There were no audio recordings or independent witnesses to this allegation, and the complainant's minor child was not made available for interview. There was insufficient evidence to prove or disprove the incident.

6. Misconduct/Procedure – Deputy 2 allegedly tried to dissuade the complainant from filing a complaint.

Recommended Finding: Not Sustained

Rationale: The complainant stated that she believed Deputy 2 tried to discourage her from filing a complaint, and minimized her comments. Deputy 2 reported that he was called to the front lobby because the complainant wanted to speak with a supervisor. Deputy 2 further reported that the complainant did not request to file a complaint; rather her intention was to have Deputy 2 discuss the matter with Deputy 1. There is dispute as to whether the complainant requested to file a complaint, or only wanted to discuss the matter with Deputy 2. There were no audio recordings or independent witnesses that observed the conversation; therefore, there was insufficient evidence to prove or disprove the allegation.

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## 15-088

1. Misconduct / Procedure – Deputy 3 allegedly would not remove the complainant from the list of those inmates required to wear Day Room Chains.

Recommended Finding: Summary Dismissal

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

2. Misconduct / Procedure – Deputies 1 and 2 allegedly failed to respond to the complainant's emergency medical needs.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

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## 15-090

1. Misconduct/Procedure – Deputy 1 allegedly placed his hands on the complainant inappropriately.

### Recommended Finding: Not Sustained

Rationale: The complainant stated that he was holding his cell phone up to record the contact, when Deputy 1 asked if he could put the phone down and then pushed down on the complainant's hand holding the camera. Deputies had concluded a probation compliance check, when the complainant was seen recording the deputies' activity, and directing comments toward the team. As deputies passed the complainant sitting in his vehicle, it was noted that the vehicle did not display a front license plate. When asked about the vehicle registration status, the complainant responded, "I'm not answering any questions," and then refused to answer questions about the vehicle's registration status or its owner. Deputy 1 reported that he told the complainant to put the camera down, but denied making any physical contact with the complainant's camera or his person. Video evidence showed Deputy 1 move his hand in an up-down motion near the camera, and he was heard asking the complainant to lower the camera so his face could be seen; the complainant was heard saying, "Don't touch my camera." The complainant provided seven 1-minute video segments of the contact, but there were gaps in the recorded activity. While the video evidence did not show any physical contact between Deputy 1 and the complainant, it cannot be confirmed that the video provided was complete from the outset of the contact. Therefore, there was insufficient evidence to prove or disprove the allegation.

2. Misconduct/Procedure – Deputy 2 allegedly issued the complainant a citation for an equipment violation without cause.

### Recommended Finding: Action Justified

Rationale: The complainant stated Deputy 2 issued him a citation for an equipment violation without reason. The complainant said that he was not driving the vehicle, and therefore, there was no traffic violation. Deputies noted that the complainant's vehicle did not have a front license plate affixed to the vehicle. Deputies further explained that since the vehicle was on a roadway, the vehicle was subject to the California Vehicle Code and could be cited for an equipment violation. Deputy 2 issued a citation for an equipment violation per California Vehicle Code § 5200, Display of License Plates. The evidence showed the alleged act did occur, but was lawful, justified and proper.

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## 15-097

1. Excessive Force – Deputies 1 and 2 allegedly assaulted the aggrieved by stepping on his feet.

### Recommended Finding: Summary Dismissal

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

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## 15-100

1. Excessive Force – Deputies 4, 7, 10, 11, and 13-16 allegedly hit the complainant from behind, knocking him unconscious, tased him multiple times, and beat him while he was on the ground.

### Recommended Finding: Summary Dismissal

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

within one year, therefore the Review Board lacks jurisdiction.

2. Excessive Force/Taser – Deputy 14 allegedly tased the complainant repeatedly and without cause.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Excessive Force – During a second courtroom appearance, Deputies 1-3, 5, 6, 8, 9, 12, and 16 allegedly “slammed” the complainant to the ground and beat him.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Excessive Force/Taser – Deputy 3 allegedly tased the handcuffed complainant

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

5. Misconduct/Procedure – Deputy 6 allegedly refused to provide the injured complainant with medical assistance.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

6. Misconduct/Medical – The injured complainant was not provided appropriate medical care following use of force.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

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### **15-114**

1. Misconduct/Procedure – Deputy 1 and the complainant were allegedly injured when a cell door closed on them.

Recommended Finding: Summary Dismissal

Rationale: The complainant failed to identify the involved member upon submittal of his signed complaint and was unavailable for clarification upon receipt of departmental evidence. He left local custody on an unknown date and was not found to be in state custody. Correspondence was sent to an out-of-custody address which was not returned, but went unanswered. The complainant’s current whereabouts are unknown and the evidence as known, indicated this accidental incident would be better handled by the County Claims division.

2. Misconduct/Medical - The complainant requested assistance from medical staff for weight gain, but allegedly did not receive adequate treatment, attention or medication.

Recommended Finding: Summary Dismissal

Rationale: CLERB Rule 4.1 Citizen Complaints: Authority. Pursuant to Ordinance #7880, as amended, (Article XVIII, Section 340 340.9 of the San Diego County Administrative Code), the Review Board shall have authority to receive, review, investigate and report on citizen complaints filed against peace officers or custodial officers employed by the County.

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### **16-026**

1. Excessive Force – Deputy 2 allegedly directed Deputy 1 to use excessive force on the complainant for no reason.

Recommended Finding: Action Justified

Rationale: The complainant stated that Deputy 2 told him that he was being transferred to another facility, and that he needed to “cuff up,” to which, the complainant responded he needed to pack his property. Without notice, the tactical team entered his cell, hit him with a “shock shield” and took him to the ground. Deputy 2 reported that the High Risk, Level 6 Maximum security complainant was scheduled for transfer to another facility, and he told the complainant that he needed to back up to the food flap and be handcuffed. The complainant did not comply with orders, so Deputy 2 gave the complainant two verbal orders to comply. When the complainant failed to comply, Deputy 2 directed the tactical team to extract the complainant from his cell. Deputy 1 was assigned the Immobilization Control Electronics (I.C.E.) Shield and was the first to enter the complainant’s cell. Deputy 1 made contact with the complainant and activated the shield for approximately 2-3 seconds, causing the complainant to fall to the floor. The remaining tactical team members entered, placed the complainant in handcuffs and leg restraints without need for additional use of force, and removed him from his cell. Video evidence showed that the complainant failed to comply with Deputy 2’s orders to turn around and back up to the door, resulting in the need to forcefully extract him from his cell. Deputies used reasonable and necessary force to extract the complainant from his cell to transfer him to another facility; and these actions were carried out in accordance with Detentions policies and procedures.

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*End of Report*