

**CITIZENS' LAW ENFORCEMENT REVIEW BOARD**

**RULES AND REGULATIONS**

**Adopted by CLERB on March 9, 1992**

**Last Revision June 27, 2017**

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DRAFT EDIT

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**SECTION 1: MISSION AND PURPOSE**

**1.1 Mission:**

CLERB's mission is to increase public confidence in and accountability of peace officers employed by the Sheriff's Department or the Probation Department by conducting independent, thorough, timely, and impartial reviews of Complaints of misconduct and deaths arising out of or in connection with actions of peace officers.

**1.2 Purpose:**

The purpose of these Rules and Regulations is to facilitate the operation of the Citizens' Law Enforcement Review Board (hereinafter referred to as CLERB), including the review of Complaints filed against peace officers or custodial officers employed by 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 San Diego County Code of Administrative Ordinances -). 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.

CLERB shall receive, review, investigate and report on Complaints in accordance with these Rules and Regulations. These rules are to provide for the independent, thorough, timely, and impartial investigation of Complaints and deaths of individuals arising out of or in connection with actions of peace officers and custodial officers employed by the Sheriff's Department or the Probation Department 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.

CLERB shall publicize the review process to the extent 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. CLERB shall also make every effort to ensure public awareness of the seriousness of the process, and that fabricated Complaints will neither be tolerated nor reviewed. The statutory and constitutional rights of all parties shall be safeguarded during the review process.

**SECTION 2: DEFINITIONS**

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

- 2.1 "Aggrieved Person" Any person who appears from a Complaint to have suffered injury, harm, humiliation, indignity, or any other damage as a result of actions by a peace officer or custodial officer in the performance of official duties or the exercise of peace officer authority.
- 2.2 "Case" A Complaint or a death investigation.
- 2.3 "Chair" The Chairperson of CLERB or the Vice Chairperson if the Chairperson is not able to preside.
- 2.4 "CLERB" The 11 member Citizens' Law Enforcement Review Board nominated and appointed in accordance with the provisions of the Ordinance.
- 2.5 "Complainant" Any person 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 official duties or the exercise of peace officer or custodial officer authority and who files a Complaint with the Review Board.

- 2.6 "Complaint" A complaint received from any person without regard to age, citizenship, residence, criminal record, incarceration, or any other characteristic of the Complainant alleging an improper act or misconduct, as further defined in Section 4.1 of a peace officer or custodial officer in the performance of official duties or the exercise of peace officer authority.
- 2.7 "County" County of San Diego, California
- 2.8 "Criminal Conduct" Conduct punishable under any applicable criminal law.
- 2.9 "Filed" The status of a Complaint signed under penalty of perjury.
- 2.10 "Investigative Hearing Panel" A three (3) member subcommittee of CLERB selected to conduct an Investigative Hearing of a Complaint, and make appropriate findings and recommendations to CLERB based on the hearing.
- 2.11 "Lodged" The status of a Complaint not signed under penalty of perjury.
- 2.12 "Ordinance" County Ordinance #7880, as amended, Article XVIII (commencing with Section 340) of the San Diego County Code of Administrative Ordinances adopted by the Board of Supervisors of the County of San Diego, California, which became effective on May 2, 1991.
- 2.13 "Preponderance of the Evidence" Evidence that has more convincing force than that opposed to it.
- 2.14 "Presiding Member" The member of a three person Investigative Hearing Panel appointed by the Chair to preside at an Investigative Hearing.
- 2.15 "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 alleging improper or illegal conduct as set forth in Section 4.1 or about whom an investigation is undertaken without the filing of a Complaint as set forth in Section 4.6.

### SECTION 3: ORGANIZATION AND MEETINGS

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

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

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

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

- (a) Death of the incumbent,

- (b) Resignation of the incumbent,
- (c) Ceasing of the incumbent to be a resident of the County of San Diego,
- (d) Absence of the member from three consecutive regular meetings of CLERB, or,
- (e) Failure to attend and satisfactorily complete the required training course as defined in Section 3.6 within three months of the beginning of a member's term or of the member's appointment to fill a vacancy.

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

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

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

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

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

- (b) Vice-Chair: In the absence of the Chair, the Vice-Chair shall perform all the duties of the Chair with the same force and effect as if performed by the Chair.
- (c) Chair Pro Tem: If both Chairs are absent at any meeting of CLERB and have not selected a Chair Pro Tem, CLERB shall select a Chair Pro Tem who shall perform all the duties of the Chair.
- (d) Secretary: The Secretary or designee shall keep a true and correct record of all proceedings of CLERB. The Secretary or designee shall have custody of all reports, books, papers, and records of CLERB. The Secretary or designee keeps the roll, certifies the presence of a quorum, and maintains a list of all active members.
- (e) Secretary Pro Tem: In the absence of the Secretary, CLERB may appoint a Secretary Pro Tem.

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

The orientation and training program includes familiarization with the following:

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

- (c) State Law relating to Peace Officers' rights and privacy;
- (d) Operations of the Sheriff's Department and the Probation Department;
- (e) Disciplinary process for Deputy Sheriffs and Probation Officers;
- (f) Sheriff and Probation Departments' training programs;
- (g) Community perspective on Law Enforcement;
- (h) Constitutional and civil rights law relating to police misconduct and community rights; 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. CLERB shall establish a regular meeting schedule and shall give public notice of the time and place of the meetings. The address of CLERB shall be posted on CLERB's official website:

<https://www.sandiegocounty.gov/clerb.html>

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

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

- (a) The agenda for each meeting will normally be provided to all members in time to be received at least one week prior to the regularly scheduled meeting. Items for the agenda for any regular meeting of ~~the~~ CLERB may be included on the agenda only with the approval of the Chair; provided, however, CLERB members may file an item for the agenda for a regular meeting directly with the Executive Officer.
- (b) The agenda for each meeting will be posted, distributed, and otherwise made public in accordance with the requirements of Ralph M. Brown Act, Section 54950 et seq., of the California Government Code.
- (c) All meetings shall be held in accordance with the requirements of the Ralph M. Brown Act, Section 54950 et seq., of the California Government Code.
- (d) A majority of members currently appointed to CLERB shall constitute a quorum.
- (e) The affirmative vote of the majority of the members currently appointed to CLERB shall be required to carry a motion or proposal.
- (f) CLERB's legal counsel will normally be present for all meetings of CLERB.
- (g) In all procedures not provided for by these Rules and Regulations, or the Ordinance, CLERB shall be governed by Robert's Rules of Order, Newly Revised.
- (h) CLERB shall keep written minutes of all meetings and a copy shall be filed with the Clerk of the Board of Supervisors.
- (i) Subcommittees may be established by CLERB as appropriate; however, no subcommittee shall consist of a quorum of CLERB.
- (j) Members and the chairperson of each subcommittee shall be designated by the Chair of CLERB.
- (k) As noted in Section 3.3 above, a member's absence from three consecutive regular meetings of CLERB shall result in the member's automatic removal from CLERB.

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

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

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

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

The Executive Officer shall recommend for approval by CLERB a specific candidate to fill a staff position. 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 Complaints. The daily operations of CLERB, including the conduct of investigations, shall be managed by the Executive Officer who shall oversee the regular functioning of the staff assigned to help carry out the duties of CLERB.

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

3.10 Public Comments. CLERB members shall avoid publicly commenting on pending Complaints, Investigations, and Investigative Hearings.

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

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

- (a) Use of excessive force;
- (b) Discrimination or sexual harassment in respect to members of the public;
- (c) The improper discharge of firearms;
- (d) Illegal search or seizure;
- (e) False arrest;
- (f) False reporting;

- (g) Criminal conduct; and/or
- (h) Misconduct.

4.1.1 Complaints: Prerequisite. Except as provided in Section 4.6 below, CLERB shall have no authority with respect to alleged activities as set forth in Sections 4.1 above to take action in regard to incidents for which no Complaint has been filed with CLERB.

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

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

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

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

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

- (a) An alleged violation of any general, standing, or special orders or guidelines of the Sheriff's Department or the Probation Department; or,
- (b) An alleged violation of any state or federal law; or,
- (c) Any act otherwise evidencing improper or unbecoming conduct by a peace officer or custodial officer employed by the Sheriff's Department or the Probation Department.

4.3 Complaint Not Required: Jurisdiction with Respect to Actions involving Death. CLERB shall have authority to review, investigate, and report on 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 official duties, regardless of whether a Complaint regarding such death has been filed with CLERB. CLERB shall have jurisdiction in respect to all deaths of individuals coming within the provisions of this subsection occurring on or after November 7, 1990. Notwithstanding the foregoing, CLERB may not commence review or investigation of any death of an individual coming within the provisions of this Section 4.6 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.

4.4 Other Duties and Responsibilities. 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 CLERB in respect to the activities of peace officers or custodial officers, including recommendations relating to any trends in regard to employees involved in Complaints. 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 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, review, investigation, reporting on, and disposition of Complaints regarding alleged activity set forth in Section 4.1 by peace officers or custodial officers of the County of San Diego in the Sheriff's Department and the Probation Department:

- (a) It is the policy of CLERB to encourage persons who have Complaints concerning the conduct of peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department to bring the same to the attention of CLERB. CLERB will attempt to assist and accommodate Complainants regarding the Complaint filing process.
- (b) The investigation of Complaints shall be conducted in an ethical, independent, thorough, timely, and impartial manner.
- (c) Complaints will be screened, reviewed, and investigated (where appropriate), and disposed of in accordance with the procedures set forth in these Rules and Regulations.
- (d) As promptly as possible, Complaints received by CLERB shall be transmitted by the Executive Officer to the Sheriff or the Chief Probation Officer.
- (e) CLERB will make every effort to consider and to respond to -Complaints against peace officers or custodial officers and investigate when necessary.
- (f) The right of any Complainant to bring a Complaint shall be absolute and unconditional. The reluctance or refusal of the Complainant to prepare a Complaint form shall not impair the right to lodge a Complaint. Notwithstanding the foregoing, no Complaint shall be investigated, however, until a written Complaint has been received by CLERB or a member of its staff, which Complaint has been signed and the truth of the Complaint attested to, under penalty of perjury, by the Complainant.
- (g) The investigation of a Complaint will be conducted in a manner designed to avoid unnecessary inconvenience or embarrassment to the Complainant, the Aggrieved Person, the witnesses, the Subject Officer, and any agency or instrumentality of the County.
- (h) To the extent possible consistent with its duties and responsibilities, CLERB shall coordinate its activities with other public officers, such as the Sheriff, the District Attorney, the Grand Jury, the U. S.

Attorney, and the Public Defender, so that the other public officers and CLERB can fully and properly perform their respective duties.

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

- (a) Required forms consist of the following, which may be modified from time to time by the Executive Officer:
  1. CLERB's complaint form
  2. Request for Investigation of Complaint & Agreement Not to Subpoena Citizens' Law Enforcement Review Board Personnel or Records, and
  3. Authorization to Use or Disclose Protected Health Information, if applicable.
- (b) If the Complaint is lodged in person, CLERB employee shall furnish the Complainant with a blank Complaint form. The Complainant shall be asked to fill out the form and to sign the form in the space provided. A copy of the completed form shall be given to the Complainant to serve as a record of the filing of the Complaint.
- (c) If the Complaint is lodged by mail, the Complaint form shall be completed by CLERB staff on the basis of the information contained within the correspondence. CLERB staff shall mail a copy of the completed Complaint to the Complainant as a record of the lodging of the Complaint, together with a request that the Complainant review the Complaint form for accuracy, and if accurate, sign the same and return it to the CLERB office.
- (d) If the Complaint is lodged by telephone, CLERB staff shall fill out an original Complaint form and prepare one duplicate copy of the Complaint form as a record of the lodging of the Complaint. The CLERB employee taking the Complaint shall give his or her name to the Complainant. The CLERB staff shall furnish the Complainant with a copy of the completed form, together with a request for verification of the accuracy and a signature.
- (e) In those cases where the Complainant is incarcerated in a detention facility in the County of San Diego, the Complaint will be handled as outlined in (c) or (d) above.

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

5.4 Time Limitations for Filing Complaints. All Complaints shall be received within one year after the date of the incident giving rise to the Complaint, except that if the person filing the Complaint was incarcerated or physically or mentally incapacitated from filing a Complaint following the incident giving rise to the Complaint, the time duration of such incarceration or physical or mental incapacity shall not be counted in determining whether the one year period for filing the Complaint has expired, subject to the provisions of Section 4.1.2 of these Rules and Regulations.

5.5 Complaint Form. CLERB shall cause all Complaints received by it to be reduced to writing. Unless CLERB has received another writing setting forth the substance of the Complaint signed by the Complainant, CLERB shall furnish the complaint form to the Complainant advising that the Complaint will not be deemed to have been filed with CLERB until and unless it is reduced to writing. In order for a Complaint to be deemed filed, the Complainant shall attest to the truthfulness of a written Complaint under penalty of perjury in the following manner, or by words of similar effect: "I hereby certify under penalty of perjury under the laws of the State of California that to the best of my knowledge, the statements made herein are true."

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

- (a) Name of the Complainant, the Aggrieved Party, and the Subject Officer,
- (b) CLERB-assigned Complaint Number,
- (c) Date Complaint was filed,
- (d) A brief description of the subject matter of the Complaint,
- (e) Date the Complaint was transmitted to the Sheriff's Department or the Probation Department,
- (f) Date the Investigative Report was completed, if applicable,
- (g) Results of CLERB's consideration and/or investigation, if any,
- (h) Date and content of the final disposition of the Complaint.

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

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

## **SECTION 6: COOPERATION AND COORDINATION**

In the discharge of its duties, CLERB shall receive complete and prompt cooperation from all officers and employees of the County. CLERB and other public officers, including the Sheriff, the District Attorney, and the Grand Jury, shall coordinate their activities so that the other public officers and CLERB can fully and properly perform their respective duties.

Such cooperation shall include 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.

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

## **SECTION 7: SUBPOENAS AND OATHS**

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. A subpoena issued under this Section 7 shall be issued and signed by the Executive Officer or his or her designee.

## **SECTION 8: CONFIDENTIALITY OF RECORDS**

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

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

The disclosure of information, including, but not limited to, the identification of the Subject Officer, in CLERB's meeting agenda, public documents, and other public reports shall comply with applicable law 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 Screening of Cases.**

- (a) Filed Complaints shall be referred to the Executive Officer for investigation. Each Complaint will be initially screened by staff and classified as follows:
  - 1. "Category I" shall include Complaints against a peace officer or custodial officer employed by the County in the Sheriff's Department or the Probation Department that require an immediate and thorough investigation. Category I Complaints include, but are not limited to:
    - a. Cases involving perishable evidence, such as visible physical injuries, video that may be erased, and witnesses who may become unavailable, and
    - b. Allegations of excessive force resulting in physical injury.
  - 2. "Category II" shall include Complaints that do not warrant an immediate investigation.
  - 3. "Category III" shall include 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 improper or illegal conduct as defined in Section 4.1 and/or 4.2, 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" shall be a miscellaneous category, which shall include requests that are essentially requests for information in which Complainant needs satisfied after explanation of County Sheriff's Department or Probation Department operations.
  - 5. "Category V" shall include complaints not within the jurisdiction of CLERB. Such complaints may be referred to CLERB for Summary Dismissal.
- (b) Death Investigations shall be classified as Category I.
- (c) The Executive Officer may periodically advise CLERB as to the progress and status of each Complaint.
- (d) CLERB staff may periodically advise the Complainant and the Subject Officer(s) as to the status of a Complaint.

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

- (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 associated with the alleged incident;
- (e) Review, analysis, and preservation of other physical evidence including videos and photographs.

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.

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

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

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

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

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

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

- (a) Review and determine the Complaint based on the Investigative Report and the evidence in the investigative file, but without an Investigative Hearing, pursuant to Section 9.10; or
- (b) Summarily dismiss the Complaint, in whole or in part, pursuant to Section 15; or
- (c) Refer the Complaint back to staff for further investigations; or
- (d) Defer further action on the Complaint; or
- (e) Any other appropriate action or disposition, consistent with the Ordinance, or
- (f) Conduct an Investigative Hearing or Hearings, pursuant to Sections 10-14.

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

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

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

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

- (b) The content of the Investigative Report to the extent permitted by applicable law. A notification that all additional statements, records, reports, exhibits, and other items contained in the file will be available on request, except for any evidence that cannot be so made available because its disclosure is prohibited by law.
- (c) Written notice that the parties may consult an attorney if desired, and that an attorney or other representative may represent him/her at any hearing, but that an attorney or other representative is not mandatory.
- (d) A copy of or a link to these Rules and Regulations.

## **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 CLERB may request an Investigative Hearing (as set forth in Sections 12-14) for some or all of the allegations of a Case.

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

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

- (a) There has been an undue lapse of time since the occurrence of the incident 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 Hearing 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 CLERB when authorizing an Investigative Hearing, and all interested parties to the Complaint shall be informed of any limitation in scope when notified of the Investigative Hearing.

## **SECTION 11: NO CONTEST RESPONSE**

A Subject Officer may enter a written response of "no contest" at any time prior to an Investigative Hearing. 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 CLERB.

## **SECTION 12: INVESTIGATIVE HEARING**

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

12.2 Selection of Three-Person Investigative Hearing Panels.

- (a) Selection of three-person Investigative Hearing Panels under this section shall be made by rotation among CLERB members, as appointed by the Chair, using any basis (including lottery) that balances the workload among Board Members. A CLERB member may request that he or she be temporarily excused to equalize caseload, avoid conflicts of interest, or for other good cause. In the event a CLERB member is so excused, another CLERB member shall be reassigned by the Chair.
- (b) If an Investigative Hearing Panel is unable to meet to convene an Investigative Hearing on a scheduled date due to the unavailability for any reason of one or more of its members, or if an Investigative Hearing Panel agrees to reschedule an Investigative Hearing due to the unavailability for any reason of the Complainant(s) or Subject Officer(s) or legal counsel for either, the case or cases assigned to such Investigative Hearing Panel may be re-assigned to another Investigative Hearing Panel. However once an Investigative Hearing of a case has been convened by an Investigative Hearing Panel, the same Investigative Hearing Panel shall consider the case to final disposition.

### 12.3 Challenges of Board Members.

- (a) Challenge for Conflict of Interest or Bias. A CLERB member sitting on an Investigative Hearing Panel shall consider all Complaints in a fair and impartial manner. A CLERB Member who has a personal bias or prejudice, or the appearance thereof, in the outcome of a Complaint shall not sit on the Investigative Hearing Panel hearing that Complaint. Personal interest in the outcome of a Complaint does not include holding or manifesting any political or social attitude or belief, where such belief or attitude does not preclude objective consideration of a case on its merits. Examples of personal bias include, but are not limited to:
  - 1. Familial relationship or close friendship with parties material to the inquiry;
  - 2. Witnessing events material to the inquiry from a non-neutral perspective;
  - 3. Being a party to the inquiry;
  - 4. Having a financial interest in the outcome of the inquiry; and/or
  - 5. Holding a bias against a particular party that is sufficient to impair the CLERB member's impartiality.
- (b) Procedure for Challenges. Within five calendar days after the date on which CLERB furnishes notice of an Investigative Hearing, including the names of the CLERB members constituting that Investigative Hearing Panel, any party to the Complaint may file a written challenge for cause to any CLERB member hearing the Complaint. Challenges for conflict of interest or bias must substantiate the challenge in terms of the standard set forth in Section 12.3 (a) above.

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

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

## SECTION 13: INVESTIGATIVE HEARING PROCEDURES

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

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

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

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

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

- (a) The Presiding Member or Chair, as applicable, will conduct the Investigative Hearing subject to being overruled by a majority of the Investigative Hearing Panel or CLERB, as applicable. Members of the Investigative Hearing Panel or CLERB, as applicable, shall be primarily responsible for obtaining testimony. One Investigative Hearing Panel member or CLERB member may be assigned by the Presiding Member or the Chair to perform the initial questioning of witnesses during an Investigative Hearing convened for a Case. Additional questions may be asked by any Investigative Hearing Panel member or CLERB member, or by a Subject Officer or his or her representative, or by an assigned CLERB staff member.
- (b) At the discretion of CLERB or the Investigative Hearing Panel, opening statement(s) may be made on behalf of the Complainant and the Subject Officer(s) involved.
- (c) The Investigative Hearing will generally then proceed pursuant to the provisions detailed in Section 14.1. In the event that the Subject Officer is compelled to cooperate in an Investigative Hearing, the Subject Officer shall be provided the "Lybarger warning" when required under the appropriate circumstances. After the Investigative Hearing Panel has taken all relevant evidence, each party may, at the discretion of the Presiding Member or the Chair, be given an opportunity to make a closing statement.
- (d) At the conclusion of any witness<sup>2</sup> testimony, either the Complainant or the Subject Officer may request that CLERB or the Investigative Hearing Panel cover any additional areas of inquiry they feel need to be covered. The Chair or Presiding Member shall determine whether any further questions will be asked.
- (e) Unless otherwise ordered by the Chair or Presiding Member, the entire Investigative Hearing on a given Complaint should be conducted on one occasion. However, if CLERB or the Investigative Hearing Panel determines that additional evidence is necessary to reach its findings, it will continue the Investigative Hearing to a future date unless the parties agree to allow CLERB or the Investigative Hearing Panel to receive such material in writing without reconvening.

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

13.7 Finding and Report by Three-Member Investigative Hearing Panel. At the conclusion of an Investigative Hearing before an Investigative Hearing Panel, the Panel members shall, by majority vote, adopt a recommended Finding with respect to the Complaint. The Investigative Hearing Panel shall not consider evidence or information obtained outside

of the Investigative Hearing. The Investigative Hearing Panel shall then prepare a written report summarizing the evidence, the recommended Finding, the reasons for the recommended Finding, any dissenting opinion, and any other information that may be useful to the full CLERB in its consideration of the case. The Investigative Hearing Panel shall take into account any rule, regulation, or policy of the Subject Officer's 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 to the extent permitted by applicable 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 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.

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

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

## **SECTION 14: EVIDENCE FOR INVESTIGATIVE HEARINGS**

14.1 What Evidence May be Considered. The Investigative Hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule 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) Each party and the Investigative Hearing Panel shall have the following rights:
  - 1. to call and examine witnesses;
  - 2. to introduce exhibits;
  - 3. to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination;

4. to impeach any witness regardless of which party first called the witness to testify; and
5. to rebut the evidence against the party.

If the Subject Officer 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, a CLERB member, or the Investigative Hearing Panel, witnesses may be excluded from the Investigative Hearing until they are called to testify.
- (d) Irrelevant and unduly repetitious evidence shall be excluded.
- (e) The rules governing privileged communications shall be effective to the extent that they are otherwise required by constitution or statute to be recognized at hearings before CLERB or the Investigative Hearing Panel.

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

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

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

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

14.6 Confidentiality of CLERB Records. CLERB shall not disclose to the general public any reports, statements, files, records, documents, tapes, or other items whose confidentiality is protected by law. This confidentiality may be waived in accordance with applicable law, statute, ordinance, or legal proceedings. Moreover, evidence contained in CLERB's investigative file may be disclosed to the Complainant and the Subject Officer, 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 CLERB. CLERB, through its staff and agents, may utilize whatever formal or informal methods for the discovery of evidence as are authorized and available under federal, state, or local law.
- (b) By the Parties. Prior to an Investigative Hearing, each Subject Officer may have access to or receive copies of evidence contained in CLERB's investigative file for the Complaint, except for any evidence that cannot be made available because its disclosure is prohibited by law. Parties seeking such discovery must give at least 48 hours advance notice to the Review Board, either in writing or by telephone.

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

## **SECTION 15: SUMMARY DISMISSAL**

After reviewing the Investigative Report and records, CLERB may summarily dismiss a Case, ("Summary Dismissal") upon recommendation of the Executive Officer, its own motion, or that of the Subject Officer. Parties to the Complaint

shall be notified of a proposed Summary Dismissal, and may appear to argue for or against Summary Dismissal. Summary Dismissal may be appropriate in the following circumstances:

- (a) CLERB does not have jurisdiction over the subject matter of the Complaint.
- (b) CLERB does not have jurisdiction because the Complaint was not timely filed.
- (c) 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 employed by 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.
- (f) Case investigation is not completed within one year, not including applicable tolling exemptions; Staff shall submit the Case to CLERB for Summary Dismissal.

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

16.1 Final Report by CLERB. At the conclusion of a matter before the entire CLERB, CLERB shall deliberate and adopt a final report ("Final Report") with respect to the Case or matter under consideration. This report shall include Findings as to the facts relating to any Case, as well as an overall conclusion as to any Case as specified in Section 16.2 below.

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

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

- (a) If the investigation clearly established that the allegation is not true, the Finding shall be "Unfounded".
- (b) If the investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation, the Finding shall be "Not Sustained".
- (c) If the investigation 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 "Exonerated".
- (d) If the investigation disclosed sufficient evidence to prove the truth of allegation by a preponderance of evidence, the Finding shall be "Sustained".
- (e) If CLERB lacks jurisdiction or the allegation clearly lacks merit, the Finding shall be "Summary Dismissal".

A Finding of "Sustained" should include:

- (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;
- (c) and may include recommendations relating to any trends in regard to employees involved in Complaints.

16.3 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 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 CLERB and will not be made a part of the Final Report.

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

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

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

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

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

#### **SECTION 17: PROCEDURES WHEN NO COMPLAINT IS REQUIRED**

In cases involving death arising out of or in connection with activities of peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department, and in such other matters where CLERB is authorized to act pursuant to the Ordinance, CLERB shall review, investigate, and report regardless of whether a Complaint has been filed.

In such cases,

the review, investigation, including the Investigative Hearing procedures for such cases, and adoption of a Final Report shall otherwise proceed in the same manner, pursuant to these Rules and Regulations, as in cases initiated by a Complaint.

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

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

#### **SECTION 19: AMENDMENTS TO RULES AND REGULATIONS**

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