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# County of San Diego

## CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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The Citizens' Law Enforcement Review Board made the following findings in the closed session portion of its August 8, 2017 meeting, held at the San Diego County Administration Center, 1600 Pacific Highway, Room 302/303, San Diego, CA 92101. Minutes of the open session portion of this meeting will be available following the Review Board's review and adoption of the minutes at its next meeting. Meeting agendas, minutes, and other information about the Review Board are available upon request or at [www.sdcounty.ca.gov/clerb](http://www.sdcounty.ca.gov/clerb).

**CLOSED SESSION**a) **PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE**

**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)

<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 (3)****ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE****16-069**

1. Misconduct/Procedure – Deputy 2 allegedly refused to initiate a wellness check requested by the complainant on June 26th.

**Board Finding:** Action Justified

**Rationale:** The complainant alleged that Deputy 2 refused to initiate a wellness check on two missing persons when requested. On Sunday, June 19, 2016, the Border Fire began near the community of Potrero in the vicinity of Campo and Emery roads. Temperatures on this day reached a high of 107 degrees, with 9 percent humidity and winds of up to 24 mph; conditions that resulted in the fire rapidly spreading to 1,500 acres by Sunday evening. By June 30th, the fire was 100 percent contained and had consumed approximately 7,609 acres, 5 homes and 12 accessory structures. Two area residents died as a result of the fire. The County Office of Emergency Services (OES) coordinated the region's overall response to this disaster that involved over 13 different agencies and thousands of man hours. Deputy 2 was assigned to patrol in the area on the date and time of this incident. He reported that when the complainant contacted him, she could not provide the name,

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address or last contact date of her “friend,” and had further stated that she believed her friend had evacuated the property. Deputy 2 reported that the complainant did not request a welfare check, and that he denied the complainant’s request to enter the property because of the lack of information she provided, nor did she have the owner’s permission to enter the property. The following day, Deputy 2 received a radio call to investigate a report of two missing adults who had purportedly abandoned this same property. He searched the identified property, but was unable to locate the missing persons. The actions taken by Deputy 2 during this tragic incident were found to be lawful, justified and proper.

2. Misconduct/Discourtesy – Deputy 2 allegedly yelled for the complainant to “back away” when she “slightly” touched him with her index finger.

Board Finding: Not Sustained

Rationale: The complainant alleged that Deputy 2 yelled at her to “back away” when she “slightly” touched him with her index finger. The complainant acknowledged touching Deputy 2 once, while Deputy 2 reported that the complainant touched or “poked” him 3 to 4 times during their brief conversation. It was after this third or fourth touch when he reportedly stated to the complainant, "Ma'am... please stop touching me. I don't appreciate it." Deputy 2 denied raising his voice at the complainant and stated that at no time was he discourteous. Sheriff's Policy 2.22, Courtesy, requires employees to be courteous to the public and fellow employees, tactful in the performance of their duties, control their tempers; and exercise patience and discretion even in the face of extreme provocation. Absent an audio or video recording of this contact, or an independent witness to this incident, there was insufficient evidence to evaluate Deputy 2’s response to the complainant’s physical contact with him, and therefore insufficient evidence to either prove or disprove the allegation.

3. Misconduct/Discourtesy – Deputy 2 was allegedly “rude and condescending” when the complainant sought assistance locating missing persons.

Board Finding: Not Sustained

Rationale: The complainant alleged that Deputy 2 was “rude and condescending” when she sought assistance locating missing persons. Deputy 2 denied this allegation, stating that he spoke clearly and respectfully to the complainant during this contact. He further reported that he did not raise his voice nor use any profanity while speaking with the complainant. There was no audio or video recording of this contact, or an independent witness to this conversation, leaving insufficient evidence to either prove or disprove the allegation.

4. Misconduct/Procedure – Deputy 1 allegedly told the complainant there was “no rush to conduct a search,” for a missing person on June 29th, because of a reported sighting that proved to be erroneous.

Board Finding: Action Justified

Rationale: The complainant alleged that on June 29, 2016, Deputy 1 told her that there was “no rush to conduct a search” for a missing person. He allegedly based this assertion on a reported sighting of that missing person that proved to be erroneous. Deputy 1 was assigned as a liaison during the Potrero fire, relaying critical information between two of the involved agencies. His duties did not include searching, organizing searches or supervising the search for any victims of this fire. He reported that there was "credible" information at that time, that the missing person was seen across town walking across railroad tracks. Deputy 1 acknowledged making the alleged statement to the complainant because in his estimation, there was no rush to conduct a search until the "credible" lead was followed up on. Deputy 1’s actions related to his duties appeared to have been lawful, justified and proper. It is noteworthy that on June 19<sup>th</sup>, two deputies were dispatched to assist Border Patrol Officers with notifying a resident regarding the mandatory evacuation. This resident, later identified as one of the decedents, had been uncooperative and confrontational in the past, and when contacted by deputies, he refused to evacuate.

5. Misconduct/Procedure – Deputy 1 and/or other unidentified deputies allegedly failed to “close off” a crime scene.

Board Finding: Action Justified

Rationale: The complainant alleged that Deputy 1 and/or other unidentified deputies failed to “close off” a crime scene. Deputy 1 reported that it was not his responsibility to “close off” any crime scenes during the Potrero fire; that this responsibility was within the purview of the jurisdictional command. He lamented the tragic nature of this incident and did not believe based on the information available at the time, that Search and Rescue could have been deployed any sooner. Deputy 1’s actions were in accordance to his duty assignment, and were lawful, justified and proper.

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**16-080**

1. Misconduct/Procedure – Deputy 2 allegedly failed to “fully investigate” a criminal complaint filed by the complainant.

Board Finding: Action Justified

Rationale: The incarcerated complainant alleged that his ex-wife forged his name, committed mail fraud, rented his house out without consent, and committed other unidentified illegal activities that the Sheriff’s Department did not respond to properly. Probable Cause for an arrest did not exist in this incident. When the complainant turned himself into authorities, he signed over his material possessions in writing to his ex-wife; additional correspondence subsequently sent by the complainant corroborated the same information. Handwriting comparisons of those documents were made to his signed complaint with CLERB, and clearly matched. The Sheriff’s Department sent correspondence to the complainant informing him that their investigation determined that his ex-wife’s actions were not criminal and there was no probable cause for an arrest. The evidence showed the Sheriff’s Department responded to the complainant’s complaint, and their actions were lawful, justified, and proper.

2. Misconduct/Procedure – Deputies allegedly failed to notify/inform the complainant about his burglarized home.

Board Finding: Not Sustained

Rationale: The complainant reported that his home was burglarized during his incarceration and that he requested a copy of the report from the Sheriff’s Department, but it was not provided. There is insufficient evidence to investigate this allegation. The complainant did not provide any evidence of his request and the Sheriff’s Department does not record such requests. Additionally, these types of requests are handled by clerks who are non-sworn personnel over whom CLERB does not have jurisdiction. The complainant and his ex-wife jointly owned the residence that was burglarized and the crime report was filed by a renter. The Department would not have any obligation to notify the complainant as he was not a party to the report, but it is unknown if the complainant requested a copy of the report, and whether the request was processed or by whom. There was insufficient evidence to either prove or disprove this allegation.

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**16-086**

1. Misconduct/Truthfulness – PO 1 allegedly made false accusations against the complainant.

Board Finding: Summary Dismissal

Rationale: The complainant alleged that PO 1 made false accusations against him and lied about a number of issues related to his probation case. The complainant contacted CLERB the day after filing this complaint stating that he wanted to withdraw his complaint against PO 1, and acknowledged that he had only filed against his probation officer in an attempt to generate a desired action. When contacted for signature on a formal withdrawal letter, the complainant again changed his mind and desired to proceed with his complaint. The complainant was informed at that time that documentation supportive of his allegations was needed in order to proceed with an investigation, but to date, documentation was never received. Efforts were made to contact the complainant for supportive documentation, but were unsuccessful. The complainant’s allegations sans supportive documentation demonstrate no prima facie showing of misconduct by PO 1. Such complaints

are referred to the Review Board for Summary Dismissal, pursuant to CLERB Rules & Regulations: Section 9: Investigation of Complaints; Subsection 9.2: Screening of Complaints.

2. Misconduct/ Intimidation – PO 1 allegedly threatened to revoke the complainant’s driver’s license if he pursued an Interstate Compact.

Board Finding: Summary Dismissal

Rationale: See Rationale #1

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*End of Report*