CITIZENS' LAW ENFORCEMENT REVIEW BOARD
RULES AND REGULATIONS

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SECTION 1: MISSION AND PURPOSE

1.1 Mission

CLERB's mission is to increase public confidence in and accountability of any peace officer, custodial officer, employee or contractor, including any contract health care provider, working under the direction of the Sheriff's Office or Probation Department by conducting independent, thorough, timely, and impartial reviews of Complaints of misconduct and deaths.

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, employees and custodial officers employed by the Sheriff's Office, the Probation Department, including employee or contracted Health Care Providers, as authorized by San Diego County Ordinance #7880, as amended (Article XVIII, Section 340-340.15 of the San Diego County Code of Administrative Ordinances). Complaints subject to review are those that allege improper or illegal conduct of peace officers, employees, custodial officers, including employee or contracted health service provider arising out of the performance of their duties or the exercise of peace officer authority or Health Care Providers for in-custody deaths, within the jurisdiction of CLERB, as more fully described in Section 4.

CLERB shall receive, review, investigate and report on Complaints in accordance with these Rules and Regulations. These Rules and Regulations are to provide for the independent, thorough, timely, and impartial investigation of Complaints, deaths of individuals arising out of or in connection with actions of peace officers , employees, custodial officers, and employee and contracted Health Care Providers employed by the Sheriff's Office or the Probation Department, and other specified incidents in a manner that a) protects both the public and the Sheriff's Office or the Probation Department, that 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 that encourages and gives the public confidence that they can come forward when they have a legitimate Complaint regarding the conduct of peace officers, employees, custodial officers including employee and contracted Health Care Providers, working under the direction of the Sheriff's Office or Probation Department. 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 or employees, custodial officers including employee and contracted Health Care Providers, working under the direction of the Sheriff's Office or Probation Department.
2.2	**Case**	A Complaint or investigation of an incident not requiring a Complaint.
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 Office or the Probation Department, including employee and contracted Health Care Providers in cases of in custody deaths or arising in the performance of official duties or the exercise of peace officer or custodial officer authority and who files a Complaint with CLERB.
2.6	**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. The complaint may consider the in-custody death of an individual alleging improper acts or misconduct, including standards of care against any employee or contracted health care provider working under the direction of the Sheriff or Probation.
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 Health Care Provider

A person, whether employed by the County or as a contractor, that provides medical or mental health care or treatment under the direction of the Sheriff's Office or Probation Department. Health Care Provider includes, but is not limited to, doctors nurses, nurse practitioners, midwives, optometrists, radiologists, pharmacists, psychiatrists, therapists, dentists, dental hygiene practitioners, and other professionals that provide such service in County detention facilities.

2.11 Investigative Hearing Panel

A three (3) member subcommittee of CLERB selected to conduct an Investigative Hearing of a Complaint and make appropriate findings and recommendations to CLERB based on the hearing.

2.12 Lodged

The status of a Complaint not signed under penalty of perjury.

2.13 Misconduct

Any alleged improper or illegal acts, omissions, or decisions directly affecting the person or property of a specific person arising out of the performance of the duties of peace officers, employees or custodial officers employed by the County in the Sheriff's Office or the Probation Department including employee and contracted Health Care Providers by reason of:

a. An alleged violation of any general, standing, or special orders or guidelines of the Sheriff's Office or the Probation Department.

b. An alleged violation of any state or federal law.

c. Any act otherwise evidencing improper or unbecoming conduct by a peace officer, employees or custodial officers employed by the County in the Sheriff's Office or the Probation Department including employees and contracted Health Care Providers.

d. For purposes of Heath Care Providers, a deviation from standard of care, error, or omission related to any health service provided.

2.14 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.

2.15 Preponderance

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

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

2.17 Subject of Investigation Any peace officer, custodial officer, employee or contracted Health Care Provider of the Sheriff's Office or the Probation Department, working under the direction of the Sheriff's Office or 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 4.3.

SECTION 3: ORGANIZATION AND MEETINGS

3.1 Composition of CLERB

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

3.2 Terms of Membership

Each member shall serve a term of three years. A member shall serve on CLERB until a successor has been appointed. A member shall be appointed for no more than two consecutive full terms. Appointment to fill a vacancy shall constitute appointment for one term. The term for all members shall begin on July 1 and end on June 30. The terms for all persons who are the initial appointees to CLERB shall be deemed to commence on July 1, 1991. Members of CLERB serve at the pleasure of the Board of Supervisors and may be removed from CLERB at any time by a majority vote of the Board of Supervisors.

3.3 Vacancies on CLERB

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

a. Death of the incumbent.

b. Resignation of the incumbent.

c. Ceasing of the incumbent to be a resident of the County of San Diego.

d. Absence of the member from three consecutive regular meetings of CLERB.

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. The duties of the Officers shall be as follows:

a. Chair

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 their 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 them 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. Items to be reviewed:

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 Office and the Probation Department.

e. Disciplinary process for Deputy Sheriffs and Probation Officers.

f. Sheriff and Probation Departments' training programs.

g. Community perspective on Law Enforcement.

h. Constitutional and civil rights law relating to police misconduct and community rights.

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

j. Diversity and inclusion; and implicit, or unconscious, bias.

3.7 Transaction of Business

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

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

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

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

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

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

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

e. The number of votes required to take action on a motion is a majority of the quorum.

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

g. In all procedures 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. 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 twenty-four hours' notice prior to any special meeting. The notice and agenda for any special meeting will be distributed in accordance with Section 54956 of the Government Code. No business other than that specified in the special meeting agenda shall be considered.

3.9 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, employees or custodial officers employed by the County in the Sheriff's Office or the Probation Department including any employee and contracted Health Care Provider.

b. Make recommendations relating to any trends in regard to peace officers, employees or custodial officers employed by the County in the Sheriff's Office or the Probation Department including any employee or contracted Health Care Provider involved in Complaints. CLERB is not established to determine criminal guilt or innocence.

c. Prepare an annual report to the Board of Supervisors, the Chief Administrative Officer, the Sheriff and the Chief Probation Officer summarizing the activities and recommendations of CLERB including the tracking and identification of trends in respect to all Complaints received and investigated during the reporting period and present the annual report to the Board of Supervisors within 60 days of its adoption by CLERB.

d. 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.

e. In the absence of the authority or jurisdiction of another agency, CLERB may annually inspect County adult detention facilities and annually file a report of such visitations together with pertinent recommendations with the Board of Supervisors.

f. 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.

g. CLERB may promulgate its own procedures for the conduct of its business activities, as long as they do not conflict with these Rules and Regulations or County Policies.

h. CLERB shall prioritize the investigation of deaths set forth in subsections 4.4 (a) (1) and

(2) or complaints involving death over all other complaints.

i. CLERB shall conduct an annual performance evaluation of the Executive Officer, led by Chair or designee.

j. As part of any investigation of a Health Care Provider, CLERB shall consider whether the Health Care Provider's function in the detention facility was adequately staffed at the time the incident under investigation took place.

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

3.10 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.

3.11 Executive Officer

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

CLERB 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 4: AUTHORITY AND JURISDICTION

4.1 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 Office 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

h. Misconduct

i. Death of any individual which:

1. Occurs while the individual was in the custody of the Sheriff or Probation.

2. Occurs within six months of that individual's release from custody pursuant to "compassionate release" (see California Government Sections 26606.5 and 26606.6).

3. Arises out of or in connection with the actions of any peace officer, custodial officer, employee or contracted Health Care Provider of the Sheriff's Office or the Probation Department.

4.2 Prerequisite

Except as provided in Section 4.4, CLERB shall have no authority with respect to improper activities as set forth in Section 4.1 to take action in regard to incidents for which no Complaint has been filed with CLERB.

4.3 Jurisdiction

CLERB shall have jurisdiction with 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 they were 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.

4.4 Complaint Not Required

Jurisdiction with Respect to Specified Incidents. CLERB shall have authority to review, investigate, and report on the following categories of incidents, regardless of whether a Complaint has been filed:

a. Death of any individual which:

1. Arises out of or in connection with the actions of any peace officer, custodial officer, employee or contracted Health Care Provider of the Sheriff's Office or the Probation Department.

2. Occurs while the individual was in the custody of the Sheriff's Office or Probation Department.

3. Occurs within six months of that individual's release from custody pursuant to "compassionate release" (see California Government Code Sections 26606.5 and 26606.6).

b. Incidents involving the discharge of a firearm by peace officers or custodial officers employed by the Sheriff's Office or the Probation Department.

c. The use of force by peace officers or custodial officers employed by the Sheriff's Office or custodial officers employed by the Sheriff's Office or the Probation Department resulting in great bodily injury.

d. The use of force by peace officers or custodial officers employed by the Sheriff's Office or the Probation Department at protests or other events protected by the First Amendment.

e. In cases not requiring a Complaint as set forth in Section 4.4(a), the review, investigation, 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 5: PROCEDURES REGARDING COMPLAINTS

5.1 Policy

The following shall provide a framework for the receipt, screening, review and investigation of Complaints regarding alleged activity set forth in Section 4 by peace officers, employees or custodial officers employed by the County in the Sheriff's Office or the Probation Department including employee and contracted Health Care Providers:

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

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

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

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

e. CLERB shall investigate Complaints against peace officers, employees or custodial officers employed by the County in the Sheriff's Office or the Probation Department including employees and contracted Health Care Providers, as set forth in these rules and regulations.

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 of Investigation, and any agency or instrumentality of the County.

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

5.2 Lodging and Filing of Complaints

Complaints may be lodged in writing, in person, by telephone, electronically or by any other means of communication. A Complaint may be lodged with CLERB by a person on behalf of

themselves 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, including electronically, on CLERB's complaint form with the truth of the Complaint attested to under penalty of perjury and (ii) all other forms required by this Section have been completed and signed by the Complainant in accordance with the following procedures:

a. Required forms consist of the following, which may be modified from time to time by the Executive Officer:

1. CLERB's Complaint form
2. Authorization to Use or Disclose Protected Health Information, if applicable.

b. If the Complaint is lodged in person, CLERB staff 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 staff taking the Complaint shall give their name to the Complainant. 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. If the Complaint is lodged electronically, via website or portal, CLERB staff shall furnish the Complainant with an electronic copy of the completed form.

f. 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), (d) or (e) 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 on which CLERB discovers the alleged misconduct, 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 4.3 of these Rules and Regulations.

5.5 Complaint Form

CLERB shall cause all Complaints received by it to be reduced to writing, including electronically. 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 Complaints

CLERB shall create a central register of all Complaints filed with it and maintained in its office. The central register shall record actions taken on each Complaint. Disclosure of information from the central register shall comply with applicable law. The central register shall contain the following:

a. Name of the Complainant, the Aggrieved Person, and the Subject of Investigation.

b. CLERB-assigned Complaint Number.

c. Date Complaint was filed.

d. A brief description of the subject matter of the Complaint.

e. Date the Complaint was transmitted to the Sheriff's Office 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, 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 of Investigation. CLERB shall have the discretion to continue or terminate an investigation, if, after a Complaint is filed and before CLERB completes its investigation, the Subject of Investigation terminates employment with the Sheriff's Office or the Probation Department. The Sheriff or the Chief Probation Officer or the Subject of Investigation shall notify CLERB when the Subject of Investigation's employment is terminated.

SECTION 6: INVESTIGATION OF CASES

6.1 Screening of Complaints

a. Each Complaint will be initially screened by staff for jurisdiction. Cases shall be referred to the Executive Officer, Chief Deputy of Investigation, Supervisory Special Investigator, or designee for prioritization in accordance with CLERB practices, which shall prioritize death investigations above all other cases.

b. The Executive Officer may periodically advise CLERB as to the progress and status of each Complaint.

c. CLERB staff may periodically advise the Complainant and the Subject of Investigation(s) as to the status of a Complaint.

6.2 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 Person, each Subject of Investigation, and witnesses or other persons likely to have information concerning the Complaint.

b. Response to CLERB's written or oral inquiries.

c. Examination of the scene of the alleged incident.

d. Viewing and analyzing physical evidence associated with the alleged incident.

e. Review, analysis, and preservation of other physical evidence including videos and photographs.

f. Review of relevant medical records.

g. Review of peace officer personnel records, as defined by Penal Code Section 832.8, in accordance with Penal Code Section 832.7(a).

h. Consultation with subject matter experts, including custodial health care and the provision of custodial health services, as needed.

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

6.3 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.

6.4 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.

6.5 Recording of Interviews

Interviews and statements may be recorded by the CLERB investigator. Such recordings shall be kept and preserved as may be required by law.

6.6 Deferment of Investigation

CLERB may toll its investigation of a Complaint pursuant to applicable tolling exemptions pursuant to 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. Pursuant to the time limits set by POBR, it shall be the policy of CLERB to complete an investigation of any alleged misconduct within one year of the date on which CLERB is first informed of the alleged misconduct regardless of the manner by which CLERB is first informed. In investigations against peace officers of the Sheriff's Office or Probation Department, if CLERB fails to complete an investigation within one year of the expiration of tolling (if applicable) or anticipates that it will fail to complete the investigation within one year of the expiration of tolling (if applicable), the executive officer of CLERB shall report to the Board of Supervisors within thirty days of the expiry of the one-year limit on:

a. Whether any of the tolling provisions listed under California Government Code § 3304(d)(2) apply, including the following listed.

1. If the act, omission, or other allegation of misconduct is also the subject of a criminal investigation or criminal prosecution, the time during which the criminal investigation or criminal prosecution is pending shall toll the one-year time period.

2. If the public safety officer waives the one-year time period in writing, the time period shall be tolled for the period of time specified in the written waiver.

3. If the investigation is a multijurisdictional investigation that requires a reasonable extension for coordination of the involved agencies.

4. If the investigation involves more than one employee and requires a reasonable extension.

5. If the investigation involves an employee who is incapacitated or otherwise unavailable.

6. If the investigation involves a matter in civil litigation where the public safety officer is named as a party defendant, the one-year time period shall be tolled while that civil action is pending.

7. If the investigation involves a matter in criminal litigation where the Complainant is a criminal defendant, the one-year time period shall be tolled during the period of that defendant's criminal investigation and prosecution.

8. If the investigation involves an allegation of workers' compensation fraud on the part of the public safety officer.

b. The reasons why the investigation could not be completed within one year. However, under no circumstance will CLERB prematurely terminate the investigation of a death or dismiss a complaint involving a death due to delay in completing the investigation or inability to complete the investigation within the time limits set by POB.

c. For Subjects of Investigation, including "health care providers", CLERB will follow the same deadlines and tolling provisions per 6.6(a) in compliance with applicable local, County or State laws.

6.7 Investigative Report

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

6.8 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 6.9.

b. Summarily dismiss the Complaint, in whole or in part, pursuant to Section 10.3.

c. Refer the Complaint back to staff for further investigations.

d. Defer further action on the Complaint.

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

f. Conduct an Investigative Hearing or Hearings, pursuant to Sections 11.

6.9 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 10.1 and shall follow the Final Report process set forth in Section 10. If the Executive Officer recommends that CLERB make a determination on a Complaint without an Investigative Hearing, the Subject of Investigation and representative and Complainants shall have an opportunity to submit additional evidence prior to the determination of the Complaint by CLERB.

6.10 File Accessibility

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

6.11 Notification to Parties

Upon completion of the Investigative Report, CLERB staff shall provide the Complainant, Aggrieved Person, and each Subject of Investigation the following:

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

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

6.12 Procedural Rights and Protections

CLERB shall provide to all non-sworn Subjects of Investigations the requirements of Section 8 and Section 9 of these Rules, and all non-sworn Subjects of Investigations shall be subject to the provision of Section 6.6 of these Rules and pursuant to applicable law.

6.13 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.”

SECTION 7: SUBPOENAS AND OATHS

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

SECTION 8: COOPERATION AND COORDINATION

8.1 In the discharge of its duties, CLERB shall receive complete and prompt cooperation from all officers and employees of the County and employed or contracted Health Care Providers under the direction of the Sheriff's Office or Probation Department. 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.

8.2 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.

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

SECTION 9: CONFIDENTIALITY OF RECORDS

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

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

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

SECTION 10: CLERB FINDINGS AND RECOMMENDATIONS

10.1 Final Report by CLERB

At the conclusion of a matter before the Board, 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 10.3.

Standard of Proof: No finding with respect to an allegation shall be sustained unless it is proven by a Preponderance of the Evidence.

10.2 Dissent

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.

10.3 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 established that the allegation is not true by a Preponderance of the Evidence, the Finding shall be "**Unfounded**."

b. If the investigation failed to disclose sufficient evidence to prove or disprove the allegation by a Preponderance of the Evidence the Finding shall be "**Not Sustained**."

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

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

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

1. The imposition of discipline, including the facts relied on in making such recommendations.

2. Any trends in regard to employees involved in Complaints.

e. If CLERB lacks jurisdiction, cooperation, protected evidence, or the allegation clearly lacks merit, the Finding shall be "**Summary Dismissal.**"

1. **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 of Investigation. 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:
CLERB does not have jurisdiction over the subject matter of the Complaint.

i. CLERB does not have jurisdiction because the Complaint was not timely filed.

ii. 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.

iii. The Subject of Investigation is no longer employed by the Sheriff's Office, or Probation Department, or employed or contracted Health Care Provider.

iv. The Complaint is so clearly without merit that no reasonable person could sustain a finding based on the facts.

v. Case investigation is not completed within one year, not including applicable tolling exemptions; Staff shall submit the Case to CLERB for Summary Dismissal, pursuant to Section 4.3 of these Rules & Regulations.

vi. CLERB was unable to obtain evidence to complete an investigation due to protected status or court order.

2. **After review by the Board**, all items recommended for Summary Dismissal in Section 10.3 are routine and may be acted upon with one (1) motion, made by the Executive Officer or a CLERB Member. There shall be no separate discussion of the items recommended for Summary Dismissal unless a CLERB Member so requests, in which event, the item(s) will be considered separately in the normal sequence in the closed session agenda.

10.4 Consideration of Subject of Investigation's Personnel History

Only after a finding of "Sustained" with respect to an allegation of improper or illegal conduct by a Subject of Investigation, should CLERB consider the Subject of Investigation's disciplinary history in determining the appropriate recommendation for discipline. The details of the Subject of Investigation's personnel records as defined by Penal Code Section 832.8 will be held confidentially by CLERB pursuant to Penal Code Section 832.7(a).

10.5 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 of Investigation, to the extent permitted by applicable law.

10.6 Reconsideration of Final Report

Upon request by the Complainant, Subject of Investigation, or their representatives, the Final Report may be re-opened for reconsideration by CLERB provided that:

a. Previously unknown relevant evidence is discovered that was not available to CLERB before it issued its Final Report, and there is a reasonable likelihood the new evidence will alter the Findings and recommendations contained in the Final Report.

b. 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.

c. 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 CLERB before the request or proposal is acted upon.

SECTION 11: INVESTIGATIVE HEARINGS

11.1 Requests for Investigative Hearing

The Complainant, Subject of Investigation, Executive Officer, or a member of CLERB may request an Investigative Hearing (as set forth in Section 11) for some or all of the allegations of a Case.

11.2 When an Investigative Hearing is Necessary

An Investigative Hearing will be conducted, in accordance with the procedures for such hearings set forth in Sections 11.3-11.26, when CLERB determines that such a hearing may facilitate the fact-finding process. An Investigative Hearing may be deemed to facilitate the fact-finding process when:

a. There has been an undue lapse of time since the occurrence of the incident that is the subject of the Complaint.

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

c. There is reason to question the conclusion of the Investigative Report.

d. An Investigative Hearing would advance public confidence in the Complaint process..

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

11.3 Scope of 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.

A Subject of Investigation 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 of Investigation accepts the allegations of the Complaint as substantially true in fact and interpretation. The Subject of Investigation shall be bound by the terms of the "no contest" response in any further consideration of the Complaint by CLERB.

11.4 Composition of Investigative Hearing

Except as otherwise provided in this Section (11.4), 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 11.5 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 shall sit as a Board of the Whole subject to a quorum of Board Members currently appointed.

11.5 Selection of Three-Person Investigative Hearing Panels.

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

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

11.6 Challenges of CLERB Members.

a. Challenge for Conflict of Interest or Bias

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

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

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

3. Being a party to the inquiry.

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

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

b. Procedure for Challenges

Within five calendar days after the date on which CLERB furnishes notice of an Investigative Hearing, including the names of the CLERB members constituting that Investigative Hearing Panel, any party to the Complaint may file a written challenge for cause to any CLERB member hearing the Complaint. Challenges for conflict of interest or bias must substantiate the challenge in terms of the standard set forth in Section 11.6 (a).

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

c. Replacement of Challenged CLERB Member

Any CLERB member removed, or who removes themselves, from the Investigative Hearing Panel due to a challenge for cause shall be replaced by the Chair with another CLERB member.

11.7 Public Comments

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

11.8 Schedule of Investigative Hearings

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

11.9 Notice Requirements

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

11.10 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 of Investigation requests an open Investigative Hearing.

11.11 Authority to Compel Appearance

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

11.12 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 by a Subject of Investigation or their 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 of Investigation(s) involved.

c. The Investigative Hearing will generally then proceed pursuant to the provisions detailed in Section11.19. In the event that the Subject of Investigation is compelled to cooperate in an Investigative Hearing, departmental personnel shall provide the Subject of Investigation with the "Lybarger warning" when required under the appropriate circumstances. After the Investigative Hearing Panel has taken all relevant evidence, each party may, at the discretion of the Presiding Member or the Chair, be given an opportunity to make a closing statement.

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

e. Unless otherwise ordered by the Chair or Presiding Member, the entire Investigative Hearing on a given Complaint should be conducted on one occasion. However, if CLERB or the Investigative Hearing Panel determines that additional evidence is necessary to reach its findings, it will continue the Investigative Hearing to a future date unless the parties agree to allow CLERB or the Investigative Hearing Panel to receive such material in writing without reconvening.

11.13 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.

11.14 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 of Investigation's employing department brought to its attention by the Subject of Investigation or representative that the Investigative Hearing Panel determines to be pertinent to the Complaint being investigated.

11.15 Submission to Full CLERB

The written Investigative Hearing Panel report referred to in Section 11.14 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 11.14 shall be forwarded to the extent permitted by applicable law to each Complainant and Subject of Investigation, together with a notice of the time and place of the CLERB meeting at which the Complaint will be considered. All Complainants and Subject of Investigations shall be notified that CLERB may accept written objections to the Investigative Hearing Panel report within 10 days of the date of the report.

11.16 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.

11.17 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.

11.18 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 of Investigation requesting a transcript, to the extent permitted by applicable law. Any record of the Investigative Hearing shall become part of the CLERB file.

11.19 What Evidence May be Considered

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

Hearsay evidence may be used for the purpose of supplementing or explaining other evidence. Evidence shall be taken in accordance with the following provisions:

a. Each party and the Investigative Hearing Panel shall have the following rights:

1. To call and examine witnesses

2. To introduce exhibits

3. To cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination

4. To impeach any witness regardless of which party first called the witness to testify

5. To rebut the evidence against the party

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

11.20 Representatives

Each party and any witness shall have the right to have a representative of their choice present at all times during their 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.

11.21 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.

11.22 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 of Investigation.

11.23 Failure to Appear

When either the Complainant or the Subject of Investigation 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.

11.24 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 of Investigation, but only to the extent and in the manner authorized by these Rules and Regulations and by applicable law at the time the disclosure is requested.

11.25 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 of Investigation 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 CLERB, either in writing or by telephone.

11.26 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.

In cases not requiring a Complaint as set forth in Section 4.5 above, the review, investigation, including the Investigative Hearing procedures for such cases, and adoption of a Final Report shall otherwise proceed in the same manner, pursuant to these Rules and Regulations, as in cases initiated by a Complaint.