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**EXECUTIVE
OFFICER**
CAROL A. TRUJILLO

County of San Diego

CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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REGULAR MEETING AGENDA TUESDAY, JANUARY 12, 2010, 5:30 P.M. San Diego County Administration Center 1600 Pacific Highway, Room 302/303, San Diego, 92101

The public portion of the meeting must be concluded in time to allow the public to vacate the building by 6:00 p.m.
(Free parking is available on the street or pay Ace Parking on the south side. Enter at the north entrance.)

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

DISABLED ACCESS TO MEETING

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

1. ROLL CALL

2. MINUTES APPROVAL

- a) Minutes of the November 2009 Regular Meeting (*Attachment A*)

3. EXECUTIVE OFFICER'S REPORT

- a) Open Complaints/Investigations Workload Report, November and December 2009 (*Attachments B*)
- b) 2009 Annual Report (distributed at meeting)

4. NEW BUSINESS

- a) Swearing in of new Board Member Carolyn Norris Rhein
- b) Sheriff's Department training video: shooting reaction times
- c) Nomination/Election of 2010 CLERB Executive Board (CLERB Rule 3.5)
- d) Farewell to Chief Deputy County Counsel William D. Smith, who is retiring
- e) Ideas, volunteers to mark the Review Board's 20th Anniversary in November 2010

- f) Executive Officer’s Recommendation: To enhance communication about specific cases, ask a representative of the Sheriff’s Department or Probation Department to be available outside the meeting room during closed session discussion of cases to return and answer questions from Board Members about those cases.

5. UNFINISHED BUSINESS

- a) **Discussion and Action:** CLERB Rules and Regulations, County Counsel/Executive Officer Recommendation: Approve the attached proposed revised Rules and Regulations. Request the Department of Human Resources to meet and confer with affected bargaining units and report back to this Board on its progress. Final approval by this Board cannot take place until that process is complete. The Rules and Regulations will then be submitted to the Board of Supervisors for approval.

6. PUBLIC COMMENTS

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

7. CLOSED SESSION

- a) **Conference with Labor Negotiators:** (Government Code Section 54957.6)
 - 1. CLERB representatives Carol Trujillo, CLERB Executive Officer, and Susan Brazeau, Labor Relations Manager.
 - 2. Employee Organizations to Meet and Confer With: Deputy Sheriffs’ Association, Deputy Probation Officers’ Association, and the Supervising Probation Officers’ Association.
- b) **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).

DEFINITION OF FINDINGS	
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 (13)

ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE

08-079

- 1. Misconduct/Procedure – Deputy 1 refused to investigate and take a theft report from the complainant.

Recommended Finding: Summary Dismissal

Rationale: Deputy 1 retired and is no longer an employee of the Sheriff’s Department and as such, CLERB does not have jurisdiction in this matter as cited by the following CLERB Rules and Regulations 4.1 Citizen Complaints: Authority.

- 2. Criminal Conduct – Deputy 1 participated in crimes committed against the complainant.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1

3. Misconduct/Procedure – Deputy 1 manipulated inquiries about the crimes to authorities.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1

4. Misconduct/Procedure – Deputies 2 and 3 warned the complainant to stop complaining.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. Because of an increase in complaints and an investigator vacancy in 2009, staff did not complete investigation of this allegation within one year. A review of the complaint showed no exceptions applied. The Review Board lacks jurisdiction.

08-080

1. Misconduct/Discourtesy – Deputy 2 “picked on” a mentally handicapped inmate.

Recommended Finding: Summary Dismissal

Rationale: Deputy 2 is no longer employed by the Sheriff's Department and is not subject to the Review Board's jurisdiction.

2. Excessive Force/Other – Deputy 2 slammed the complainant into a fence and drew his arm back with such force that it broke in six places.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1

3. Misconduct/Intimidation – Deputy 1 threatened the complainant by stating, “You need to drop your lawsuit or we'll beat you up every night.”

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. Because of an increase in complaints and an investigator vacancy in 2009, staff did not complete investigation of this allegation within one year. A review of the complaint showed no exceptions applied. (According to County Counsel, no civil suit has been filed.) The Review Board lacks jurisdiction.

4. False Reporting – Deputy 3 was not even present during the initial confrontation between the complainant and Deputy 2 to write a report.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. Because of an increase in complaints and an investigator vacancy in 2009, staff did not complete investigation of this allegation within one year. A review of the complaint showed no exceptions applied. (According to County Counsel, no civil suit has been filed.) The Review Board lacks jurisdiction.

08-086

1. Illegal Search & Seizure – Probation Officers 1, 2, 4, 5, 6 and/or 7 searched all areas of the complainant’s apartment, including his children’s room and confiscated items.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers’ Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. Because of an increase in complaints and an investigator vacancy in 2009, staff did not complete investigation of this allegation within one year. A review of the complaint showed no exceptions applied. The Review Board lacks jurisdiction.

2. Misconduct/Procedure – Probation Officers 1, 2, 4, 5, 6 and/or 7 completely “trashed” the complainant’s apartment.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1

3. Misconduct/Procedure – Probation Officers 1, 2, 4, 5, 6 and/or 7 confiscated items without leaving documentation or a property receipt.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1

4. Excessive Force/Other – Probation Officers 1, 2, 4, 5, 6 and/or 7 grabbed and dragged the complainant and his family from their home, dislocating the complainant’s shoulder.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1

5. False Arrest – Probation Officers 1, 2, 4, 5, 6 and/or 7 illegally detained the complainant’s wife and children and then would not allow them access to their apartment for over four hours.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1

6. Misconduct/Procedure – Probation Officers 1, 2, 4, 5, 6 and/or 7 refused to provide an inhaler upon request to the asthmatic complainant.

Recommended Finding: Summary Dismissal

Rationale: See rationale #1

7. False Arrest – Probation Officers 1, 2, 4, 5, 6, 7 and/or 8 arrested the complainant without cause on May 10, 2008, and again on an unknown date.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1

8. False Reporting – Probation Officer 8 made a false report about the condition of the complainant’s home to CPS.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety

Officers' Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. Because of an increase in complaints and an investigator vacancy in 2009, staff did not complete investigation of this allegation within one year. A review of the complaint showed no exceptions applied. The Review Board lacks jurisdiction.

9. Misconduct/Procedure – The Probation Department's random drug tests results varied from the complainant's independent drug test results conducted the same day.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1

10. Misconduct/Harassment – Probation Officer 3 set the complainant up for failure with the terms of his probation.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. Because of an increase in complaints and an investigator vacancy in 2009, staff did not complete investigation of this allegation within one year. A review of the complaint showed no exceptions applied. The Review Board lacks jurisdiction.

08-091

1. Excessive Force – Deputies 1 and 2 beat and kicked the complainant to unconsciousness.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. Because of an increase in complaints and an investigator vacancy in 2009, staff did not complete investigation of this allegation within one year. A review of the complaint showed no exceptions applied. The Review Board lacks jurisdiction.

08-092

1. Misconduct/Procedure – Deputy 1 refused to allow the co-complainant's visitation with substance abuse personnel.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. Because of an increase in complaints and an investigator vacancy in 2009, staff did not complete investigation of this allegation within one year. A review of the complaint showed no exceptions applied. The Review Board lacks jurisdiction.

08-101

1. Misconduct/Procedure – Deputy 1 improperly classified the incarcerated co-complainant with "Greenbander" status.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. Because of an increase in complaints and an investigator vacancy in 2009, staff did not complete investigation of this allegation within one year. A review of the complaint showed no exceptions applied. The Review Board lacks jurisdiction.

2. Misconduct/Procedure – Deputy 1 improperly shackled the incarcerated co-complainant, resulting in a fall with injuries.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1

3. Misconduct/Procedure – Deputy 1 failed to provide proper medical care to the incarcerated co-complainant.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1

4. Misconduct/Discourtesy – Deputy 1 was “rude” to the co-complainant when she called seeking assistance.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1

5. Misconduct/Procedure – Deputy 1 did not respond to the incarcerated co-complainant's grievances/requests.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1

08-103

1. Misconduct/Harassment – Deputy 1 has harassed the complainant since their separation.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. Because of an increase in complaints and an investigator vacancy in 2009, staff did not complete investigation of this allegation within one year. A review of the complaint showed no exceptions applied. The Review Board lacks jurisdiction.

08-104

1. Misconduct/Procedure – Deputy 1 did not properly process the complainant's mail and/or money orders sent to his son, who was incarcerated at the George Bailey Detention Facility (GBDF).

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. Because of an increase in complaints and an investigator vacancy in 2009, staff did not complete investigation of this allegation within one year. A review of the complaint showed no exceptions applied. The Review Board lacks jurisdiction.

09-005

1. Illegal Search & Seizure – Deputies 1 and 2 stopped the complainant for a traffic violation the complainant said he did not commit.

Recommended Finding: Action Justified

Rationale: Deputy 1, who cited the complainant for turning left against a red arrow, is no longer employed by the Sheriff's Department and is not subject to CLERB's jurisdiction. Deputy 2, who accompanied Deputy 1 as a training officer, said Deputy 1's report documenting the violation was truthful and accurate. Although the complainant said the arrow was yellow, on the advice of his attorney he later pled guilty to the traffic violation and paid a fine in exchange for dismissal of a misdemeanor charge. The deputies' actions were lawful, justified and proper.

2. Misconduct/Discourtesy – Deputy 2 told the complainant, "If you want drama, you'll get drama."

Recommended Finding: Not Sustained

Rationale: Deputy 2 said it was possible he made this statement but not recall his exact words. This allegation is subjective regarding discourtesy, and the statement is not discourteous on its face. There is insufficient evidence to prove or disprove an allegation of discourtesy.

3. Misconduct/Intimidation – Deputy 2 told the complainant he was going to jail unless he signed the Notice to Appear.

Recommended Finding: Action Justified

Rationale: A citation states on its face that a signature is not an admission of guilt but a notice to appear in court. Deputies took the complainant into custody after he refused to sign a traffic citation, as is authorized by state law. The complainant was handcuffed and put in a cell at a patrol station, which is routine for a custodial arrest. Deputy 2's actions were lawful, justified and proper.

4. Misconduct/Procedure – Deputy 1 and/or 2 did not tell the complainant he was committing a misdemeanor by refusing to sign the Notice to Appear.

Recommended Finding: Not Sustained

Rationale: Deputy 1 is no longer employed by the Sheriff's Department and is not subject to CLERB's jurisdiction. Deputy 2 said he told the complainant he was committing a misdemeanor and explained the complainant's two options of signing the citation and appearing in court at a later time, or having his car towed as a traffic hazard and "appear immediately" before a magistrate (if one were available.) Although the evidence is clear the complainant knew he was being arrested and faced jail, it is not clear whether he knew he would be charged with a misdemeanor for delaying/resisting/obstructing an officer. There is insufficient evidence to prove or disprove the allegation.

5. Illegal Search & Seizure – Deputy 1 and/or 2 handcuffed the complainant.

Recommended Finding: Action Justified

Rationale: See #3.

6. False Arrest – Deputy 1 and/or 2 incarcerated the complainant at the patrol station.

Recommended Finding: Action Justified

Rationale: See #3.

7. Misconduct/Procedure – Deputy 1 and/or 2 had the complainant's car towed rather than allow a passenger to take it.

Recommended Finding: Action Justified

Rationale: Deputy 1 is no longer employed by the Sheriff's Department and is not subject to CLERB's jurisdiction. Law enforcement officers may impound an arrested person's vehicle under certain circumstances. Deputy 2 said the car was towed rather than released to a passenger because it was a traffic hazard and the passenger was not the registered owner. His actions were lawful, justified and proper.

8. Misconduct/Discourtesy – Deputy 1 and/or 2 “rudely laughed” about impounding the complainant’s car.

Recommended Finding: Not Sustained

Rationale: Deputy 1 is no longer employed by the Sheriff's Department and is not subject to CLERB's jurisdiction. Deputy 2 denied this allegation. There was insufficient evidence to prove or disprove the allegation.

9. Misconduct/Discourtesy – Deputy 1 and/or 2 laughed at the passenger when he called 911 asking for another deputy.

Recommended Finding: Not Sustained

Rationale: Deputy 1 is no longer employed by the Sheriff's Department and is not subject to CLERB's jurisdiction. Communication records indicated the “suspect” called 911 asking for another deputy. The complainant believed the passenger called 911, but the passenger said he used his phone only to call for a ride. Deputy 2 denied laughing at or ridiculing the passenger but said he asked why the passenger would call 911 when there was no emergency. There is insufficient evidence to prove or disprove the allegation.

10. Misconduct/Discourtesy – Deputy 2 stated, “If you are calling 911, we are 911.”

Recommended Finding: Not Sustained

Rationale: Deputy 2 said he did not recall his exact words but said this was something he might say. This allegation is subjective as to discourtesy, and the statement is not discourteous on its face or the context. There is insufficient evidence to prove or disprove the allegation.

11. Misconduct/Procedure – Deputy 2 refused the complainant’s request for another deputy, stating “No one else is coming.”

Recommended Finding: Not Sustained

Rationale: There was insufficient evidence to prove or disprove this allegation.

12. Illegal Search & Seizure – Deputies 1 and 2 searched the complainant’s car without justification while waiting for the tow.

Recommended Finding: Action Justified

Rationale: State law permits a law enforcement officer to inventory the contents of a vehicle before it is towed and stored. The deputies’ actions were lawful, justified and proper.

13. Misconduct/Procedure –Deputy 1 and/or 2 “never told” the complainant why they searched his car.

Recommended Finding: Not Sustained

Rationale: Deputy 1 is no longer employed by the Sheriff's Department and is not subject to CLERB's jurisdiction. Deputy 2 said he told the complainant that the car would be searched to inventory its contents before storage. There is insufficient evidence to prove or disprove the allegation.

14. Misconduct/Procedure –Deputy 1 and/or 2 “forced” the complainant to sit in a patrol car for about 45 minutes in “extremely hot weather” while waiting for the tow.

Recommended Finding: Action Justified

Rationale: The complainant said the air conditioner in the patrol car was running but was ineffective, and that Deputy 1 rolled the windows down half way at his request and apologized for the air circulation. Deputy 1 is no longer employed by the Sheriff's Department and is not subject to CLERB's jurisdiction. Having been taken into custody after refusing to sign a notice to appear on a hot summer afternoon in East County, the complainant's options were limited -- sitting on the ground in the sun while deputies processed his car for storage, or sitting out of the sun in an air-conditioned patrol car. Placing the complainant in the patrol car was lawful, justified and proper.

15. Misconduct/Procedure – Deputy 3 added a misdemeanor charge for refusing to sign the Notice to Appear after the complainant had signed the Notice to Appear.

Recommended Finding: Action Justified

Rationale: According to the complainant, Deputy 3 wrote him up for violating Penal Code § 148(a), delaying/resisting/obstructing an officer in the performance of his/her duties, which the District Attorney's Office prosecuted. At a patrol station, where the complainant was taken after refusing to sign a notice to appear for a traffic infraction, he eventually signed the ticket and was released. However, the complainant's persistent refusal to sign the notice to appear turned what should have been a brief cite-and-release traffic stop into an hours-long ordeal for him. His arrest was documented and supported by probable cause. The action was lawful, justified, and proper.

09-051

1. Death Investigation/Inmate Suicide - Deputy 1 found an inmate dead in his cell, hanging from a sheet noose.

Recommended Finding: Action Justified

Rationale: No complaint was filed. The Review Board initiated review pursuant to County of San Diego Charter § 606, which authorizes the Review Board to investigate in-custody deaths. The inmate had a history of mental illness, told deputies he was suicidal and would hang himself, and was promptly put in a safety cell. Within an hour the inmate was treated by a psychiatrist, who administered anti-psychotic medication, determined the inmate was no longer suicidal, cleared the inmate for removal from the safety cell, secured the inmate's promise to notify staff if he again felt suicidal, and recommended transfer to a psychiatric unit. Deputies transferred the inmate the same afternoon. Shortly after entering the new unit, Deputy 1, conducting a timely security, check found the inmate hanging from a sheet noose. This investigation found no wrongdoing by sworn staff.

09-053

1. Death Investigation/Medical – Deputy 1 found an inmate dead in his bunk.

Recommended Finding: Action Justified

Rationale: No complaint was filed. The Review Board initiated review pursuant to County of San Diego Charter § 606, which authorizes the Review Board to investigate in-custody deaths. An autopsy showed the inmate, booked into jail for being drunk in public, died from the effects of chronic alcoholism and that the manner of his death was natural. A review of Department records showed the inmate was being treated for alcohol withdrawal, was under a doctor's supervision in a jail medical unit, and was checked regularly by deputies. This investigation showed no wrongdoing by Sheriff's staff.

09-098

1. Discrimination/other - Deputies 1 and 2 “profiled” the complainant as a street racer or other reason.

Recommended Finding: Action Justified

Rationale: According to the complainant's citation, deputies stopped him because his performance car did not

have a visible front license plate as required by Vehicle Code § 5201. A photograph taken by deputies showed the complainant's car did have a front license plate, but it was not clearly visible: the plate was on a motorized mount on the bottom of the front grille, positioned face down to the pavement. The deputies' conduct was lawful, justified and proper.

2. Misconduct/harassment - Deputies 1 and 2 "harassed" the complainant "while trying to figure out what to give (him) at ticket for."

Recommended Finding: Action Justified

Rationale: Deputy 1 was authorized to look under the hood of the complainant's performance car by VC § 2806, based on the car's visible racing stickers and modified exhaust system and the complainant's statement in a previous contact that the engine had an after-market intake. Deputy 1 found an after-market air intake designed to enhance performance. The intake did not have a sticker showing it was state tested and approved. Deputy 1 cited the complainant for having modified emissions, an infraction. A smog referee later passed the complainant's car. Deputy 2 was the cover unit and stated he observed no harassment. The deputies' actions were lawful, justified and proper.

09-105

1. Illegal Search & Seizure – FBI Agents searched the complainant's home and business, seizing business and personal belongings over a three year period.

Recommended Finding: Summary Dismissal

Rationale: The Review Board lacks jurisdiction in this matter, and the complainant was referred to federal authorities.

2. False Arrest – FBI Agents arrested the complainant three different times for fraud, an expired visa, and tax evasion over a three year period.

Recommended Finding: Summary Dismissal

Rationale: The Review Board lacks jurisdiction in this matter, and the complainant was referred to federal authorities.

3. Criminal Conduct – Immigration Officials "tortured" the medically fragile complainant for 9 days in a dirty, insect-infested 1x1 meter cell, without his medication.

Recommended Finding: Summary Dismissal

Rationale: The Review Board lacks jurisdiction in this matter, and the complainant was referred to federal authorities.

4. Misconduct/Medical – Medical staff failed to properly diagnose, treat and/or respond to numerous medical issues brought by the complainant during his incarceration at the GBDF.

Recommended Finding: Summary Dismissal

Rationale: The Review Board lacks jurisdiction in this matter, and the complainant was referred to the Sheriff's Department.

Carol A. Trujillo

CAROL A. TRUJILLO
Executive Officer

CAT
Attachments