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(VACANT)

County of San Diego

CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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REGULAR MEETING AGENDA

TUESDAY, MAY 11, 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 March 9, 2010 Regular Meeting (*Attachment A*)
- b) Minutes of the April 13, 2010 Special Meeting (*Attachment A-2*)

3. WORKLOAD REPORT

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

4. NEW BUSINESS

- a) Farewell to Board Member Donald Warfield

5. UNFINISHED BUSINESS

- a) Sheriff's Department's response to recommendation in 07-063/Correa

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) **Attorney-Client Discussion** - Notice pursuant to Government Code Subsection 54956.9 (c), pending litigation.
 - Memo re: One-Year Cases for Summary Dismissal
- 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).
- c) **Public Employment Appointment (Executive Officer):** Government Code section 54957 (b).
 - Evaluate candidates for Executive Officer position

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 (9)

ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE

09-020

1. Misconduct/Procedure – Deputy 1 improperly allowed two inmates to assault the complainant.

Recommended Finding: Not Sustained

Rationale: Deputy 1 denied knowing the complainant had been threatened or intentionally opening the complainant's cell door so that two inmates could enter the complainant's cell and beat him up. According to the deputy and confirmed by a supervisor, the jail's computer system was set at the time to allow more than one cell to be remotely opened at a time. Deputy 1 denied enabling this computer function. When Deputy 1 opened the cell door for the two inmates to enter their cell from the module, the complainant's adjacent cell door also opened. Deputy 1 tried to remotely shut the complainant's cell door, but the two inmates grabbed the door, forced it open, entered the complainant's cell, and beat him. Deputies quickly responded and stopped the fight with pepper spray. The complainant received prompt medical attention for a bloody nose and the effects of the pepper spray. One inmate told deputies investigating the assault he feared the complainant would come out of his cell and "get me." The other inmate told deputies "I don't know" when asked about the incident. These inmates are no longer in jail and could not be located to question. A review of available evidence showed that opening the complainant's cell door appeared to be unintentional; there was insufficient evidence to prove or disprove intentional action by Deputy 1.

2. Misconduct/Procedure – Unidentified deputies did not take steps to properly protect the complainant, who had been threatened.

Recommended Finding: Action Justified

Rationale: The complainant, jailed for beating someone to death, admittedly twice beat a gang member inmate following a card game dispute. A deputy received an anonymous note that the gang would avenge the attack by assaulting the complainant. The same day, the deputy interviewed the complainant, who denied knowledge of gang activity, said “everything was cool,” and said he had been reassured by his victim’s friend “that everything is forgotten.” Deputies nevertheless immediately placed the complainant in protective custody and moved him into a solitary cell in another module. Their actions were lawful, justified and proper.

09-023

1. Illegal Search & Seizure – Deputies entered the complainant’s home and bedroom without announcing who they were.

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 staff vacancies, 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 – Deputies entered the bedroom of juveniles while brandishing their weapons.

Recommended Finding: Summary Dismissal

Rationale: See above.

3. Illegal Search & Seizure - Deputies improperly detained the complainant and his family causing children to be late for school.

Recommended Finding: Summary Dismissal

Rationale: See above.

4. Misconduct/Truthfulness – Deputies lied to the complainant that the search of his home was random when it was actually requested by the Probation Department.

Recommended Finding: Summary Dismissal

Rationale: See above.

5. False Reporting – Deputy 2 included false information in her police report concerning a search of the complainant’s office and that the complainant argued with deputies.

Recommended Finding: Summary Dismissal

Rationale: See above.

6. Misconduct/Procedure - Deputy 2, a female, twice searched Jason Fisher, a male, as four other male officers stood by.

Recommended Finding: Summary Dismissal

Rationale: See above.

7. Discrimination/Sexual – Deputy 2 made insulting and inappropriate sexual comments while performing a full body search of the complainant.

Recommended Finding: Summary Dismissal

Rationale: See above.

8. Misconduct/Procedure – Deputies behaved unprofessionally and treated children and another third party like criminals.

Recommended Finding: Summary Dismissal

Rationale: See above.

9. False Arrest – Deputies arrested the complainant because of his “attitude.”

Recommended Finding: Summary Dismissal

Rationale: See above.

10. Misconduct/Intimidation – Deputies 1 and 2 told Jill Steffan if she did not admit guilt, they would do everything in their power to take her kids away.

Recommended Finding: Summary Dismissal

Rationale: See above.

11. Criminal Conduct - Deputies “planted” evidence in the complainant’s trailer.

Recommended Finding: Summary Dismissal

Rationale: See above.

12. Misconduct/Procedure – Deputies refused to provide the complainant with a drug test and to fingerprint evidence used against him.

Recommended Finding: Summary Dismissal

Rationale: See above.

09-024

1. Illegal Search & Seizure – Officers entered the complainant’s home and bedroom without announcing who they were.

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 staff vacancies, 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 – Officers entered the bedroom of juveniles while brandishing their weapons.

Recommended Finding: Summary Dismissal

Rationale: See above.

3. Illegal Search & Seizure - Officers improperly detained the complainant and his family causing children to be late for school.

Recommended Finding: Summary Dismissal

Rationale: See above.

4. Misconduct/Truthfulness – Officers lied to the complainant that the search of his home was random when it was actually requested by the Probation Department.

Recommended Finding: Summary Dismissal

Rationale: See above.

5. Misconduct/Procedure – Officers behaved unprofessionally and treated children and another third party like criminals.

Recommended Finding: Summary Dismissal

Rationale: See above.

6. False Arrest – Officers arrested the complainant because of his “attitude.”

Recommended Finding: Summary Dismissal

Rationale: See above.

7. Criminal Conduct - Officers “planted” evidence in the complainant’s trailer.

Recommended Finding: Summary Dismissal

Rationale: See above.

8. Misconduct/Procedure – Officers refused to provide the complainant with a drug test and to fingerprint evidence used against him.

Recommended Finding: Summary Dismissal

Rationale: See above.

09-025

1. Misconduct/Procedure - Deputy 1 ordered the complainant out of a court facility without reason or explanation and refused to allow him back inside.

Recommended Finding: Not Sustained

Rationale: Deputy 1 stated the complainant was talking in his cell phone in the security screening area of a court house during an extremely busy period, refused his direction to get off the phone or go outside, and became argumentative. There was no corroboration of the incident, and there was insufficient evidence to prove or disprove the allegation.

2. Misconduct/Discourtesy - Deputy 1 treated the complainant rudely, accusing the complainant of “arguing” with him and having an “attitude.”

Recommended Finding: Not Sustained

Rationale: Deputy 1 denied treating the complainant rudely. Witnesses described both parties as “argumentative” and their exchange as “heated.” Allegations of rudeness are subjective, and there was no audio or video evidence of the encounter. There was insufficient evidence to prove or disprove the allegation.

3. Misconduct/Retaliation - Deputy 1 ordered the complainant out of the court facility after the complainant took down his name and told him his behavior was inappropriate.

Recommended Finding: Not Sustained

Rationale: Deputy 1 said he ordered the complainant out of the building the next day after the complainant concluded his court business and again became argumentative. There was no independent corroboration of the encounter. There was insufficient evidence to prove or disprove the allegation.

4. Misconduct/Discourtesy - Deputy 1 ordered the complainant back into the court facility so he could check the complainants for warrants

Recommended Finding: Not Sustained

Rationale: Deputy 1 said the complainant refused to leave the courthouse property when asked after causing a disturbance in the lobby. Because of the complaint's aggressive behavior, Deputy 1 said he asked for the complainant's driver's license to identify him and check for warrants, which the complainant refused to give. The complainant disputed the need for a warrants check. There is no policy or procedure prohibiting a deputy asking a person regarded as disruptive to court security for identification. There was insufficient evidence to prove or disprove the allegation.

5. Misconduct/Procedure - Deputy 1 kept a copy of the complainant's driver's license, even though the complainant had no warrants, causing the complainant to fear future retaliation.

Recommended Finding: Not Sustained

Rationale: Deputy 1 said he asked for the complainant's driver's license to run him for warrants but was unable to do so. He said he routinely copied identification to complete warrant checks or arrest reports but shredded the copy after completing the task. There was insufficient evidence to prove or disprove the allegation.

6. Misconduct/Intimidation - Deputy 1 told the complainant, "I better not see you again!" "You watch out!" "This things not over!"

Recommended Finding: Not Sustained

Rationale: Deputy 1 denied making the statement. Witnesses said they were too far away and did not know whether these statements were made. There was insufficient evidence to prove or disprove the allegation.

09-030

1. Misconduct/Procedure – Deputy 1 ordered the complainant to remove his hands from his pockets while investigating a report of loud music

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 staff vacancies, 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/Discourtesy – Deputy 1 yelled at the complainant and used "abusive speech".

Recommended Finding: Summary Dismissal

Rationale: See above.

3. Misconduct/Intimidation – Deputy 1 told the complainant he was going to, "put a bullet in me" "take me to jail" and "taser me".

Recommended Finding: Summary Dismissal

Rationale: See above.

09-031

1. Misconduct/Procedure – Deputies 1-4 "framed" the complainant, accused him as a "scapegoat," and "covered up" for an escape of an inmate with the same name.

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 and 2010, 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 5 and/or Deputy 8 placed the complainant in solitary confinement for more than 40 days even though he is supposed to be housed in the general inmate population.

Recommended Finding: Summary Dismissal

Rationale: See above.

3. Misconduct/Procedure – Deputy 5 and/or Deputy 8 failed to respond to the complainant's grievances.

Recommended Finding: Summary Dismissal

Rationale: See above.

4. Excessive Force – Deputy 6 and/or Deputy 7 punched and kicked the complainant.

Recommended Finding: Summary Dismissal

Rationale: See above.

09-035

1. Misconduct/Procedure – Deputy 1 refused to provide the complainant, an inmate, with toilet paper.

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 and 2010, 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/Intimidation – Deputy 2 threatened to destroy the complainant's mail if the complainant didn't shut up.

Recommended Finding: Summary Dismissal

Rationale: See above.

3. Misconduct/Discourtesy – Deputy 2 called the complainant a “bitch” and a “fucking idiot” and told him to “suck my dick.”

Recommended Finding: Summary Dismissal

Rationale: See above.

4. Excessive Force – Deputy 2 punched the complainant's arm, even though the complainant posed no threat.

Recommended Finding: Summary Dismissal

Rationale: See above.

5. False Reporting – Deputy 2 made a false statement to “cover up” the incident.

Recommended Finding: Summary Dismissal

Rationale: See above.

6. Misconduct/Procedure – Deputy 3 failed to properly investigate the complainant’s complaints.

Recommended Finding: Summary Dismissal

Rationale: See above.

09-050

1. Death Investigation/Inmate Suicide – Deputies 1 and 2 found Inmate Santana suspended by a noose during a routine security check.

Recommended Finding: Action Justified

Rationale: While deputies were performing hourly checks, as required by policy, they discovered Santana lying on the ground, with his upper torso partially suspended from the floor by a ligature. Deputies and medical personnel responded to a call of “man down,” and resuscitative efforts were performed until death was pronounced. The cause of death was attributed to asphyxia by hanging, and the manner of death was classified as suicide. The evidence shows the deputies’ conduct was lawful, justified and proper.

10-020

1. On March 1, 2010, the complainant submitted a three-page handwritten signed complaint describing: clergy abuse related to an alleged crime in 1985-86; the “medical restraint” of a relative, misdiagnosis, and drug kickbacks in Boston; the violent death of a friend; her poisoning from carbon monoxide from various appliances at her rented home in Clairemont; her Worker’s Comp case; her attempts to access records about her father from a local school district; and a hit and run accident at a gas pump, which was documented by the San Diego Police Department. None of the allegations have a recognizable nexus to a deputy or probation officer.

Recommended Finding: Summary Dismissal

Rationale: Section 4: Authority, Jurisdiction, Duties And Responsibilities Of Review Board. 4.1 Citizen Complaints: Authority. Pursuant to Ordinance #7880, as amended, (Article XVIII, Section 340 340.9 of the San Diego County Administrative Code), the Review Board shall have authority to receive, review, investigate and report on citizen complaints filed against peace officers or custodial officers employed by the County in the Sheriff’s Department or the Probation Department...
