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CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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FINAL NOTICES

The Citizens' Law Enforcement Review Board made the following findings in the closed session portion of its March 9, 2010 meeting, held at the San Diego County Administration Center, 1600 Pacific Highway, Room 302/303, San Diego, CA 92101. Minutes of the open session portion of this meeting will be available following the Review Board's review and adoption of the minutes at its next meeting. Meeting agendas, minutes, and other information about the Review Board are available upon request or at www.sdcounty.ca.gov/clerb.

CLOSED SESSION

- a) **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 <u>jurisdiction</u> or the complaint clearly lacks merit.

CASES FOR SUMMARY HEARING (14)

ALLEGATIONS, FINDINGS & RATIONALE

09-003

1. Criminal Conduct – Deputy 1 parked in a marked fire lane in front of the complainant's house and refused to move her car when the complainant told her he feared for his family's safety in the event of a fire.

Board Finding: Summary Dismissal

Rationale: The evidence showed the alleged conduct occurred while the deputy was off-duty. San Diego County Administrative Code §340, Purpose and Intent, states that the Review Board was established to handle citizen complaints charging deputies and probation officers "with misconduct arising out of the performance of their duties." The Review Board lacks jurisdiction.

2. Misconduct/Discourtesy – Deputy 1 laughed at the complainant, told him "You'd better not," and walked away when he told her he was going to have her car towed from the fire lane.

Board Finding: Summary Dismissal

Rationale: See Rationale for #1.

3. Misconduct/Procedure – Deputy 1 showed her law enforcement badge to California Highway Patrol officers, resulting in a "professional courtesy" warning in lieu of a citation for parking in the fire lane.

Board Finding: Unfounded

Rationale: Deputy 1 denied showing her badge to CHP officers, which the CHP officer who contacted her corroborated. According to CHP communications records, the car was moved from the fire lane. The evidence showed the alleged conduct did not occur.

4. Misconduct/Truthfulness – Deputy 1 lied to California Highway Patrol officers, stating she had responded to several domestic disputes at the complainant’s home.

Board Finding: Unfounded

Rationale: Deputy 1 denied making this statement to a CHP officer, which the CHP officer and Department records corroborated. The CHP supervisor who reportedly heard the statement from officers and related the statement to the complainant is retired and could not be located. The evidence showed the alleged conduct did not occur.

09-006

1. Misconduct/Procedure – Deputy 1 attempted to stop the complainant’s vehicle while wearing civilian clothing and driving an unmarked car.

Board 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/Discourtesy – Deputy 1 “banged” on the complainant’s car window and screamed at him as evidenced by her flushed, red face.

Board Finding: Summary Dismissal

Rationale: See above.

3. Misconduct/Procedure – Deputy 1 used Deputy 2’s badge instead of her own for identification to the complainant.

Board Finding: Summary Dismissal

Rationale: See above.

4. False Reporting – Deputy 1 falsely cited the complainant for violations of VC§ 21755, Pass on Right Safely and VC§ 21650, Right Side of Roadway, which the complainant disputes.

Board Finding: Summary Dismissal

Rationale: See above.

5. Illegal Search & Seizure – Deputy 3, detained the complainant for 30 minutes, questioned his passenger, and searched his vehicle during a traffic stop.

Board Finding: Summary Dismissal

Rationale: See above.

6. Misconduct/Procedure – Deputy 1 failed to appear at a court hearing on the traffic citation, wasting taxpayer money and the complainant’s time.

Board Finding: Summary Dismissal

Rationale: See above.

09-007 & 09-008

1. Illegal Search & Seizure – Deputy 1 pulled the complainant over on the freeway in violation of her Fourth Amendment rights.

Board Finding: Action Justified

Rationale: According to deputy reports, the complainant passed Deputy 1 as he drove his marked patrol car at 70 mph on the freeway. Deputy 1 observed the complainant drive erratically at speeds of more than 100 mph, nearly colliding with other cars and the concrete center divide after he pulled behind her and activated lights and sirens. After her arrest, the complainant admitted speeding, then denied speeding and seeing the overhead lights, a statement that was inconsistent with her complaint. Deputy 1 had reasonable suspicion to pull the complainant over, and his actions were lawful, justified and proper.

2. False Arrest – Deputy 1 arrested the complainant for evading an officer and driving under the influence even though she pulled over and has prescriptions for her medications.

Board Finding: Action Justified

Rationale: In addition to speeding and erratic driving while being followed by a patrol car with lights and siren activated, the complainant failed several field sobriety tests: she nearly fell and failed to follow instructions to count, to balance and to walk. The complainant said she had ingested several prescription drugs. These factors led to the conclusion that she was too intoxicated to operate a motor vehicle safely, regardless of whether she had taken street drugs or prescription drugs. A drug test showed she was under the influence of four prescription drugs; the prescription warnings on each of these drugs warn patients to use “caution engaging in activities that require alertness, such as driving.” She was also charged with bringing contraband into jail because she said kept Valium in a plastic bag in her vagina. Her arrest was based on probable cause and was lawful, justified and proper.

3. Excessive Force – Deputy 1 and/or 2 forcibly removed the complainant from the car, slammed her against the car, and held her head against the trunk.

Board Finding: Action Justified

Rationale: Not knowing why the complainant had ignored lights and sirens as Deputy 1 followed her in his patrol car, deputies did a “hot stop” of the complainant’s vehicle on the freeway. She stepped out of her car without assistance after eventually complying with deputies’ commands to show her hands, get out of the car, put her hands above her head, and face away from deputies. Once outside the car, however, she reportedly lowered her arms and turned toward deputies. Fearing the complainant could be reaching for a weapon under her sweatshirt, Deputy 2 said he pushed her upper body over the trunk and used his bodyweight to push her against her car so she could not reach anything at her waist. Deputy 2 handcuffed her but denied holding her head against the trunk. None of the deputies on scene said they saw this. There were no corroborating marks in the complaint’s subsequent booking photo or complaints of pain by the complainant at the scene or at jail. Deputy 1 had his canine partner in hand and did not make contact with the complainant. Deputy 2’s use of force was within Department policy and was lawful, justified and proper in the circumstances.

4. Misconduct/Discourtesy – Deputy 1 told other deputies, “This bitch doesn’t have any fucking clothes on.”

Board Finding: Unfounded

Rationale: Deputy 1 denied making this statement. Other deputies at the scene denied hearing Deputy 1 make this statement about the complainant, who wore only a sweatshirt and panties. Discrepancies in the complainant’s statements, along with a drug test showing she was under the influence of four prescription drugs that individually could impair alertness, made her account unreliable. The evidence showed the alleged act did not occur.

5. Excessive Force – Deputy 1 roughly pulled the complainant out of the patrol car and dragged her into the station.

Board Finding: Unfounded

Rationale: Deputy 1 did not transport the complainant because his canine partner was in the backseat. The evidence showed the allegation as it pertains to Deputy 1 did not occur.

6. Misconduct/Intimidation – Deputy 1 reviewed the complainant’s criminal record and told her, “It is my word against yours.”

Board Finding: Unfounded

Rationale: Deputy 1 denied making this statement. Discrepancies in the complainant’s statements, along with a drug test showing she was under the influence of four prescription drugs that individually could impair alertness, made her account unreliable. The evidence showed the alleged act did not occur.

7. Excessive Force – Deputy 3 dragged and pulled on the complainant at jail.

Board Finding: Unfounded

Rationale: Deputy 3 denied dragging or pulling on the complainant when taking her from his patrol car to jail. There is no corroborating evidence, such as video or complaints of pain at jail. Discrepancies in the complainant’s statements, along with a drug test showing she was under the influence of four prescription drugs that individually could impair alertness, made her account unreliable. The evidence showed the alleged act did not occur.

8. Misconduct/Truthfulness – Deputy 1 told a female detentions deputy that the complainant threatened her.

Board Finding: Unfounded

Rationale: See #6.

9. Excessive Force – Deputy 4 pulled and yanked on the complainant’s hair.

Board Finding: Action Justified

Rationale: Deputy 4 denied pulling or yanking on the complainant’s hair. Before the complainant was booked into jail, Deputy 4 removed beads and rubber bands from the complainant’s hair because they are contraband and not allowed in the jail. There was no corroborating injury or complaint of pain. Discrepancies in the complainant’s statements, along with a drug test showing she was under the influence of four prescription drugs that individually could impair alertness, made her account unreliable. Deputy 4’s actions were lawful, justified and proper.

09-009

1. Misconduct/Procedure – Deputy 1 refused to take law enforcement action when another citizen threatened to fight the complainant.

Board 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/Discourtesy – Deputy 1 was “dismissive,” used “rather abusive language,” and showed little respect to the complainant after she was threatened in a parking lot dispute.

Board Finding: Summary Dismissal

Rationale: See above.

3. Misconduct/Procedure – Deputy 1 failed to properly identify himself when the complainant asked for his name.

Board Finding: Summary Dismissal

Rationale: See above.

4. Misconduct/Procedure – Sergeant 2 was defensive and said he would speak with Deputy 1 if the complainant agreed not to file a complaint.

Board Finding: Summary Dismissal

Rationale: See above.

09-010

1. Misconduct/Discourtesy – Deputy 1 was “demeaning, arrogant, condescending” and would not provide the complainant with emergency assistance upon request.

Board 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/Discourtesy – Deputy 1 accused the complainant of threatening him when the complainant said he would call 911 for assistance.

Board Finding: Summary Dismissal

Rationale: See above.

3. Misconduct/Procedure – Deputy 1 ordered the complainant away from an incident scene without providing requested assistance.

Board Finding: Summary Dismissal

Rationale: See above.

09-012

1. Misconduct/Procedure – PO 1 did not respond to the complainant’s repeated requests for assistance.

Board 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/Discourtesy – PO 1 repeatedly interrupted and made degrading accusations against the complainant by calling her a drug addict and a liar.

Board Finding: Summary Dismissal

Rationale: See above.

3. Misconduct/Discourtesy – PO 1 told the complainant she was useless and that no one would hire her because she was a drug addict.

Board Finding: Summary Dismissal

Rationale: See above.

4. Misconduct/Intimidation – PO 1 threatened the complainant with arrest and CPS intervention if she went near her grandchildren.

Board Finding: Summary Dismissal

Rationale: See above.

5. Misconduct/Procedure – PO 1 would not allow the complainant to use an office telephone to call for transport.

Board Finding: Summary Dismissal

Rationale: See above.

6. Misconduct/Discourtesy – PO 1 told the complainant, “I’m sure you can do something for someone for a quick \$100, (implying prostitution).

Board Finding: Summary Dismissal

Rationale: See above.

09-014

1. Misconduct/Procedure – Deputy 5 mistakenly allowed 2 modules out at the same time resulting in a riot.

Board 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/Discourtesy – Deputy 3 told the complainant to, “shut the fuck up!”

Board Finding: Summary Dismissal

Rationale: See above.

3. Misconduct/Retaliation – Deputy 3 handcuffed the complainant and placed him into an isolation cell for 4 hours when he said he had a “chrono” for a lower bunk.

Board Finding: Summary Dismissal

Rationale: See above.

4. Misconduct/Procedure – Deputies 1, 2 or 5 confiscated the complainant’s belongings including his legal papers, which were subsequently lost.

Board Finding: Summary Dismissal

Rationale: See above.

5. Misconduct/Procedure – Deputies 5 and 4 failed to respond to the complainant’s 3 grievances.

Board Finding: Summary Dismissal

Rationale: See above.

6. Misconduct/Procedure – Deputy 5 opened the complainant’s incoming legal mail.

Board Finding: Summary Dismissal

Rationale: See above.

(CLERB Investigators’ note: The complainant brought forth several other allegations concerning jail conditions e.g. sleep deprivation tactics, lights on throughout the night, unspecified profanity, mail and clothing exchange at late hours, and lockdowns that were referred back to the Sheriff’s Department for investigation.)

09-016

1. Criminal Conduct – Deputy 1 is wrongfully pursuing the complainant with criminal charges related to child custody issues.

Board 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/Truthfulness – Deputy 1 told the complainant he would lie about the complainant and his behavior in court.

Board Finding: Summary Dismissal

Rationale: See above.

3. Misconduct/Disrespect – Deputy 1 called the complainant by his first name, which the complainant found disrespectful.

Board Finding: Summary Dismissal

Rationale: See above.

4. Misconduct/Procedure – Deputy 1 failed to return the complainant’s telephone calls until ordered to do so by his superiors.

Board Finding: Summary Dismissal

Rationale: See above.

5. Misconduct/Intimidation – Deputy 1 called and threatened the complainant and on another occasion used the term “zeroed in on you,” which the complainant took as a threat.

Board Finding: Summary Dismissal

Rationale: See above.

6. Misconduct/Procedure – Deputy 1 failed to provide the complainant with information including where to serve papers/mail.

Board Finding: Summary Dismissal

Rationale: See above.

7. Misconduct/Procedure – Deputy 1 and/or other unidentified deputies denied the complainant a police report on two occasions.

Board Finding: Summary Dismissal

Rationale: See above.

8. Misconduct/Truthfulness – Deputy 1 lied to his superiors about telephone conversations he had with the complainant.

Board Finding: Summary Dismissal

Rationale: See above.

9. Misconduct/Truthfulness – Deputy 1 lied to his superiors that the complainant assaulted and/or kicked an attorney.

Board Finding: Summary Dismissal

Rationale: See above.

10. Criminal Conduct – Deputy 1 failed to investigate the complainant’s abuse of harassment, torment, and extortion by his former wife and attorney. The complainant has also been subjected to physical abuse by the police, had his bank accounts emptied, and been charged with crimes by the city attorney for following a family court order.

Board Finding: Summary Dismissal

Rationale: See above.

09-017

1. Misconduct/Procedure - Deputy 1 ordered the complainant to be waist- and leg-chained at all times while outside his cell.

Board Finding: Action Justified

Rationale: There was ample evidence that the inmate complainant repeatedly threatened and assaulted staff and other inmates. The inmate also was found with jail made weapons that could have injured deputies, medical staff, other inmates, and court personnel. Placing him in waist and leg chains whenever he left his cell was lawful, justified and proper.

09-029

1. Misconduct/Procedure – Deputies 1 and 2 determined the complainant to be the aggressor prior to interviewing him about the incident.

Board Finding: Action Justified

Rationale: There were no independent witnesses to this event, and both the complainant and his neighbor blamed each other for what occurred. Both admittedly began “chest bumping” one another, which escalated into the complainant striking his neighbor with a closed fist. The neighbor did not retaliate after that with any physical violence against the complainant. Based upon both parties’ calls to 9-1-1 and the complainant’s admission that he struck his neighbor, deputies responded and conducted an investigation, in which they interviewed both parties. The result of their investigation determined the complainant to be the aggressor due to his higher level of force. The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.

2. False Arrest – Deputies 1 and 2 arrested the complainant for battery when he was a victim.

Board Finding: Action Justified

Rationale: Deputies were authorized by and in compliance with Department Policy and Procedure in arresting the complainant after he physically struck his neighbor with a closed fist, resulting in injury to the neighbor. The complainant was also injured during the incident. The District Attorney dismissed charges against the complainant because “without any corroboration for either party’s version of events, they could not prove the case beyond a reasonable doubt.” The fact that no charges were issued did not negate probable cause for the complainant’s arrest. The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.

09-034

1. Discrimination/Religious – Deputy 1 refused to take back a ham sandwich that was mistakenly served to an inmate who is Jewish and eats Kosher, in violation of the inmate’s freedom of religion.

Board Finding: Action Justified

Rationale: Deputy 1 said the complainant asked an inmate worker for a regular non-Kosher meal, accepted it from the worker, then asked the worker for a Kosher meal. Because inmates are permitted one meal each per feeding by Department policy, Deputy 1 did not allow the inmate worker to give the complainant the second meal. The inmate workers who passed out the meals are no longer in custody and could not be located to question. Deputy 1 denied taking anti-Semitic action against the complainant by refusing to give him a second, Kosher meal. Video evidence refuted a complaint statement made under penalty of perjury that Deputy 1 kicked the complainant’s cell food flap closed, indicating the complainant’s account of the incident was unreliable. The evidence showed the alleged act did occur but was lawful, justified and proper.

2. Misconduct/Discourtesy – Deputy 1 told the inmate, “Fuck you. You took it and I ain’t taking it back.”

Board Finding: Unfounded

Rationale: Deputy 1 denied arguing with or cursing at the complainant, whom he described as calm and speaking in a normal tone. Inmate workers who passed out the food trays are no longer in custody and could not be located to question. Video evidence refuted a complaint statement made under penalty of perjury that Deputy 1 kicked the complainant’s cell food flap closed, indicating the complainant’s account of the incident was unreliable. The evidence showed the alleged conduct did not occur.

10-012

1. Misconduct/Procedure - Deputy 1 should have checked the complainants for warrants earlier so he could have been released from jail sooner after his court appearance, when he learned the District Attorney did not file a criminal charge.

Board Finding: Summary Dismissal

Rationale: San Diego Administrative Code §340.9(a) requires complaints to be filed within one year of the complaint incident; any period of incarceration or incapacitation is not counted in determining the one-year period. Jail records showed the complainant was incarcerated in October 2008. He complained to the Review Board in February 2010, 16 months or more than one year after the complaint incident. According to jail records and the complainant, he was not incarcerated or incapacitated after the complaint incident. The Review Board lacks jurisdiction.

2. Misconduct/Procedure - Deputy 1 should have returned the complainant’s belongings and allowed him to dress in his personal clothing before he went to court, so he could have been released from jail sooner.

Board Finding: Summary Dismissal

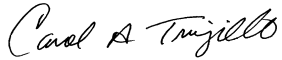
Rationale: See Rationale #1.

10-013

1. Excessive Force/other - Deputy 1 slammed the complainant’s hands in a door in jail.

Board Finding: Summary Dismissal

Rationale: San Diego Administrative Code §340.9(a) requires complaints to be filed within one year of the complaint incident; any period of incarceration or incapacitation is not counted in determining the one-year period. Jail records showed the complainant was incarcerated in August 2008. She complained to the Review Board in February 2010, 18 months or more than one year after the complaint incident. According to jail records and the complainant, she was not incarcerated or incapacitated after the complaint incident. The Review Board lacks jurisdiction.



CAROL A. TRUJILLO
Executive Officer

CAT/amb