

County of San Diego



2005 ANNUAL REPORT

“SERVING THE COMMUNITY AND THE JUSTICE SYSTEM FOR 15 YEARS”

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About the Citizens' Law Enforcement Review Board

In November of 1990, the citizens of San Diego County voted to establish the Citizens' Law Enforcement Review Board. The Review Board is composed of 11 citizens who are appointed by the Board of Supervisors. The Review Board was established for the purpose of receiving and investigating complaints of misconduct by peace officers and custodial officers performing their duties while employed by the Sheriff's Department or the Probation Department. The Review Board is also able to investigate any deaths, which occurred while in the custody of, or in connection with, actions of peace officers or custodial officers employed by the Sheriff's Department or the Probation Department. The Review Board advises the Board of Supervisors, the Sheriff and the Chief Probation Officer on matters related to the handling of citizens' complaints or deaths, or departmental policies and practices.

Mission Statement

To increase public confidence in government and the accountability of law enforcement through the investigation and reporting of citizen complaints filed against peace officers or custodial officers employed by the County in the Sheriff's or Probation Departments which allege improper conduct by the officers, or which allege policy or procedural violations.

2005 Board Members

Robert Winston, Chairperson
Otto Emme, Vice Chairperson
Kourosh Hangafarin, Secretary
Edward Castoria
Patrick Hunter
Thomas Iniguez
Mark Marchand
Allen Miliefsky
Glenn Quiroga
Don Warfield
Louis Wolfsheimer

Staff

John Parker, Executive Officer
Lynn Setzler, Special Investigator
Joseph Garcia, Special Investigator
Victoria Ollier, Administrative Secretary III

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**RÉSUMÉS OF THE CURRENT
REVIEW BOARD MEMBERS**

Robert Winston
Chairperson

A resident of Carlsbad, Mr. Winston is a Senior Vice President for Smith Barney in La Jolla. He holds degrees in Criminal Justice Administration from San Diego State University and in Behavioral Science from Indian Valley College. Mr. Winston has served on the Board of Directors of the UCSD Cancer Center Foundation. He volunteered as a reserve police officer for the San Diego Police Department from 1993 through 1999. He also serves as a director for the San Diego Police Foundation.

Otto Emme
Vice Chairperson

A resident of San Diego, Otto Emme is owner and operator of his family-owned real estate business, which specializes in apartment rental properties. Additionally, Mr. Emme is a captain in the California Army National Guard. He serves as commander of a heavy maintenance ordinance company in Gardena, California. Locally, he serves on the San Diego Historic Resources Board and is a member of the 2005-06 County Grand Jury. He has been the past chair of the Pacific Beach Community Planning Board, Recreation Council and a member of Sigma Delta Parliamentarian Society. Mr. Emme is a graduate of the University of San Diego with a degree in International Relations.

Kourosh Hangafarin
Secretary

A resident of Rancho Santa Fe, Mr. Hangafarin is an operations and public affairs professional with 20 years of experience in private enterprise and political organizations. He has served on the Republican National Committee Chairman's Advisory Board, President of the Iranian American Republican Council, a member on the Board of Director's of the San Diego Lincoln Club and on the World Future Society and World Affairs Council. He has held positions on the San Diego County Planning Commission and the San Diego Port Commission.

Edward Castoria

A resident of the Tierrasanta area of San Diego, Edward Steven "Eddie" Castoria, M.A., J.D. is President and CEO of TeleTran Tek Services, a San Diego-based consulting company which, among other projects, manages the region's motorist aid call box system. He holds a B.A. in Psychology from the University of San Francisco, as well as an M.A. in Counseling Psychology and a J.D. in law from the University of New Mexico. Before entering private business, Mr. Castoria worked as a government public works program manager for both San Diego County and Nueces County, Texas. As an attorney, he prosecuted major fraud cases for the U.S. Department of Justice in Washington, D.C., and practiced civil litigation in New Mexico and California. Before law school, Mr. Castoria managed an in-house inmate counseling program in the Bernalillo County, NM jail system. He was a decorated Army Infantry Airborne Ranger officer who served as a Pathfinder commander during the Vietnam war. He is an avid golfer.

Patrick Hunter

A resident of the Rancho Penasquitos community in San Diego, Mr. Hunter is employed at Highland Partnership, Inc., a Chula Vista-based general contracting firm. He is a retired Naval Officer where he served in senior administrative positions during a 22-year career. Significant assignments included the Navy Fighter Weapons School (TOPGUN), USS John F. Kennedy, the Pentagon, and U.S. Naval Forces Europe in London. He received his undergraduate degree from Norfolk State University and his Master of Public Administration from National University in San Diego. Mr. Hunter became involved in the civilian oversight of law enforcement in 1997, accepting an appointment to the City of San Diego Citizens' Review Board on Police Practices. He was elected Chair of that Review Board for the 2003-2005 terms.

Thomas Iniguez

A resident of Bonita, Thomas Iniguez is currently employed by Walters Management as a Community Director and Property Manager for the Eastlake Community of Chula Vista. He served in the U.S. Navy from 1970-1974. Mr. Iniguez is retired from

the Chula Vista Police Department and had served previously with the Imperial Police Department and the San Diego Sheriff's Department. Mr. Iniguez is a member of the Bonita Optimist Club; the Bonita - Sweetwater Civic Association, and the Bonita Highlands Homeowners Association.

Mark Marchand

A 14-year resident of the Bonita/Chula Vista area, Mr. Marchand is CEO of the Pacific Southwest Association of Realtors, manages the San Diego County Commercial Association and the Coronado Association of Realtors. He serves on the SR 125 Advisory Committee, Chula Vista Bay front Master Plan Advisory Committee, The Salvation Army Board of Directors, Christmas in October, Boy's and Girl's Club, as well as five corporate boards. He has also been on the Chula Vista Mobile Home Rent Review Commission. Mr. Marchand served in the Navy Security Group and is a graduate of Dallas Baptist University, North Texas State University, and Duke University.

Allen Miliefsky

A resident of San Diego, Allen Miliefsky is a retired Air Force Officer and flew 256 combat missions in Vietnam. He is a graduate of the University of Nebraska, the University of Southern Mississippi, Industrial College of the Armed Forces, Air Command and Staff College and the Air War College. He is presently employed as a Transition Service Officer for the Disabled American Veterans at Miramar MCAS, and is commander of the local Jewish War Veterans of the U.S.A. Mr. Miliefsky is also a member of the San Diego Police Department RSVP currently serving in the Traffic Division,

Glenn Quiroga

Glenn Quiroga is a life-long resident of San Diego County. He serves as the elected Tribal Treasurer for the Sycuan Band of the Kumeyaay Nation. As Treasurer, Mr. Quiroga oversees the financial affairs of all the business enterprises of the Tribe, works closely with auditors to ensure compliance with applicable regulations and laws, and reports regularly to his constituents on the financial health of the businesses. He continues to serve as Director of the Sycuan Medical Health Plan, a position that he has

held for four years. Mr. Quiroga is a member of the California Nations Indian Gaming Association, the National Indian Gaming Association, and the Society of Professional Business Administration. He is a graduate of El Cajon Valley High School and attended Marymount College and the University of San Diego. He and his wife Toni reside in Granite Hills with their son.

Don Warfield

A San Diego native, Mr. Warfield is owner of Donald Warfield & Associates, a real estate firm dealing in the sales of investment properties & residential real estate. Mr. Warfield is a graduate of San Diego State University and the Graduate School of Savings & Loan at Indiana University, and served in the United States Air Force. He has worked in the banking industry for 28 years and served on various boards, including Boys & Girls Club; the Mother Goose Parade Association; Rotary Club; the El Cajon Chamber of Commerce; the El Cajon Police Selection Board; the City of El Cajon & County of San Diego United Way Boards; Tax Payers Association and Chaired Cajon Valley School Tax Override. Mr. Warfield was also a member of the Crime Commission. Mr. Warfield currently serves as a member of the San Diego Police RSVP in Central Division and is the Treasurer of the Del Cerro Heights Home Owners' Association

Louis Wolfsheimer

Originally from Baltimore, MD, Mr. Wolfsheimer has been a resident of San Diego since 1962. He was First Lieutenant in the United States Air Force. Mr. Wolfsheimer currently practices law with the firm of Milch & Wolfsheimer. He is a graduate of the University of North Carolina and California Western School of Law. Presently, Mr. Wolfsheimer is a member of the State Bar of California, and is "Of Counsel" with the law firm of Procopio, Cory Hargreaves and Savitch, LLP. In the past, Mr. Wolfsheimer has served on a multitude of board committees such as Francis W. Parker School, American Jewish Committee, Episcopal Community, Combined Arts of San Diego (COMBO), Salvation Army and Human Subjects Committee of UCSD Medical School, to name a few.

MESSAGE FROM THE CHAIR

It is with great pride that I accepted the unanimous vote of members of the Review Board to serve another term as Chairman. The talent and dedication that every member of the board brings to the work of CLERB is awesome and I feel fortunate to work with this group. Each member shares my view that CLERB exists to protect the rights of the citizens of San Diego County. Because the Sheriff is an elected official, there is no real check on his authority between elections. A primary role that CLERB fills is to act as a vital check on his power. CLERB also has a similar role with the Probation Department.

CLERB offers all persons who may have a grievance or allegations of misconduct by Sheriff's deputies or Probation officers an alternative to either department's internal complaint process. All complaints are taken seriously and most are investigated thoroughly by CLERB's civilian staff. Our investigators gather evidence and interview witnesses while creating an investigative report. The investigative staff then makes recommendations to the review board regarding the validity of the allegations, and it is the sole responsibility of the appointed members on the board to make a final judgment.

Many investigations reveal that Sheriff's deputies or Probation officers facing allegations of misconduct acted properly, both under departmental policy and under the law. Conversely, when misconduct allegations are proved valid, the review board then makes appropriate disciplinary recommendations.

Both before and after CLERB was created 15 years ago, it was faced with many challenges, both internally and externally. The dedicated staff and members of the Review Board have risen to each and every challenge. Some of the internal challenges have involved creating or changing investigative methods and procedures to adapt to growing caseloads with finite resources.

Most external challenges have struck at what voters intended when CLERB was created - a process for receiving and investigating citizen complaints which would be open to public scrutiny. The open deliberations of complaint cases, once a part of our public meeting agenda, have been forced into closed sessions under threat of lawsuit from the Deputy Sheriffs' Association. A court challenge related to the confidentiality of such hearings is still pending before the California Supreme Court. A positive ruling in that case may permit CLERB to regain some measure of openness. Despite all the challenges, CLERB continues to be a nationally recognized standard for the "independent investigations" model of citizen oversight of law enforcement.

The citizens of San Diego County should be thankful for the outstanding leadership at both the Probation and Sheriff's Departments, as well as dedicated law enforcement professionals they employ to protect and serve us all. CLERB will continue to provide a measure of assurance that both departments respect the rights of all individuals in the performance of their duties.

ROBERT WINSTON
Chairperson – 2005

EXECUTIVE OFFICER'S SUMMARY

***“Serving The Community And The Justice System
For 15 Years”***

Upon reaching our 15th year milestone, I believe a very brief historical review of the Citizens Law Enforcement Review Board (CLERB) is in order. On November 6, 1990, the voters approved an amendment to the Charter of San Diego County, providing for the creation of CLERB. In early 1991, the Administrative Code was amended to establish CLERB, and recruitment for the first board members began. On May 23, 1991, the newly appointed board members held the first of many organizational meetings.

For the remainder of 1991, the primary focus of the Review Board was on drafting rules and regulations; receiving orientation training from the Probation and Sheriff's Departments; and the process of recruiting staff. On January 13, 1992, CLERB's first executive officer was introduced to the board. On April 15, 1992, the hiring of professional staff was announced. With staff in place, the process of making the Review Board function as intended by the voters began. From the very inception of CLERB, there have been numerous legal challenges and one very notable fiscal impediment to its ability to function properly. All have been well documented in earlier reports. Despite the previous and ongoing challenges, we continue to practice our adopted motto: *“serving the community and the justice system.”*

CLERB has evolved in many ways since my arrival in May, 1997. We have updated and streamlined the

complaint investigation process by eliminating a long-standing case backlog through the establishment of sound investigation and case management standards. We have forged an excellent record of handling difficult case-related issues with integrity. As I approach my 10th year as executive officer, I am dedicated to the continuous improvement of our business process. This means cementing, in a positive and lasting way, the professionalism of our staff members; maintaining credibility with the diverse communities we serve; and assuring objectivity and fairness to the men and women of the Sheriff's Department and the Probation Department.

As we move forward to 2006 and beyond, we anticipate a final resolution of the pending legal challenges to the public's right to know how their grievances are addressed by this Review Board. We believe it was the intent of the voters who created this body that there would be an openness and understanding of the process that could not be attained from the Sheriff or the Probation Department due to the laws restricting those law enforcement agencies' release of information. Our process differs because the information we previously released to the public was gained independently, and not from a law enforcement personnel record.

As an updated feature of this report, I am adding two appendices in order to provide a more complete understanding of our process. They are County Charter Section 606, and a copy of the revised CLERB Rules and Regulations, which note proposed changes to address existing confidentiality laws, while providing the openness of process intended by our original mandate.

As usual, the bulk of this report goes into great detail regarding complaints received during 2005, as well as cases closed in the same period. I should point out that the significant accomplishments of the past year have been realized, not only by the hard work of our professional staff, but also through the selfless dedication of our entire board, led during the past year by Chairman Robert Winston, Vice-Chairman Otto Emme and Secretary Kourosh Hangafarin. This report is dedicated to the members of the Citizens Law Enforcement Review Board, past and present, who have served the County of San Diego with distinction.

COMPLAINT DATA REVIEW

There was a significant increase in complaints received during the year. We went from **116** complaints with 357 allegations¹ in 2004, to **182** complaints with 440 allegations in 2005. This is a **57% increase** in total complaints. Sheriff's units with notable increases in complaint totals were Court Services, George Bailey Detention Facility, Las Colinas Detention Facility, Vista Detention Facility, and Vista Patrol Station. Probation Adult Services also experienced a significant increase in complaints, although their totals remain fairly insignificant to the overall totals in this report.

Sheriff Units with the highest overall complaint totals for the year are George Bailey Detention Facility with 37 and San Diego Central Jail with 35. Among

¹ Allegations are individual acts – or categories of misconduct. Complaint cases typically have multiple allegations. Allegation totals can also be compounded by the number of deputies named in a given case. Finally, as case investigations are completed, the allegation totals are subject to change as factual information is established.

Sheriff's patrol units, Vista Station led with 11 complaints, up five over the previous year. San Marcos Station was second with nine complaints, up just one complaint from the previous year. The Probation Department went from an overall total of two complaints in 2004 to 14 in 2005. (Refer to Table 1 on page 11)

In examining allegations by category, Table 1 discloses Sheriff and/or Probation units that received the highest counts in each of the following identified category:

- Criminal Conduct: Nine Separate Units in both the Sheriff and Probation Departments (1 each)
- Death Cases: SD Central Jail and Vista Station (6 each)
- Discrimination: Geo. Bailey Detention Facility and Probation Adult Services (2 each)
- Excessive Force: SD Central Jail (20); Vista Detention Facility and Vista Patrol Station (9 each)
- False Arrest: Encinitas Patrol Station (7)
- False Reporting: Probation Adult Services (5)
- Illegal Search/Seizure: San Marcos Patrol Station and Vista Patrol Station (3 each)
- Other Misconduct²: SD Central Jail (57); Geo. Bailey Detention Facility (50)

The total complaints are traditionally broken into three main departmental segments by count and

² Other Misconduct is broken down into several sub-categories as shown in Table 4 on page 12. The most common sub-category of misconduct is "Procedure," followed by "Discourtesy."

percentage: Sheriff's Detention with 104, or 57%; Sheriff's Law Enforcement & Other with 64, or 35%; and Probation (all) with 14, or 8%. (See Graphs 5 & 6, page 13) I have also included a comprehensive breakdown of all complaints and allegations closed in 2005. (Table 5, page 15)

The Review Board closed a total of 168 cases during the year. From this total, 43 were *Procedurally Closed* because a signed complaint was not returned to the office, or because we lacked jurisdiction. Another 49 cases were submitted to the Review Board for *Summary Dismissal* following a "truncated" or abbreviated investigative process. The remaining 76 cases were fully investigated and submitted to the Review Board with a variety of recommended findings. Of the 76 "fully investigated" cases, nine, or 12%, had *Sustained* allegations.

With a 57% increase in overall complaint totals, one would expect corresponding rises in most misconduct categories as proven by the statistics reported herein. Death cases, however, are not a typical bellwether for complaint trends, because these cases are not "complaint-driven." As part of our Charter mandate, we have the authority to review and investigate the death of any individual arising out of or in connection with the actions of Sheriff's deputies or Probation officers, *regardless of whether a citizen complaint has been filed*. All other cases require a signed citizen complaint in order to be investigated.

Unfortunately, we experienced an increase in reported death cases in 2005. In 2004, there were a total of 10 death cases, including two deputy-involved shootings. In 2005, there were 22 death cases, up 120% from

2004. Nine of these cases were deputy-involved shootings, a 450% increase over the 2004 total. Five of the nine shooting death cases occurred in the City of Vista between March 7 and August 1, and three of those cases occurred within a five-day period.

The first case on March 7th occurred when a man driving erratically crashed his car into a building at the Vista Court complex. He was shot when he ran, unarmed, into the Vista Jail lobby and reportedly attacked deputies assigned to the jail.

The second case on May 15th occurred when deputies were called to investigate a dispute between neighbors during which the subject reportedly fired a handgun. When deputies confronted this subject and ordered him to show his hands, he reportedly brandished a weapon and was shot by the deputies.

The third case occurred on July 28th when deputies were called to a residence where a subject was reportedly acting strange. The deputies confronted the subject in a bedroom and he grabbed a pair of 10 pound dumbbells. The deputies used OC spray to no effect and as they retreated out of the bedroom, the subject charged them and threw one dumbbell, striking a deputy on the arm. The deputies then shot the subject.

The fourth case occurred July 29th and involved a foot pursuit with a reported armed robbery suspect. The chase went into a darkened park area and when the subject reportedly reached toward a pocket, he was shot several times. Initial reports indicated the subject was not armed.

The fifth case occurred on August 1st and involved a subject who was reportedly believed to be an auto theft suspect and possibly a gang member, subject to an existing injunction. The subject ran when approached by deputies and was chased through the Townsite neighborhood. Initial reports said the deputies suspected the subject was armed, and when he was caught and confronted, he reportedly reached toward his hip and was shot.

By coincidence, all five subjects/decedents were of Hispanic descent. The last three incidents in particular prompted considerable outcry from the Hispanic community. Because of growing concerns expressed by community members and city officials, a "town hall" meeting was called between community members, city officials and members of law enforcement, including Sheriff Kolender and District Attorney Bonnie Dumanis. In the meeting, the Sheriff and his staff could not address most community questions regarding the shootings because the incidents were under investigation. Although officials promised more information at a later date, a very vocal segment of the people at the meeting expressed frustration and outrage when their questions went unanswered.

Based on what was heard during this community meeting, it is clear that a growing rift with the Vista Hispanic community needs addressing by law enforcement. Many have organized and continue to hold events wherein the shootings and a perceived lack of redress by the Sheriff are decried. The obvious immediate issue is the fact that the Sheriff had virtually no Spanish-speaking deputies assigned to work in the overwhelmingly Hispanic/Spanish-

speaking Townsite area. Also, Vista Station's community outreach programs appear to be missing a large segment of the Hispanic community. There have been some discussions among city and Sheriff's officials about recruiting volunteers to serve with deputies in the Hispanic neighborhoods and to provide Spanish language courses to deputies. However, as 2005 came to a close, the existing shortcomings have not been resolved.

In the aftermath of the last three Vista shootings, the *North County Times* ran an editorial which raised valid questions regarding the shootings. The editorial called for an independent inquiry to examine a "top-to-bottom review" of the Sheriff's Department's use of deadly force "by qualified people with no connection to San Diego County, including CLERB." They pointed out that "people and institutions are generally incapable of diagnosing fundamental problems with themselves." I happened to agree with this premise and saying so was not intended to provoke controversy.

From what I know, the Sheriff's Department has good Use of Force policies in place. But are they "best-in-class" as compared to other departments around the country? Because the type of audit envisioned is more broadly based than the kind of case investigations and reviews conducted by CLERB, it was suggested that the Sheriff contract outside of the County, with an individual or organization with the expertise and resources to handle an in-depth examination of the department and its practices. Demonstrating his great leadership ability, Sheriff Kolender took this proposal to the Board of Supervisors, who approved funding such an audit. It is expected that a "Request for

Proposals,” will be posted on the County’s website (www.sdcounty.ca.gov) at the “Buynet” quick link in early 2006. We hope to see a bid awarded and work started by mid-year.

Beyond what we know from the cases involving deaths discussed above, are the overall shooting statistics for the past two years. We do not have jurisdiction when there is no death, except when a complaint has been filed. However, I feel it is important to provide some related information from other County sources. In 2004, there were a total of six deputy-involved shootings, two of which resulted in deaths. According to the County Counsel’s Office, claims were filed with the County in two of the six cases in 2004. One claim was closed without payment and the other remains open because it has gone to litigation

In 2005, there were a total of ten deputy-involved shooting incidents, of which nine resulted in fatalities. One incident “resulted in property damage only.” The County Counsel’s Office stated that claims were filed in six of the ten incidents in 2005. Most of these claims remain open because litigation is still possible – not yet barred by statute of limitations. The only claim resulting from a shooting incident that has been paid was the property damage claim. There have been no court judgments.

THE CHANGING TIMES

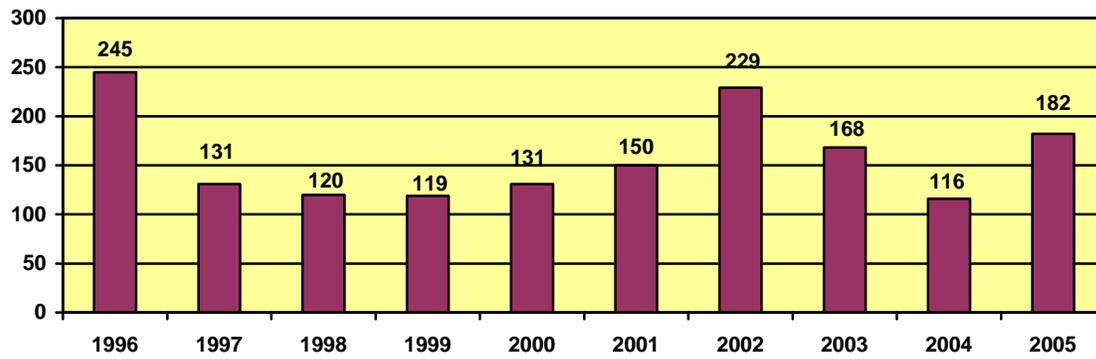
I would like to acknowledge changes to the Review Board membership, as well as changes at both the Sheriff’s Department and the Probation Department. Departing CLERB during 2005 were Samantha Leach

and Ralph Mora. Newly appointed members are Patrick Hunter, Thomas Iniguez and Louis Wolfsheimer. Changes of note at the Sheriff’s Department include the retirement of Undersheriff Barry Zuniga and the promotion of Assistant Sheriff Bill Gore to the Undersheriff position. Sheriff Kolender has announced his intention to seek a new term as Sheriff. At the Probation Department, Assistant Chief Probation Officer Dave Cranford retired and his position has been left unfilled. There was also a change at Probation’s CLERB liaison position; Rob Oliphant has retired and was replaced by Cesar Escuro.

As in previous reports, we have tried to present relevant complaint data in a variety of ways to include tables of broad complaint information, enhanced by other charts or graphs to break down and better illustrate what has occurred during the year. Information included in this report is based on the last best data we had at the close of 2005. As with any statistics dealing with on-going and closed investigations, there can be minor changes in complaint and allegation breakdowns as investigations progress and are finally closed. If there are any questions or comments concerning any portion of this report, please contact me at 619-238-6776.

JOHN PARKER
Executive Officer

Graph 1: TOTAL COMPLAINTS RECEIVED BY YEAR 1996 - 2005



Graph 2: COMPLAINTS RECEIVED BY QUARTER – 2004/2005

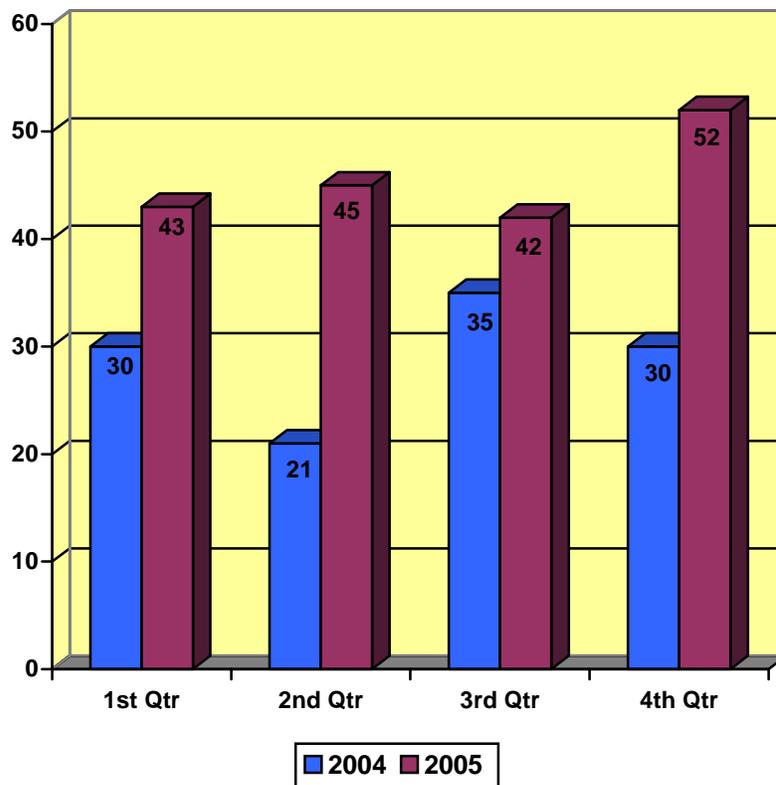


TABLE 1: COMPLAINTS & ALLEGATIONS RECEIVED - BY UNIT OR FACILITY - IN 2005

STATIONS/UNITS:	Complaint Totals	CC	Deaths	Discr.	EF	FA	FR	ISS	IDF	Misconduct	Allegation Totals
ALPINE SUBSTATION	2	0	0	0	1	1	1	0	0	1	4
CAMPO/TECATE SUBSTATION	1	0	0	0	3	0	0	1	0	6	10
CID:ELDER ABUSE	1	0	0	0	0	0	0	0	0	2	2
COD:DV	1	0	0	0	0	0	0	0	0	2	2
COURT SERVICES	6	0	1	0	4	0	0	0	0	14	19
CSB:PRISONER TRANSPORT	1	1	0	0	0	0	0	0	0	1	2
DESCANSO DF	2	0	0	0	6	0	0	0	0	1	7
EAST MESA DETENTION FACILITY	1	0	1	0	0	0	0	0	0	0	1
ENCINITAS STATION	7	0	0	0	6	7	0	2	1	10	26
ESD:ASTREA	1	0	0	0	0	0	0	0	0	1	1
FALLBROOK SUBSTATION	3	0	0	0	0	0	0	0	0	7	7
GEO. BAILEY DETENTION FACILITY	37	1	4	2	6	0	0	0	0	50	63
IMPERIAL BEACH STATION	3	0	1	0	4	1	1	0	0	3	10
LAS COLINAS DETENTION FACILITY	14	1	0	0	8	0	0	0	0	20	29
LEMON GROVE STATION	6	1	0	0	2	3	1	2	0	8	17
PINE VALLEY SUBSTATION	1	0	0	0	0	0	0	0	0	3	3
POWAY STATION	3	0	1	0	1	0	0	0	0	7	9
SAN MARCOS STATION	9	1	2	1	2	3	1	3	0	12	25
SANTEE STATION	6	0	4	0	2	1	0	0	0	2	9
SAN DIEGO CENTRAL JAIL	35	0	6	0	20	0	1	0	0	57	84
SID:N. COUNTY GANG TF	1	0	0	0	2	2	0	0	0	2	6
SOUTH BAY DETENTION FACILITY	2	0	0	0	0	0	0	0	0	11	11
VALLEY CTR/PAUMA SUBSTATION	1	1	0	0	0	1	1	0	0	0	3
VISTA DETENTION FACILITY	13	1	2	1	9	0	0	0	0	19	32
VISTA STATION	11	0	6	0	9	2	0	3	0	9	29
PROB:ADULT SERVICES	11	1	0	2	0	0	5	2	0	11	21
PROB:INST. SERVICES	1	0	0	0	1	0	1	0	0	1	3
PROB:JUVENILE SERVICES	2	1	1	0	0	0	0	0	0	3	5
Totals:	182	9	29	6	86	21	12	13	1	263	440

NOTES:

- 1) CC= Criminal Conduct; Discr= Discrimination; EF= Excessive Force; FA= False Arrest; FR= False Reports; ISS= Illegal Search & Seizure; IDF= Improper Discharge of Firearm.
- 2) Allegation totals always exceed complaint totals and are multiplied by the number of personnel involved.

GRAPH 3: ALLEGATION TOTALS FOR COMPLAINTS RECEIVED IN 2005

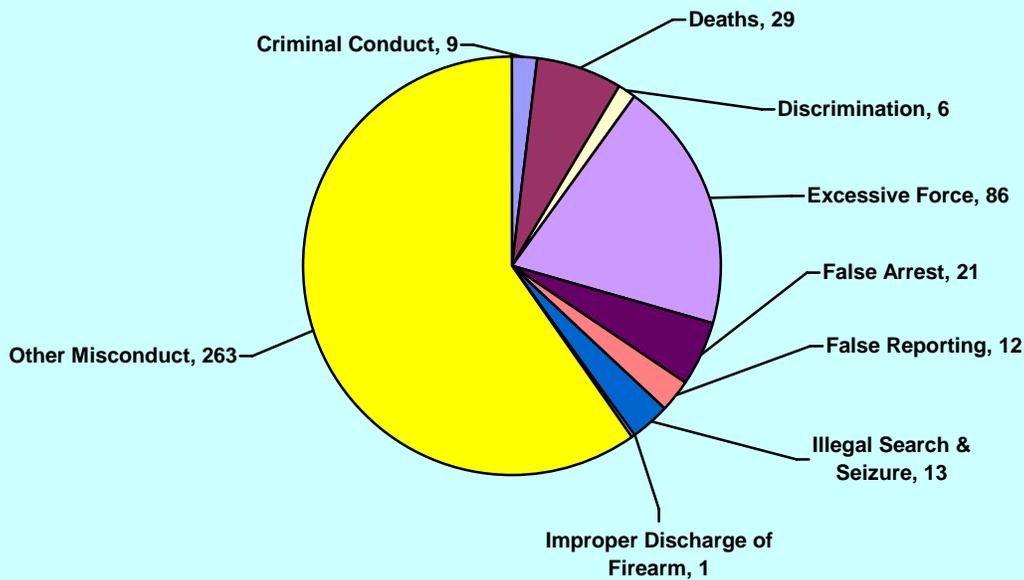
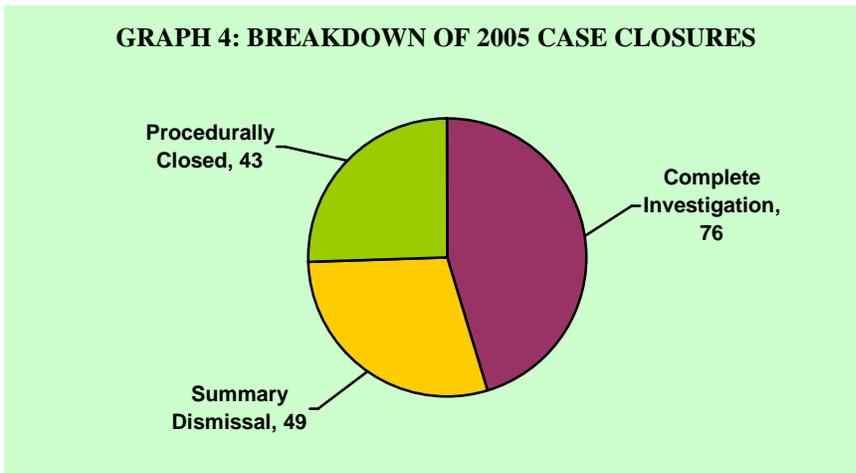


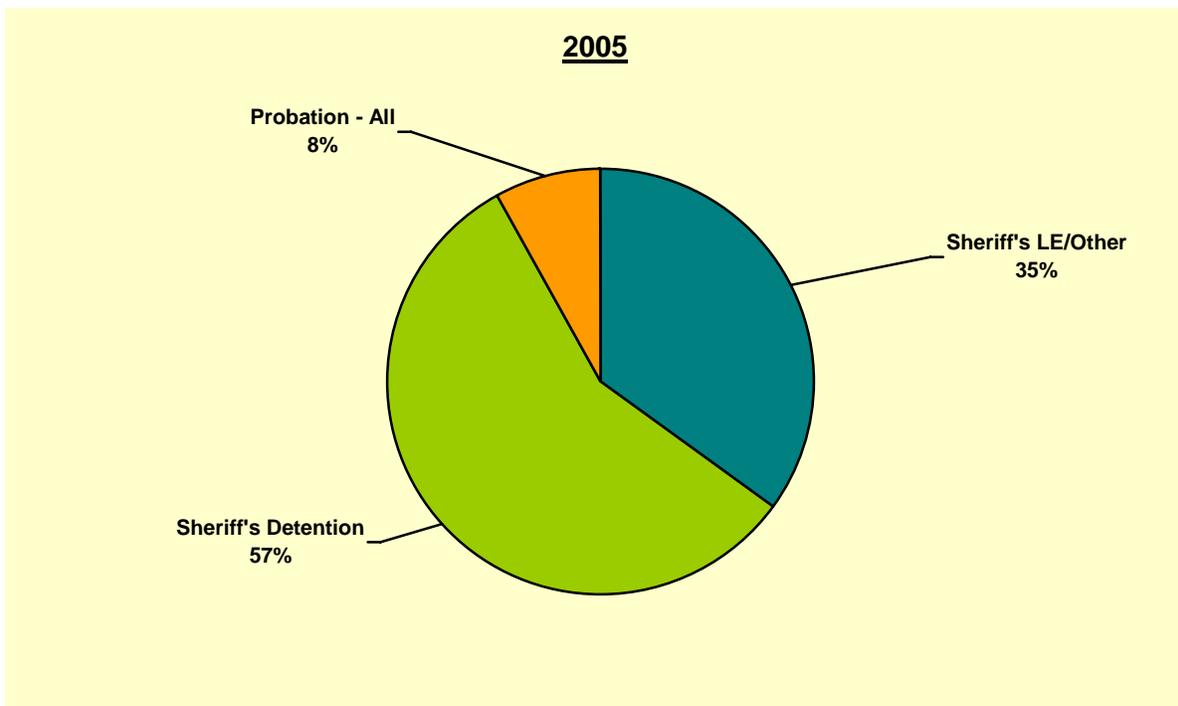
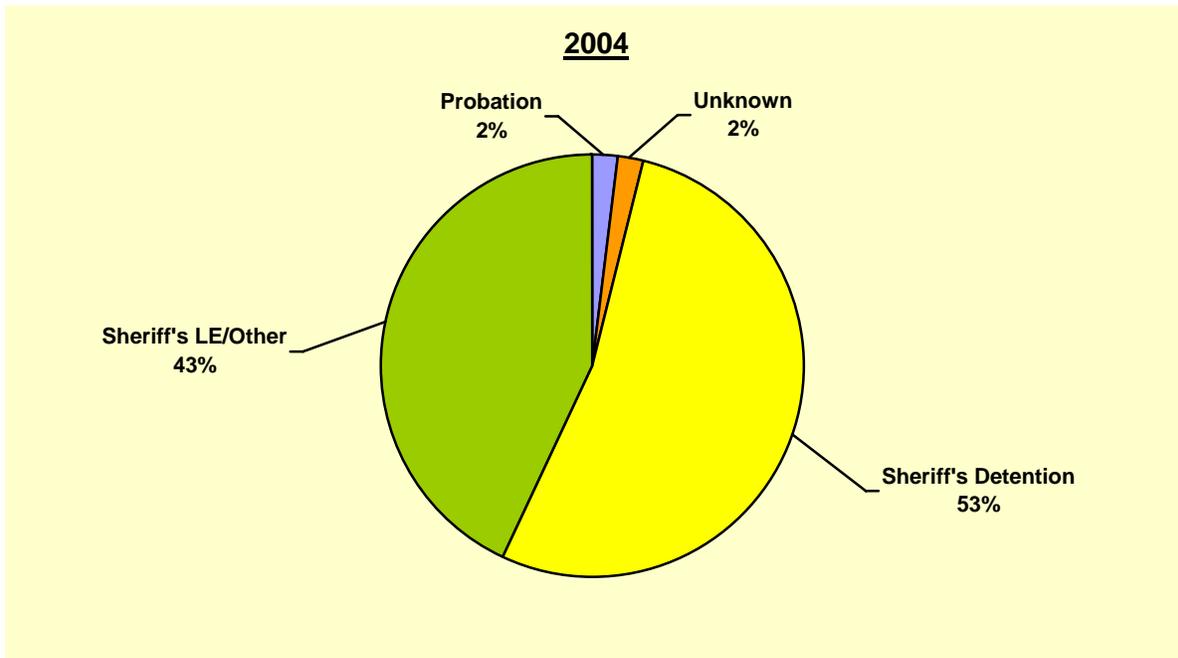
Table 2: TOTAL COMPLAINTS BY MAJOR ORG/BUREAU		
Organization/Bureau	2004	2005
Sheriff's Detention Facilities	62	104
Sheriff's Law Enforcement Services	50	64
Probation Department-All	2	14
Unknown	2	-
TOTAL	116	182

Table 3: BREAKDOWN OF DISCRIMINATION ALLEGATIONS		
Description	2004	2005
National Origin	-	-
Other	1	1
Racial	3	5
Religious	2	-
Sexual/Gender	6	-
TOTAL	12	6

Table 4: BREAKDOWN OF MISCONDUCT ALLEGATIONS		
Description	2004	2005
Discourtesy	33	29
Harassment	6	3
Intimidation	8	1
Medical (I/O)	8	5
Procedure	194	219
Retaliation	4	1
Truthfulness	4	5
TOTAL	257	263



GRAPHS 5 & 6: COMPLAINT PERCENTAGES BY MAJOR ORG/BUREAU – 2004/2005



GRAPHS 7 & 8: ALLEGATIONS BY PERCENTAGE – 2004/2005

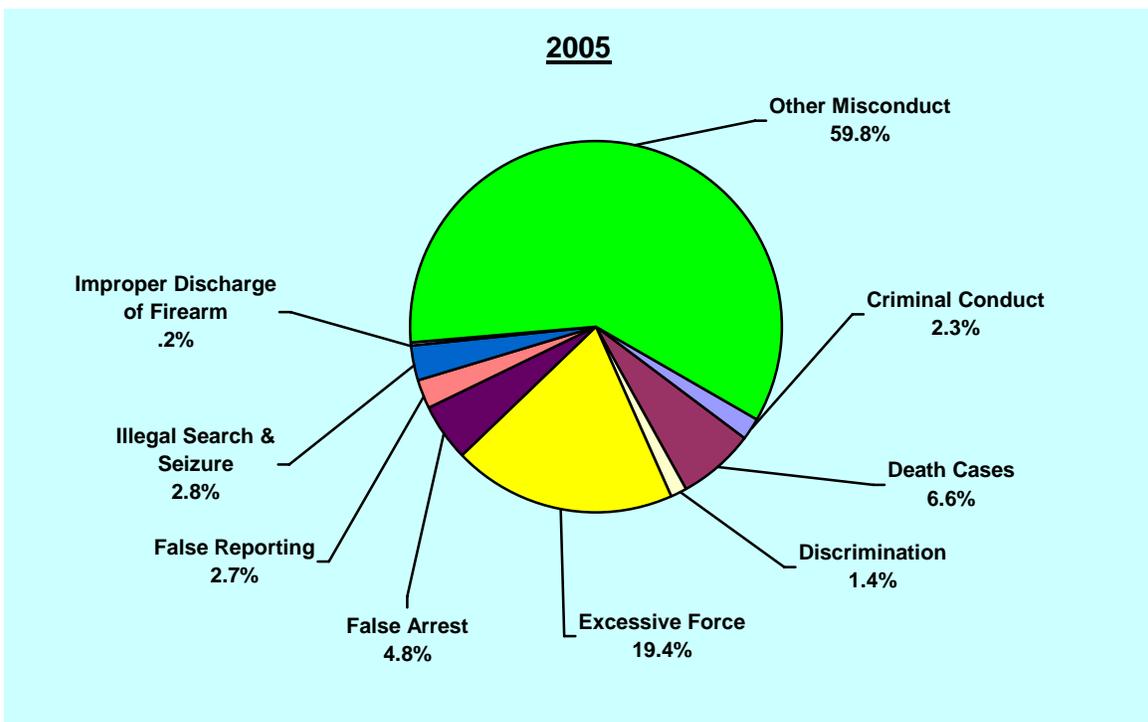
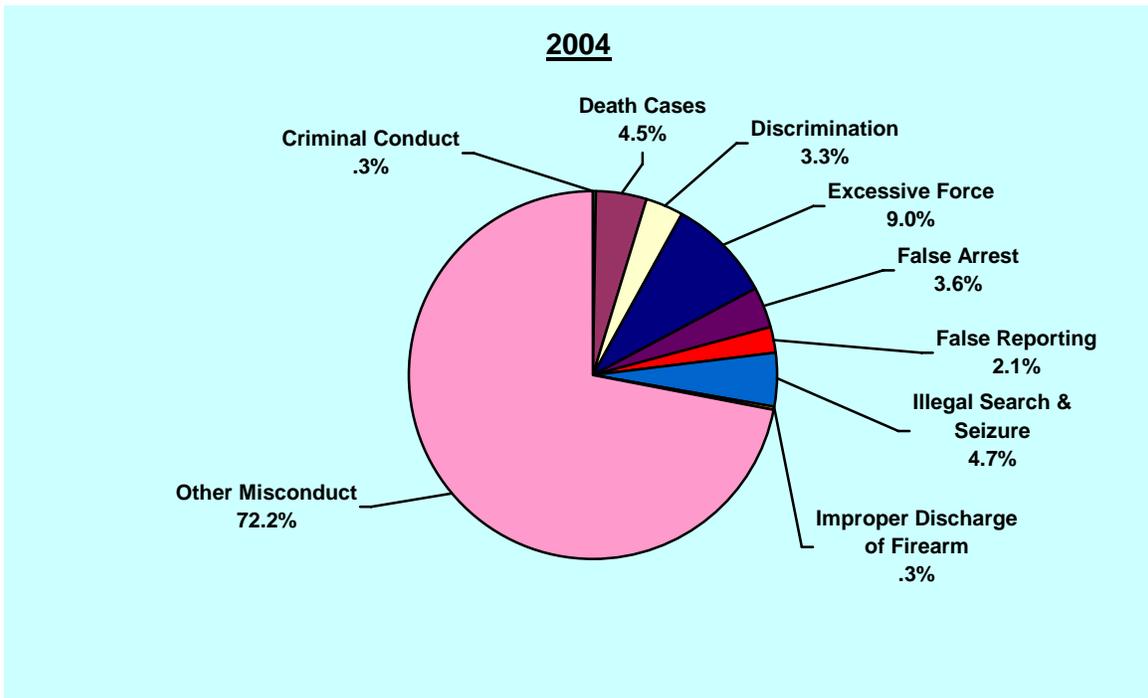


TABLE 5: COMPLAINTS & ALLEGATIONS CLOSED - BY UNIT OR FACILITY - IN 2005

STATIONS/UNITS	Complaint										Allegation Totals
	Totals	CC	Deaths	Discr.	EF	FA	FR	ISS	IDF	Misconduct	
ALPINE SUBSTATION	1	0	0	0	1	0	0	0	0	0	1
CAMPO/TECATE SUBSTATION	1	0	0	0	3	0	0	1	0	6	10
CID:ELDER ABUSE	1	0	0	0	0	0	0	0	0	2	2
COURT SERVICES	2	0	1	0	0	0	0	0	0	4	5
CSB:PRISONER TRANSPORT	1	1	0	0	0	0	0	0	0	1	2
DESCANSO DF	1	0	0	0	0	0	0	0	0	1	1
EAST MESA DETENTION FACILITY	2	0	0	0	2	0	1	0	0	10	13
ENCINITAS STATION	10	0	0	0	6	8	1	4	1	24	44
ESD:ASTREA	1	0	0	0	0	0	0	0	0	1	1
FALLBROOK SUBSTATION	3	0	0	0	0	0	0	0	1	5	6
GEO. BAILEY DETENTION FACILITY	35	1	3	2	1	0	0	0	0	54	61
IMPERIAL BEACH STATION	1	0	0	0	0	0	0	0	0	1	1
INTERNAL AFFAIRS	2	0	0	0	0	0	0	0	0	3	3
JULIAN SUBSTATION	1	0	0	2	0	1	0	0	0	2	5
LAS COLINAS DETENTION FACILITY	7	0	0	0	1	0	0	0	0	10	11
LEMON GROVE STATION	6	1	0	0	2	2	1	2	0	10	18
PINE VALLEY SUBSTATION	2	0	0	0	0	0	0	0	0	4	4
POWAY STATION	2	0	0	0	0	3	0	3	0	4	10
SAN MARCOS STATION	10	0	0	0	5	5	1	0	0	36	47
SANTEE STATION	8	0	0	0	5	1	0	3	0	13	22
SAN DIEGO CENTRAL JAIL	32	0	3	1	18	0	1	0	0	66	89
SID:N. COUNTY GANG TF	1	0	0	0	2	2	0	0	0	2	6
SOUTH BAY DETENTION FACILITY	3	0	1	0	0	0	0	0	0	11	12
VALLEY CTR/PAUMA SUBSTATION	2	1	0	0	0	1	1	0	0	3	6
VISTA DETENTION FACILITY	13	0	0	3	17	0	0	0	0	32	52
VISTA STATION	7	0	0	0	4	2	0	3	0	11	20
PROB:ADULT SERVICES	11	2	0	1	0	0	4	2	0	14	23
PROB:JUVENILE SERVICES	2	1	1	0	0	0	0	0	0	3	5
Totals:	168	7	9	9	67	25	10	18	2	333	480

NOTES:

- 3) CC= Criminal Conduct; Discr= Discrimination; EF= Excessive Force; FA= False Arrest; FR= False Reports; ISS= Illegal Search & Seizure; IDF= Improper Discharge of Firearm.
- 4) Allegation totals always exceed complaint totals.

GRAPH 9: ALLEGATION TOTALS FOR COMPLAINTS CLOSED IN 2005

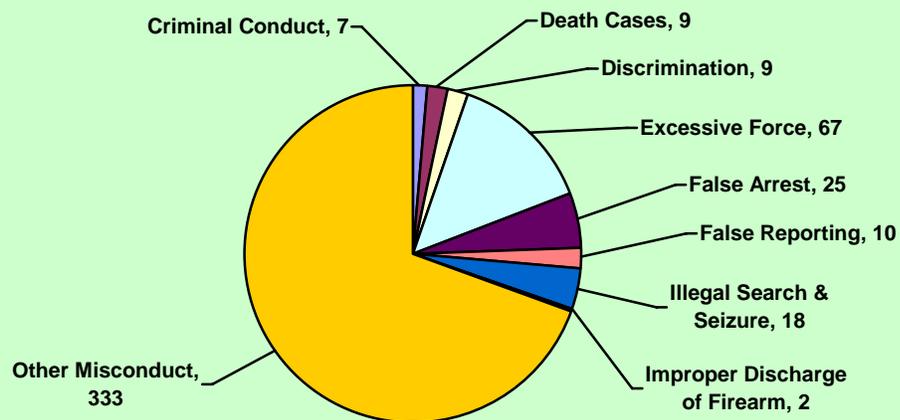


TABLE 6: INVESTIGATED CASES CLOSED/FINDINGS - BY DATE - 2005
(Procedurally Closed & Summary Dismissal Cases are listed separately.)

CASE #	COMPLAINANT	FINDINGS					DATE CLOSED
		Sustained	Not Sustained	Action Justified	Unfounded	Summary Dismissal	
04-029	Ortiz		2	2			01/11/2005
04-031	Barno			7			01/11/2005
04-052	St. Clair	1	1	2	1		01/11/2005
04-053	Gray	2	4	7	2		01/11/2005
04-021	Bureno		1	2	1		02/08/2005
04-046	Codding		2		1		02/08/2005
04-051	Zavala				2		02/08/2005
04-076	Miller		4	4			02/08/2005
04-107	Kimler			2			03/08/2005
04-041	Coover		2				04/12/2005
04-043	Morrison		1	2	2		04/12/2005
04-055	Becker		2	1	2		04/12/2005
04-064	Cole			2	1	1	04/12/2005
04-070	Wickliffe & Peace		1	1	1		04/12/2005
04-083	Marquez			1	1		04/12/2005
04-094	Sanchez			1			04/12/2005
04-097	Burch			1			04/12/2005
04-098	Burch				1		04/12/2005
05-006	Orth			2	1		04/12/2005
05-017	Blanco		1				04/12/2005
05-019	Matthews				1		04/12/2005
04-068	Mars		2				05/10/2005
04-069	Gale			3	3		05/10/2005
04-071	Prince	1					05/10/2005
04-080	Macklem		1	4	1	1	05/10/2005
04-089	Ashbrook		2				05/10/2005
04-096	Cejka		3	1	1		05/10/2005
05-005	Collins		4	1			05/10/2005
05-014	Wallace for Perez			1			05/10/2005
04-050	Padilla for Arizmendi			1			06/14/2005
04-082	Winston & Garcia				2		06/14/2005
04-100	Walker & McNulty			3	3		06/14/2005
04-102	Crowder				1		06/14/2005
04-106	Wright				2		06/14/2005
05-010	Quijada for Aguina		1	4			06/14/2005
05-028	Owens				1		06/14/2005
04-073	Hassett		1	1			07/12/2005
04-074	Hassett			1			07/12/2005
04-093	Graham		1	2	1		07/12/2005
04-099	Rosenfield			5	3		07/12/2005
04-101	Crowder		2				07/12/2005
04-108	Dumas	1	2	1	2		07/12/2005

CASE #	COMPLAINANT	FINDINGS					DATE CLOSED
		Sustained	Not Sustained	Action Justified	Unfounded	Summary Dismissal	
04-084	Kachele	2	7	1	2		08/09/2005
04-088	Wright		2	2	2		08/09/2005
05-011	Lee			9			08/09/2005
05-016	Darling			4	4		08/09/2005
05-068	Katnik			1			08/09/2005
05-077	Talmo			2			08/09/2005
05-079	Brown		1	1	4		08/09/2005
04-090	LaValle	4		2			09/13/2005
04-113	Raja	1			2	1	09/13/2005
05-007	Bahena		2	1			09/13/2005
05-022	Garcia			2	2		09/13/2005
05-026	Newton		1	2			09/13/2005
05-041	Ellis			4			09/13/2005
05-042	Holland				1		09/13/2005
04-112	Washington			6	2		10/11/2005
04-115	Burtech		5		1		10/11/2005
05-021	Bruce				3		10/11/2005
05-024	Soper			4			10/11/2005
05-043	Warren			3			10/11/2005
05-092	Roberts				1		10/11/2005
05-034	Crowder		1				11/08/2005
05-052	Aronin		3	2	1		11/08/2005
05-066	Smith			1			11/08/2005
05-070	Burgess				1		11/08/2005
05-097	Calderone				2		11/08/2005
05-113	Jones			1	2		11/08/2005
05-120	Nuguid		3				11/08/2005
05-121	Kimler				2		11/08/2005
04-116	Dreyer	1	1	3			12/13/2005
05-023	Buckner			2	3		12/13/2005
05-064	Moore				1		12/13/2005
05-124	Urquhart	1	1	3			12/13/2005
05-129	Jones		1	1	1		12/13/2005
05-131	Bright		1				12/13/2005
	TOTALS	14	69	122	74	3	

TABLE 7: SUMMARY DISMISSAL/PROCEDURALLY CLOSED CASES - BY DATE - 2005

CASE #	COMPLAINANT	FINDINGS		DATE CLOSED
		SUMMARY DISMISSAL	PROCEDURALLY CLOSED	
04-037	Barno	X		01/11/2005
04-044	Chapel	X		01/11/2005
04-061	Miller	X		01/11/2005
04-065	Maxwell	X		02/08/2005
04-077	Davis	X		02/08/2005
04-091	McBreairty	X		03/08/2005
04-092	Harrel	X		03/08/2005
04-103	Murray	X		03/08/2005
05-001	Cedano	X		03/08/2005
05-020	Matthews	X		04/12/2005
04-067	Mohamad	X		05/10/2005
04-095	Burns	X		05/10/2005
04-105	Thompson	X		05/10/2005
05-002	Belmont	X		05/10/2005
05-015	Shepherd	X		05/10/2005
05-044	Sinclair	X		05/10/2005
05-047	Smith	X		06/14/2005
05-060	Yavorsky	X		06/14/2005
05-065	Johnson	X		06/14/2005
04-110	Fares	X		07/12/2005
05-018	MacDonald	X		07/12/2005
05-084	Davila for Guerrero	X		07/12/2005
05-085	Pettis	X		07/12/2005
05-086	Crowder	X		08/09/2005
05-039	Booth	X		09/13/2005
05-059	Ravaux	X		09/13/2005
05-072	Arnhart	X		09/13/2005
05-074	Arnhart	X		09/13/2005
05-033	Schnaue	X		10/11/2005
05-048	Whalen	X		10/11/2005
05-051	Shepherd	X		10/11/2005
05-071	Whalen	X		10/11/2005
05-073	Piadade	X		10/11/2005
05-099	Huggins	X		10/11/2005
05-103	Zaragosa	X		10/11/2005
05-031	Cole	X		11/08/2005
05-035	Johnson	X		11/08/2005
05-046	Cole	X		11/08/2005
05-049	Skoverski	X		11/08/2005
05-069	Brooks	X		11/08/2005
05-078	Cole	X		11/08/2005
05-100	Calmese	X		11/08/2005

CASE #	COMPLAINANT	FINDINGS		DATE CLOSED
		SUMMARY DISMISSAL	PROCEDURALLY CLOSED	
05-125	Williams	X		11/08/2005
05-128	Grace	X		11/08/2005
05-057	Gilley	X		12/13/2005
05-082	Walser	X		12/13/2005
05-089	Henderson & Blase	X		12/13/2005
05-094	Alvarez	X		12/13/2005
05-127	Spedding	X		12/13/2005
04-111	Wilson		X	01/10/2005
04-114	Winterton		X	01/18/2005
05-003	Gray for Abrams		X	01/31/2005
05-004	Sosanavongsa		X	01/31/2005
05-008	Lara for Macias		X	02/08/2005
05-009	Barnes		X	02/08/2005
05-012	Moore		X	02/14/2005
05-025	Dumas		X	03/29/2005
05-029	Matthews		X	04/04/2005
05-036	Gilbertson		X	04/13/2005
05-037	Tamburrino		X	04/13/2005
05-038	Tamburrino		X	04/13/2005
05-030	Cole		X	04/25/2005
05-032	Cole		X	04/25/2005
05-040	Vehey		X	04/25/2005
05-045	Takeshta		X	04/25/2005
05-050	Jackson		X	05/19/2005
05-055	Aguilar		X	05/31/2005
05-056	Ellis		X	06/01/2005
05-053	Brownsell		X	06/07/2005
05-054	Brownsell		X	06/07/2005
05-076	Williams		X	06/27/2005
05-087	Murphy		X	07/25/2005
05-090	Edwards		X	07/27/2005
05-091	Crowder		X	07/27/2005
05-098	Becker		X	08/09/2005
05-101	Mott		X	08/11/2005
05-104	Bralick		X	08/15/2005
05-105	Michaelson for Hannibal		X	08/18/2005
05-111	Harrel		X	08/30/2005
05-114	Greenwood		X	09/02/2005
05-119	Singleton		X	09/16/2005
05-123	Fuller		X	10/10/2005
05-130	Ballard		X	10/19/2005
05-133	Williams		X	11/07/2005
05-135	Schaffer		X	11/14/2005

CASE #	COMPLAINANT	FINDINGS		DATE CLOSED
		SUMMARY DISMISSAL	PROCEDURALLY CLOSED	
05-137	Nieto-Gutierrez		X	11/14/2005
05-143	Johnson		X	11/17/2005
05-149	Hayes		X	11/30/2005
05-167	Palmer		X	12/06/2005
05-160	Couts		X	12/13/2005
05-162	Alba		X	12/20/2005
05-168	Weinberger		X	12/21/2005
	TOTALS	49	43	

TABLE 8: POLICY RECOMMENDATIONS - 2005

CASE #	NAME	SUMMARY OF POLICY RECOMMENDATIONS	DATE TO BOARD	DEPT. RESPONSE
04-108	Dumas, Mark	Prior to inmate movement related to inter-facility transfers, deputies will document inmate property with respect to number of bags and generalized content. A receipt will be provided to the inmate as a means of verification against monetary claims. (See case file for more detailed description)	6/14/2005	Pending

TABLE 9: CLERB TWO-YEAR OPERATIONAL BUDGET

LINE ITEM CATEGORY	*2005-06	*2006-07
Salaries & Fringe Benefits	\$397,963	\$414,601
Services & Supplies	99,959	102,114
Total Expense	497,922	516,715
General Revenue	\$497,922	\$516,715
Full Time Employees	4	4

*Subject to change due to Salary Negotiations & Op-Plan revision

GLOSSARY OF TERMS & DEFINITIONS

Action Justified:

The investigation showed the alleged act did occur, and was lawful, justified and proper.

Not Sustained (Insufficient Evidence):

The investigation failed to support the allegation, but the allegation could not be shown to be false.

Procedurally Closed:

Cases closed by the Executive Officer when they lack a signature under penalty of perjury.

Summary Dismissal:

- (a) CLERB had no jurisdiction over the complaint (or an allegation) subject matter; or
- (b) CLERB had no jurisdiction because the complaint was not timely filed; or
- (c) The complaint was so clearly without merit that no reasonable person could sustain a finding based on the facts.

Sustained:

The investigation proves that the allegations were true and not justified.

Unfounded:

The investigation showed the alleged act(s) did not occur.

Lodged versus Filed Complaints:

Complaints are "lodged" when a person describes an incident about which s/he wants to complain, but has not sworn to the truth of their statement. Many

complainants phone in their complaints; these complaints are deemed "lodged only" until the complainant submits a signed statement attesting or swearing to the truth of the complaint.

Preponderance of the Evidence:

Evidence that has more convincing force than that opposed to it. "Preponderance of the evidence" is the standard of proof used in the Review Board's investigations.

Summary Hearings:

The Review Board considers the staff reports on complaint investigations. In most cases the Review Board makes its findings on the allegations at Summary Hearings without taking public testimony. Summary Hearings are conducted in accordance with the Review Board's Rules and Regulations, and California's Public Meeting statutes.

Investigative Hearings:

At a Summary Hearing, the Review Board may vote to hold an "Investigative Hearing" on a complaint. It will then schedule such a hearing at which public testimony will be taken. Investigative Hearings are conducted in accordance with the Review Board's Rules and Regulations, and California's Public Meeting statutes.

APPENDIX A: CHARTER OF THE COUNTY OF SAN DIEGO**Section 606: Citizens Law Enforcement Review Board.**

- (a) The Board of Supervisors, by ordinance, shall establish a Citizens Law Enforcement Review Board consisting of not less than nine (9) nor more than fifteen (15) members nominated by the Chief Administrative Officer and appointed by the Board of Supervisors. Members of the Citizens Law Enforcement Review Board shall serve without compensation for terms not to exceed three years as established by ordinance, and members shall be appointed for not more than two consecutive full terms. County employees and persons employed as peace officers or custodial officers shall not be eligible to be members of the Citizens Law Enforcement Review Board.
- (b) Members of the Citizens Law Enforcement Review Board shall serve at the pleasure of the Board of Supervisors, and they may be removed at any time by a majority vote of the Board of Supervisors.
- (c) Vacancies on the Citizens Law Enforcement Review Board shall be filled for the balance of the unexpired term in the same manner as the position was originally filled.
- (d) The Citizens Law Enforcement Review Board shall have the power to subpoena and require attendance of witnesses and the production of books and papers pertinent to its investigations and to administer oaths.
- (e) The Citizens Law Enforcement Review Board may appoint in accordance with its established procedures such personnel as may be authorized by the Board of Supervisors. Notwithstanding any other provision of this Charter, any authorized executive director and investigators of the Citizens Law Enforcement Review Board shall be in the classified or the unclassified service as determined, by ordinance, by the Board of Supervisors.
- (f) The Board of Supervisors, by ordinance, shall establish the duties of the Citizens Law Enforcement Review Board and its duties may include the following:
 - (1) Receive, review and investigate citizens complaints which charge peace officers or custodial officers employed by the Sheriff's Department or the Probation Department with (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 or (H) misconduct. All action complaints shall be in writing and the truth thereof shall be attested under penalty of perjury. "Misconduct" is defined to mean and include any alleged improper or illegal acts, omissions or decisions directly affecting the person or property of a specific citizen by reason of:
 - 1. An alleged violation of any general, standing or special orders or guidelines of the Sheriff's Department or the Probation Department; or
 - 2. An alleged violation of any state or federal law; or
 - 3. Any act otherwise evidencing improper or unbecoming conduct by a peace officer or custodial officer employed by the Sheriff's Department or the Probation Department.
 - (2) Review and investigate the death of any individual arising out of or in connection with actions of peace officers or custodial officers employed by the Sheriff's Department or the Probation Department, regardless of whether a citizen complaint regarding such death has been filed with the Citizens Law Enforcement Review Board.

- (3) Prepare reports, including at least the Sheriff or the Probation Officer as recipients, on the results of any investigations conducted by the Citizens Law Enforcement Review Board in respect to the activities of peace officers or custodial officers, including recommendations relating to the imposition of discipline and recommendations relating to any trends in regard to employees involved in citizen complaints.
 - (4) Prepare an annual report to the Board of Supervisors, the Chief Administrative Officer, the Sheriff and the Probation Officer summarizing the activities and recommendations of the Citizens Law Enforcement Review Board, including the tracking and identification of trends in respect to all complaints received and investigated during the reporting period.
 - (5) Notify in writing any citizens having filed a complaint with the Citizens Law Enforcement Review Board of the disposition of his or her complaint. The Chief Administrative Officer shall also receive appropriate notification of the disposition of citizen complaints.
 - (6) Review and make recommendations on policies and procedures of the Sheriff and the Probation Officer.
 - (7) Establish necessary rules and regulations for the conduct of its business, subject to approval of the Board of Supervisors.
 - (8) Perform such other duties as the Board of Supervisors, by ordinance, may assign to the Citizens Law Enforcement Review Board.
 - (9) Established rules and procedures for receipt of complaints from detention facility inmates.
- (g) In the event that a County Department of Corrections is established, the Citizens Law Enforcement Review Board shall have the same powers and duties in respect to that Department, its Director, and its peace officer and custodial officer employees, as the Citizens Law Enforcement Review Board has in respect to the Sheriff, the Probation Officer and their departments and employees.

(Added, Effective 12-26-90)

APPENDIX B: CLERB RULES AND REGULATIONS

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CITIZENS' LAW ENFORCEMENT REVIEW BOARD
RULES AND REGULATIONS
Adopted by the CLERB on March 9, 1992
(DRAFT --Proposed Amendment 08-18-03)

SECTION 1: PURPOSE.

The purpose of these rules and regulations is to facilitate the operation of the Review Board, including the review of citizen complaints filed against peace officers or custodial officers employed by the County of San Diego in the Sheriff's Department or the Probation Department, as authorized by San Diego County Ordinance #7880, as amended (Article XVIII, Section 340-340.15 of the Administrative Code of the county of San Diego). Complaints subject to review are those which allege improper or illegal conduct of peace officers or custodial officers arising out of the performance of their duties or the exercise of peace officer authority, within the jurisdiction of the Review Board, as more fully described in Section 4 below.

In order that this purpose can be achieved, the Citizens Law Enforcement Review Board, hereafter referred to as the Review Board, shall receive, review, investigate and report on citizen complaints in accordance with these rules and regulations. These rules are to provide for the fair, impartial, independent and prompt investigation of citizen complaints in a manner which a) protects both the public and the Departments, Sheriff and Probation, which are involved in such complaints, and b) enhances the relationship and mutual respect between the Departments and the public they serve.

The Review Board shall publicize the review process in a manner which encourages and gives the public confidence that they can come forward when they have a legitimate complaint regarding the conduct of peace officers or custodial officers designated above. The Review Board 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, unless plainly evident from the context that a different meaning is intended, the following terms mean:

2.1 "Subject Officer" **The peace officer or custodial officer employed by the County of San Diego in the Sheriff's Department or the Probation Department against whom has been filed a Citizen complaint alleging improper or illegal conduct as set forth in sections 4.1 and 4.2 or about whom an investigation is undertaken without the filing of a complaint as set forth in section 4.6.** As provided in Section 8 of these Rules and Regulations, the Subject Officer shall be identified in the Review Board's agenda, its public documents and public reports, and at any public meetings or hearings only by a coded identifier which maintains the confidentiality of the Subject Officer's name. The coded identifier will relate to the individual complaint only. In disclosing information to the public, the name of the Subject Officer shall not be disclosed. The Subject Officer's presence at a hearing before a Hearing Panel or the Review Board for purposes of providing testimony shall be in closed session, if appropriate, where requested by the Subject Officer.

2.2 "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 his or her official duties or the exercise of peace officer authority.

2.3 "Citizen 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 sections 4.1 and 4.2 below, of a peace officer or custodial officer in the performance of his or her official duties or the exercise of peace officer authority.

2.4 "Chair" The Chairperson of the Citizens Law Enforcement Review Board, or the Vice Chairperson if the Chairperson is not able to preside.

2.5 "Complainant" Any individual who files a complaint regarding the conduct of a peace officer or custodial officer in the employ of the Sheriff's Department or the Probation Department arising in the performance of his or her official duties or the exercise of peace officer authority and who files a complaint with the Review Board.

2.6 "County" County of San Diego, California

2.7 "Ordinance" County Ordinance #7880, as amended, Article XVIII (commencing with Section 340) of the Administrative Code of the County of San Diego adopted by the Board of Supervisors of the County of San Diego, California, which became effective on May 2, 1991.

2.8 "Review Board" The eleven (11) members of the Citizens Law Enforcement Review Board nominated and appointed in accordance with the provisions of the Ordinance.

2.9 "Hearing Panel" A three (3) member subcommittee of the Review Board selected to conduct an investigative hearing of a citizen complaint, and make appropriate findings and recommendations to the Review Board based on the hearing.

2.10 "Presiding Member" The member of a three person Hearing Panel appointed by the Chair to preside at an investigative hearing.

SECTION 3: ORGANIZATION AND MEETINGS.

3.1 Composition of the Review Board. The Review Board shall consist of eleven (11) members nominated by the Chief Administrative Officer and appointed by the Board of Supervisors. Each Review Board 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 Term of Membership. Each member shall serve a term of three (3) years. A member shall serve on the Review Board until a successor has been appointed. A member shall be appointed for no more than two (2) 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 the Review Board shall be deemed to commence on July 1, 1991.

Members of the Review Board serve at the pleasure of the Board of Supervisors and may be removed from the Review Board at any time by a majority vote of the Board of Supervisors.

3.3 Vacancies on the Review Board. A vacancy shall occur on the Review Board on the happening 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 the Review Board, or,
- (e) Failure to attend and satisfactorily complete the required training course 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 member shall be notified of the vacancy by the Chair. Vacancies shall be filled within forty five (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 the Review Board shall serve without compensation, except that they shall be reimbursed for necessary expenses incurred in performing their duties in accordance with provisions of the County Administrative Code.

3.5 Officers of the Review Board. The members of the Review Board shall elect annually from its membership a Chair, a Vice Chair and a Secretary. The term of office shall be for one year or until the successor has been elected. The duties of the Officers shall be as follows:

- A. Chair: The Chair shall preside over all meetings of the Review Board 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 the Review Board and the rulings of the Review Board are faithfully executed. The Chair shall act as the spokesperson in all matters pertaining to the Review Board.
- The Chair shall sign all documents on behalf of the Review Board after the same have been approved by the Review Board and shall perform such other duties and delegated responsibilities as may be imposed upon him or her by the Review Board. The Chair shall appoint all subcommittees, and, ex-officio, be a 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 the Review Board and have not selected a Chair Pro Tem, the Review Board shall select a Chair Pro Tem who shall perform all the duties of the Chair.
- D. Secretary: The Secretary shall keep a true and correct record of all proceedings of the Review Board. The Secretary shall have custody of all reports, books, papers, and records of the Board.
- E. Secretary Pro Tem: In the absence of the Secretary, the Review Board 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 the Review Board. Each member of the Review Board 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 the Review Board and automatically create a vacancy.

The orientation and training program includes familiarization with the following:

- (a) County Government structure and the Review Board;
- (b) County Charter, Brown Act and State Law pertaining to the Review Board;
- (c) State Law relating to Peace Officers' rights and privacy;
- (d) Operations of the Sheriff's Department 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 citizen's rights.
- (i) Memoranda of Agreement between the County of San Diego and the Deputy Sheriff's Association or San Diego Probation Officers' Association.

3.7 Transaction of Business. The Review Board shall establish a regular meeting schedule and shall give public notice of the time and place of the meetings. The official address of the Review Board is:

Citizens' Law Enforcement Review Board
1168 Union Street, Suite 400
San Diego, CA 92101-3819

All regular and special meetings of the Review Board shall be held at the County Administrative Center, or at any other public place as designated by the Chair.

The meetings and business of the Review Board 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.
- (b) The agenda for each meeting will be posted, distributed, and otherwise made public in accordance with the requirements of State and County law applicable to advisory boards.
- (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 the Review Board shall constitute a quorum.
- (e) The affirmative vote of the majority of the members currently appointed to the Review Board shall be required to carry a motion or proposal.
- (f) The Review Board's legal counsel will normally be present for all meetings of the Review Board.
- (g) In all procedures not provided for by these Rules, or the enabling Ordinance #7880, as amended, the Review Board shall be governed by Robert's Rules of Order, Newly Revised.
- (h) The Review Board 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 the Review Board as appropriate, however, no more than five (5) members of the Review Board (including the Chair as an ex-officio member) shall serve on any one subcommittee.
- (j) Members and the Chair of each subcommittee shall be designated by the Chair of the Review Board.
- (k) As noted in Section 3.3 above, a member's absence from three (3) consecutive regular meetings of the Review Board shall result in the member's automatic removal from the Review Board.
- (l) Normally, the order of business for the Review Board meetings shall be as follows:
 1. Roll Call.
 2. Approval of Minutes.
 3. Special order of business; announcements; communications.
 4. Public comment.
 5. Executive Officer's report.
 6. General policy items.
 7. Subcommittee reports.
 8. Unfinished business.
 9. New business.
 10. Discussion and consideration of complaints and reports.
 11. Recess to closed session, if appropriate.
 12. Adjourn.

3.8 Special Meetings of the Review Board. Special meetings may be held at the call of the Chair, or the vice-Chair in the absence of the Chair. Upon petition of six (6) members of the Review Board, the Chair shall call a meeting of the Review Board within one (1) week. Review Board members will be given at least twenty-four (24) 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 Review Board Staff. The Review Board shall appoint personnel in support of the Review Board as may be authorized by the Board of Supervisors. The Board of Supervisors has also authorized the hiring of outside, independent legal counsel for the Review Board.

The Executive Officer shall recommend to the Review Board the filling of any staff position for approval by the Review Board; and shall supervise the administrative, clerical, investigative and other personnel as necessary to discharge the functions of the Review Board. The Executive Officer shall promulgate internal office procedures and prepare necessary standardized forms for the conduct of the investigations and the receipt of citizen complaints. The daily operations of the Review Board, 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 the Review Board.

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, which 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; and/or
- (h) Misconduct.

4.2 "Misconduct" Defined. "Misconduct", as referred to in section 4.1 (h) above, is defined to mean and include any alleged improper or illegal acts, omissions or decisions directly affecting the person or property of a specific citizen arising out of the performance of the Peace officer's or custodial officer's official duties or the exercise of Peace officer authority by reason of:

- (a) An alleged violation of any general, standing or special orders or guidelines of the Sheriff's Department or the Probation Department; or,
- (b) An alleged violation of any county ordinance or state or federal law; or,
- (c) Any act otherwise evidencing improper or unbecoming conduct by a peace officer or custodial officer employed by the Sheriff's Department or the Probation Department.

4.3 Citizen Complaints: Pre-requisite. The Review Board shall have no authority with respect to alleged improper activities and misconduct, as set forth in sections 4.1 and 4.2 above, to take action in regard to incidents for which no citizen complaint has been filed with the Review Board.

4.4 Citizen Complaints: Jurisdiction. The Review Board shall have jurisdiction in respect to all citizen complaints arising out of incidents occurring on or after November 7, 1990; provided, however, that the Review Board 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 period of 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 he/she was incarcerated or physically or mentally incapacitated from filing a complaint within one year from the incident giving rise to the complaint by submitting a written statement to the Review Board. Prior to determining whether it has jurisdiction over the complaint, the Review Board will notify the subject officer, provide him/her with a copy of the complaint and the complainant's statement, and give him/her the opportunity to submit a statement limited solely to the issue of whether there was such an incarceration or physical or mental incapacity. This matter shall be scheduled for consideration by the Review Board at its regular meeting and the agenda materials distributed prior to the meeting shall include the written statements submitted by the complainant and subject officer.

The written statement submitted to the Review Board pursuant to this section shall be attested to under penalty of perjury as provided by Section 5.5 of these rules.

4.5 Citizen Complaints: Notification of Disposition. The Review Board shall have authority to notify in writing any citizen having filed a complaint with the Review Board of the disposition of his or her complaint. The Chief Administrative Officer shall also receive appropriate notification of the disposition of citizen 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."

4.6 Citizen Complaint Not Required: Jurisdiction with Respect to Actions Involving Death. The Review Board shall have authority to review and investigate the death of any individual arising out of or in connection with actions of peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department, arising out of the performance of his or her official duties or the exercise of peace officer authority, regardless of whether a citizen complaint regarding such death has been filed with the Review Board. The Review Board shall have jurisdiction in respect to all deaths of individuals coming within the provisions of this subsection occurring on or after November 7, 1990; provided however, that the Review Board may not commence review or investigation of any death of an individual coming within the provisions of this subsection more than one year after the date of the death, unless the review and investigation is commenced in response to a complaint filed within the time limits set forth in section 4.4.

4.7 Other Duties and Responsibilities. The Review Board 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 the Review Board in respect to the activities of peace officers or custodial officers, including recommendations relating to any trends in regard to employees involved in citizen complaints. The Review Board is not established to determine criminal guilt or innocence.
- (b) 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 the Review Board including the tracking and identification of trends in respect to all complaints received and investigated during the reporting period.
- (c) 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.
- (d) Annually inspect county adult detention facilities and annually file a report of such visitations together with pertinent recommendations with the Board of Supervisors, the Presiding Judge of the Superior Court, the Sheriff, the Board of Corrections and the Attorney General. Inspections shall be concerned with the conditions of inmate employment, detention, care, custody, training and treatment on the basis of, but not limited to, the minimum standards established by the Board of Corrections.
- (e) Establish necessary rules and regulations for the conduct of its business, subject to approval of the Board of Supervisors.

SECTION 5: PROCEDURES REGARDING COMPLAINTS.

5.1 Policy. The following shall provide a framework for the receipt, screening, processing, and disposition of citizen complaints regarding alleged illegal or improper conduct (set forth in Sections 4.1 and 4.2) by employees of the County of San Diego in the Sheriff's Department and the Probation Department:

- (a) It is the policy of the Review Board to encourage citizens who have complaints concerning the conduct of peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department to bring the same to the attention of the Review Board. The Review Board will attempt to assist and accommodate complainants regarding the complaint filing process.
- (b) The investigation of complaints shall be conducted in a fair, impartial, objective and ethical manner.
- (c) Complaints will be considered, investigated (where appropriate), and disposed of in accordance with the procedures set forth herein.
- (d) As promptly as possible, citizen complaints received by the Review Board shall be transmitted by the Executive Officer to the Sheriff or the Chief Probation Officer.
- (e) The Review Board will make every effort to ensure that no adverse consequences will result to any person or witness as a result of having brought a complaint or having provided information in any investigation of a complaint.
- (f) The Review Board will make every effort to consider and to respond to citizens' complaints against peace officers or custodial officers, and, where investigation is necessary, will conduct an impartial and fair investigation into any such complaints in accordance with the procedures set forth herein.
- (g) 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 his or her right to lodge a complaint. No complaint shall be investigated, however, until a complaint signed by or on behalf of the person aggrieved has been received by the Review Board or a member of its staff.
- (h) 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 officer, and any agency or instrumentality of the County.
- (i) To the extent possible consistent with its duties and responsibilities, the Review Board 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 Defenders Office, so that the other public officers and the Review Board 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 or by any other means of Communication. A complaint may be lodged with the Review Board on behalf of oneself or on behalf of another person by any interested person or group. A complaint shall be considered received by the Review Board at the time it is lodged.

No complaint will be deemed to have been filed with the Review Board unless and until it has been reduced to writing, and signed by the complainant or his/her representative, in accordance with the following procedures:

- (a) If the complaint is lodged in person, the Review Board employee 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.
- (b) If the complaint is lodged by mail, the complaint form shall be completed by the Review Board staff on the basis of the information contained within the correspondence. The Review Board 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 Review Board office.
- (c) If the complaint is lodged by telephone, the Review Board 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 Review Board employee taking the complaint shall give his or her name to the complainant. The Executive Officer shall furnish the complainant with a copy of the completed form, together with a request for verification of the accuracy and a signature.

- (d) 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 (b) or (c) above.

5.3 Who May File Complaint. Citizen complaints shall include complaints received from any person what so ever 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 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 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 4.4 of these Rules and Regulation, pursuant to the provisions of Section 4.4 of these rules.

5.5 Complaint Form. The Review Board shall cause all complaints received by it to be reduced to writing on the complaint form. Unless the Review Board has received another writing setting forth the substance of the complaint and signed by the complainant, the completed form shall be furnished to the complainant advising that the complaint will not be deemed to have been filed with the Review Board until and unless it is reduced to writing. The truthfulness of a written complaint shall be attested to under penalty of perjury in the following manner, or by words of similar effect: "I hereby certify that, to the best of my knowledge, and under penalty of perjury, the statements made herein are true".

5.6 Recording of Complaints. The Review Board shall cause a central register of all complaints filed with it to be maintained in its office. The central register shall record actions taken on each complaint. The central register shall contain the following:

- (a) Name of the Complainant, the Aggrieved Party, and the Subject Officer,
- (b) Number of complaint,
- (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 Department or the Probation Department,
- (f) Results of the Review Board's consideration and/or investigation, if any,
- (g) Date and content of the final disposition of the complaint.

In disclosing information from the central register to the public, the name of the Subject Officer shall not be disclosed.

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 complained of conduct, unless the Executive Officer or a Review Board member recommends that the investigation continue and the Review Board, in its discretion, concurs.

5.8 Termination, Resignation or Retirement of Subject Officer. The Review Board shall have the discretion to continue or terminate an investigation, if, after a complaint is filed and before the Review Board completes its investigation, the subject officer terminates employment with the Sheriff's Department or the Probation Department. The Sheriff or the Chief Probation Officer or the subject officer shall notify the Review Board when the subject officer's employment is terminated.

SECTION 6: COOPERATION AND COORDINATION.

In the discharge of its duties, the Review Board shall receive complete and prompt cooperation from all officers and employees of the County. The Review Board 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 the Review Board can fully and properly perform their respective duties.

Such cooperation shall include 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.

The Review Board shall attempt to avoid contacting any subject officer at his or her home. The Review Board shall attempt to get the subject officer's work schedule prior to scheduling an interview or investigative hearing. The Review Board shall attempt to avoid scheduling interviews or investigative hearings on an officer's regular days off, scheduled vacation or authorized leave of absence.

SECTION 7: SUBPOENAS, OATHS.

The Review Board shall, pursuant to the Charter of the County of San Diego, section 606(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.

SECTION 8: CONFIDENTIALITY OF RECORDS.

Any personnel records, citizen complaints against County personnel in the Sheriff's Department or the Probation Department, and information obtained from these records, which are in the possession of the Review Board or its staff, shall be confidential and shall not be disclosed to any member of the public, except in accordance with applicable law. The Review Board shall not obtain or consider personnel records, including internal affairs reports, or information obtained from personnel records, in connection with an investigation or hearing. The Review Board shall keep no records which are maintained by Subject Officer name. Copies of records and complaints of the Review Board shall be made available to the Sheriff or the Probation Officer upon completion of the investigation of the Review Board unless prohibited by applicable law.

The Subject Officer shall be identified in the Review Board's agenda, its public documents and public reports, and at any public meetings or hearings only by a coded identifier which maintains the confidentiality of the Subject Officer's name. The coded identifier will relate to the individual complaint only. In disclosing information to the public, the name of the Subject Officer shall not be disclosed.

The Subject Officer's presence, or the presence of any other employee of the same employer, at a hearing before a Hearing Panel or the Review Board for purposes of providing testimony shall be in closed session, if appropriate, where requested by the Subject Officer.

SECTION 9: INVESTIGATION OF COMPLAINTS.

9.1 Transmittal of Complaints. Citizen complaints filed with the Review Board shall be transmitted forthwith to the Sheriff or the Chief Probation Officer.

9.2 Screening of Complaints.

- (a) Complaints shall be referred to the Executive Officer for investigation. Each complaint will be initially screened by staff and classified as follows:
 - 1. "Category I" Complaint against a peace officer or custodial officer employed by the County in the Sheriff's Department or the Probation Department which requires an immediate and thorough investigation.
 - 2. "Category II" Complaint which does not warrant an immediate and full investigation, and/or is appropriate for deferral.
 - 3. "Category III" Miscellaneous. Essentially a request for information -- complainant needs satisfied after explanation of County Sheriff's Department or Probation Department operations.
 - 4. "Category IV" Complaint not within the jurisdiction of the Review Board. Such complaints will be referred to the Review Board for Summary Dismissal.

5. "Category V" Complaints not alleging facts establishing a prima facie showing of misconduct. Such complaints may be referred to the Review Board for Summary Dismissal.
- (b) The classification of each complaint, as set forth in section 9.2 (a) (1)-(5), must be reviewed and approved by the Review Board before significant further action is taken by staff with respect to such complaint.
- (c) The Executive Officer shall periodically advise the Review Board as to the progress and status of each complaint.
- (d) The Executive Officer may periodically advise the complainant and the subject officer(s) as to the status of a complaint.

9.3 Scope of Investigation. The investigation of a citizens complaint may include, but need not be limited to, the following:

- (a) Interviews with the Complainant, the aggrieved party, each Subject Officer, and witnesses or other persons likely to have information concerning the complaint; examination of the scene of the incident; viewing and analyzing physical evidence, if any, associated with the alleged incident; review, analysis and preservation of other physical evidence, if any. 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 Officer is compelled to cooperate in an investigation, the Subject Officer shall be provided the "Lybarger warning" when required under the appropriate circumstances.
- (b) It shall be the responsibility of the investigator to record each step in the investigation and the result thereof in an investigation report which shall be made a part of the complaint file.
- (c) The Review Board investigators shall attempt to secure written statements under oath 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 verbatim transcript or 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.
- (d) Interviews and statements may be tape-recorded by the investigator. Such recordings shall be kept and preserved until the case is finally disposed of by the Review Board and its findings reviewed by the Board of Supervisors or other appropriate agency or official, or for such longer period as may be required by law.
- (e) The general policy of the Review Board will normally be to defer its investigation of a complaint for the period of time during which formal criminal proceedings relating to the subject matter of the complaint are pending against the subject officer. The Review Board reserves the right to commence immediate investigations, or to defer investigations, in all other cases depending upon Review Board priorities and available resources.

9.4 Investigation Report. At the conclusion of the (pre-hearing) investigation, the investigator shall complete an appropriate written report setting forth the names of the complainant, **and** the aggrieved party, and **the identifying code of** the subject officer; and summarizing what investigation was conducted and what information was disclosed by the investigation. **The coded identifier will relate to the individual complaint only.** The report shall also contain a procedural recommendation by the Executive Officer to the Review Board as to what further action should be taken by the Review Board, such as whether an investigative hearing before a three-member Hearing Panel is appropriate, or before the full Review Board, or whether the case is appropriate for Summary Dismissal, or any other appropriate action or disposition. **Neither the investigator nor the Review Board shall obtain or consider personnel records, including internal affairs reports, or information obtained from personnel records in connection with an investigation. Statements of the Subject Officer, or any other employee of the same employer, given during an interview shall not be included in investigation reports; recommendations of the Executive Officer may reflect, but may not disclose, information obtained from an interview with the Subject Officer, or any other employee of the same employer.**

The Investigative Report shall be submitted to the Chair of the Review Board who may attach his or her own recommendation and submit the entire report to the Review Board, either orally or in writing, or both.

9.5 Review Board Options After Receipt of Investigative Report. After receipt of the Investigative Report, the Review Board shall take whatever further action it deems appropriate for disposition of the allegations of the Complaint, including the following options:

- (a) Conduct an investigative hearing or hearings, pursuant to Sections 10-16; or
- (b) 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 9.6; or
- (c) Summarily dismiss the Complaint, in whole or in part, pursuant to Section 15; or
- (d) Refer the Complaint back to staff for further investigations; or
- (e) Defer further action on the Complaint; or
- (f) Any other appropriate action or disposition, consistent with the Ordinance.

9.6 Disposition By Review Board without a Hearing. If the Review Board decides to review and determine a Complaint based on the Investigative Report and investigative file evidence, but without an investigative hearing, the Review Board shall apply the standard of proof set forth in Section 14.9 and shall follow the Final Report process set forth in Sections 16.5-16.8. If the Executive Officer recommends that the Review Board make a determination on a Complaint without an investigative hearing, the subject officer and representative shall have an opportunity to: (a) review the Investigative Report and; (b) submit additional evidence prior to the determination of the Complaint by the Review Board.

9.7 File Accessibility. Every member of the Review Board shall have full access to all complaints and files maintained by the Review Board or its staff.

9.8 Notification to Parties. Upon completion of the Investigative Report, the Chair shall provide the Complainant, aggrieved party, and each Subject Officer the following:

- (a) Written notice that the Complaint will be considered by the Review Board; and an explanation of the process to be utilized by the Review Board.
- (b) Any recommendations dealing solely with summary disposition or procedural matters.
- (c) A copy of the Investigative Report and the summary supplied to the Review Board. 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 can not be so made available because its disclosure is prohibited by law.
- (d) Written notice that the parties may consult an attorney if desired, and that an attorney or other representative may represent him/her at any hearing, but that an attorney or other representative is not mandatory.
- (e) A summary or copy of these rules and regulations, and any other similar informational items appropriate to the individual case.

SECTION 10: DETERMINING WHEN A HEARING IS NECESSARY.

10.1 Requests for Investigative Hearing. The Complainant, Subject Officer, Executive Officer, or a member of the Review Board may request an investigative hearing (as set forth in Sections 12-14) for some or all of the allegations of a complaint.

10.2 When is a Hearing Necessary. An investigative hearing will be conducted, in accordance with the procedures for such hearings set forth in Sections 11-15, when the Review Board 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 which is the subject of the Complaint; or
- (b) There are additional witnesses, evidence, or information that contradicts or supplements, or is not disclosed by the Investigative Report; or
- (c) There is reason to question the conclusion of the Investigative Report; or
- (d) A hearing would advance public confidence in the Complaint process; or
- (e) An appearance in person by the parties would facilitate the fact finding process.

10.3 Scope of the 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 the Review Board when authorizing a hearing; and all interested parties to the complaint shall be informed of any limitation in scope when notified of the hearing.

SECTION 11: NO CONTEST RESPONSE.

A Subject Officer may enter a written response of "no contest" at any time before a hearing. A response of "no contest" indicates that the Subject Officer accepts the allegations of the Complaint as substantially true in fact and interpretation. The Subject Officer shall be bound by the terms of the no contest response in any further consideration of the Complaint by the Review Board.

SECTION 12: INVESTIGATIVE HEARING PANELS.

12.1 Composition of Hearing Panel. A Hearing Panel of the Review Board shall normally consist of three (3) members of the Review Board, selected pursuant to Section 12.2 below, with one member designated as the Presiding Member. In cases involving the death of a person, and in such other cases as the Review Board shall decide, the Review Board will sit as a Board of the Whole with a minimum of six (6) Board members present.

12.2 Selection of Three-Person Hearing Panels.

- (a) Selection of three-person Hearing Panels under this section shall be made by rotation among the Review Board members, as appointed by the Chair using any basis (including lottery) that balances the workload among Board members. A Review Board 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 Review Board member is so excused, another Board member shall be reassigned by the Chair.
- (b) If a Hearing Panel is unable to meet to convene a hearing on a scheduled date due to the unavailability for any reason of one or more of its members, or if a Panel agrees to reschedule a hearing due to the unavailability for any reason of the complainant(s) or subject officer(s) or legal counsel for either, the case or cases assigned to such panel may be re-assigned to another Hearing Panel. However once a hearing of a case has been convened by a Hearing Panel, the same Panel shall consider the case to final disposition.

12.3 Challenges of Board Members.

- (a) Challenge for Conflict of Interest or Bias. A Board member sitting on a Hearing Panel shall consider all complaints in a fair and impartial manner. A Board Member who has a personal bias or prejudice, or the appearance thereof, in the outcome of a complaint shall not sit on the 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;
 5. Holding a bias against a particular party that is sufficient to impair the Board member's impartiality.
- (b) Procedure for Challenges. Within five (5) calendar days after the date on which the Review Board furnishes notice of a Hearing, including the names of the Board Members constituting that Panel, either party to the complaint may file a written challenge for cause to any Board Member hearing the complaint. Challenges for conflict of interest or bias must substantiate the challenge in terms of the standard set forth in Section 12.3 (a) above.

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

- (c) Replacement of Challenged Board Member. Any Board member removed, or who removes him/her self, from the Hearing Panel due to a challenge for cause shall be replaced by the Chair with another Board member.

12.4 Public Comments. Board members shall avoid public comment on pending complaints, investigations, and hearings.

SECTION 13: INVESTIGATIVE HEARING PROCEDURES.

13.1 Schedule of Investigative Hearings. Investigative hearings may be scheduled by the Chair for any regular or special meeting of the Review Board; or, as to hearings before a Hearing Panel, by the Presiding Member for any other appropriate time.

13.2 Notice Requirements. Ten (10) days notice of an investigative hearing shall be given to the Complainant, each Subject Officer, and any other person whose attendance the Review Board deems appropriate. The notice shall state the date, time and place of the investigative hearing, and the names of the Hearing Panel.

13.3 Hearings Open to Public. All hearings shall be open to the public, to the extent permitted by law, except that the Subject Officer's presence, or the presence of any other employee of the same employer, at a hearing before the Review Board or Hearing Panel for purposes of providing testimony shall be in closed session, if appropriate, where requested by the Subject Officer.

13.4 Authority to Compel Appearance. The authority of the Review Board's subpoena may be used to compel the appearance of witnesses, including Subject Officers, and/or the production of documents. Subpoenas may be requested through the Chair of the Review Board.

13.5 Conduct of the Investigative Hearing. Hearings should be informal, and should be conducted in the following manner unless the Chair or Presiding Member orders otherwise:

- (a) The Presiding Member will conduct the investigative hearing subject to being overruled by a majority of the Hearing Panel. Members of the Board shall be primarily responsible for obtaining testimony. One Board member may be assigned by the Chair or Presiding Member to do the initial questioning of witnesses when a complaint is called for investigative hearing. Additional questions may be asked by any Board member, or by a party or party's representative, or by an assigned staff members.

- (b) At the discretion of the Review Board, opening statement(s) may be made on behalf of the Complainant and the Subject Officer(s) involved.
- (c) The investigative hearing will generally then proceed as follows: The Complaint will be presented, and witnesses, if any will be introduced. The Board may assign a staff member or counsel to assist in the presentation of a complaint where such assistance appears necessary to facilitate a fair and orderly hearing of the complaint. The Subject Officer may then respond to the Complaint, and introduce witnesses, if any. Each person testifying, and each party to the Complaint, may be questioned by the Board and by the parties or their attorneys. In the event that the Subject Officer is compelled to cooperate in an investigative hearing, the Subject Officer shall be provided the "Lybarger warning" when required under the appropriate circumstances. After the Board has taken all relevant evidence, each party may, in the discretion of the Presiding Member, be given an opportunity to make a closing statement.
- (d) At the conclusion of any witness' testimony, either the complainant or the officer involved may request that the Hearing Panel cover any additional areas of inquiry they feel need to be covered. The 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 the 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 the Hearing Panel to receive such material in writing without reconvening.

13.6 Deliberation. After obtaining evidence, the Hearing Panel will deliberate in closed session. The Hearing Panel shall not consider any information not received as part of the investigative hearing. The 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.

SECTION 14: EVIDENCE.

14.1 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 which 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 shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called the witness to testify; and to rebut the evidence against the party. If the Subject Officer does not testify in his/her own behalf he/she may be called and examined as if under cross-examination.
- (b) Oral evidence shall be taken only under oath or affirmation.
- (c) Upon the request of either party or a Board member, witnesses may be excluded from the hearing until they are called to testify.
- (d) Irrelevant and unduly repetitious evidence shall be excluded.
- (e) The rules of privilege shall be effective to the extent that they are otherwise required by constitution or statute to be recognized at hearings before the Review Board.

14.2 Representatives. The Complainant, aggrieved party, Subject Officer, and any witness shall have the right to have a representative of his or her choice present at all times during his/her own fact-finding interviews or investigative hearings conducted by or on behalf of the Review Board. The representative shall not be a witness or a person subject to the same investigation.

14.3 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 (7) days of receipt of the notice of hearing so that appropriate arrangements can be made.

14.4 Authority to Compel Appearance. The authority of a Review Board subpoena may be used to compel the production of documents and/or the appearance of witnesses, including the Subject Officer.

14.5 Failure to Appear. When either the Complainant or the Subject Officer fails to appear, the Board Panel may receive statements from those persons present and relying on the evidence received, continue with the investigative hearing.

14.6 Confidentiality of Review Board Records. The Review Board 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 a Review Board's investigative file may be disclosed to the Complainant and the Subject Officer, but only to the extent and in the manner authorized by these Rules and Regulations. In disclosing information to the public, the name of the Subject Officer shall not be disclosed.

14.7 Discovery.

- (a) By the Review Board. The Review Board, 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 a hearing, the Complainant and each Subject Officer may have access to or receive copies of evidence contained in the Review Board's investigative file for the complaint, except for any evidence that can not be so made available because its disclosure is prohibited by law. Parties seeking such discovery must give at least forty eight (48) hours advance notice to the Review Board, either in writing or by telephone.

14.8 Record of Investigative Hearing. All hearings shall be tape- recorded by the Review Board. At the option of the Chair, 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 Officer requesting a transcript, **except that a Complainant shall not be provided any portions of the transcript which consists of testimony of the Subject Officer, or any other employee of the same employer, given in closed session, or in which the Subject Officer is identified by name.** Any record of the investigative hearing shall become part of the case file.

14.9 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 hearing(s) or otherwise contained in the investigative record. "Preponderance of the evidence" means evidence that has more convincing force than that opposed to it.

SECTION 15: SUMMARY DISMISSAL.

After reviewing the Investigative Report and records, the Review Board may summarily dismiss a Complaint by majority vote, upon recommendation of the Executive Officer, its own motion, or that of the Subject Officer. Parties to the Complaint shall be notified of a proposed summary dismissal, and may appear to argue for or against summary disposition. Summary dismissal will be appropriate in the following circumstances:

- (a) The Review Board does not have jurisdiction over the subject matter of the Complaint.
- (b) The Review Board does not have jurisdiction because the Complaint was not timely filed.
- (c) **The Complainant and/or key witnesses fail to participate or cooperate in the investigation.**
- (d) **The Subject Officer is no longer with the department or subject to discipline.**
- (e) The Complaint is so clearly without merit that no reasonable person could sustain a finding based on the facts.

SECTION 16: REVIEW BOARD FINDINGS AND RECOMMENDATIONS.

16.1 Finding and Report by Three-Member Hearing Panel. At the conclusion of an investigative hearing before a Hearing Panel, the Panel members shall deliberate in closed session and, by majority vote, adopt a recommended finding with respect to the Complainant. **The Hearing Panel shall not obtain or consider personnel records, including internal affairs reports, or information obtained from personnel records in connection with an investigative hearing.** The 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 Review Board in its consideration of the case. **The written report by the Hearing Panel shall not include statements of the Subject Officer, or any other employee of the same employer, given during any closed sessions of the hearing. The recommended finding of the Hearing Panel may reflect, but shall not disclose, information obtained from the Subject Officer, or any other employee of the same employer, during any closed session of the hearing.** The Panel shall take into account any rule, regulation, or policy of the subject officer's employing department brought to its attention by the subject officer or representative that the Panel determines to be pertinent to the complaint being investigated

16.2 Submission to full Review Board. The written Panel report referred to in Section 16.1 shall be forwarded to all members of the Review Board, and the matter placed on the next scheduled regular or special meeting of the Review Board.

A copy of the written Panel report referred to in section 16.1, above, shall be forwarded to each Complainant and Subject Officer, together with a notice of the time and place of the Review Board meeting at which the complaint will be considered. All Complainants and Subject Officers shall be notified that the Review Board may accept written objections to the panel report within ten (10) days of the date of the report.

16.3 Consideration by full Review Board. The Review Board shall consider the report of the Hearing Panel and any other information that may be brought to its attention at the meeting. Thereafter, the Review Board may:

- (a) Vote to conclude the matter without further investigation, review, or hearings;
- (b) Request further information or review by staff, by the Hearing Panel, or through other appropriate means
- (c) Vote to conduct further proceedings on the matter before the entire Review Board;
- (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 governmental agencies, or other appropriate action.
- (e) Accept the Panel report as the Final Report of the Review Board.

16.4 Investigative Hearings before entire Review Board. In cases that are initially heard before the entire Review Board, the interim steps required when a case is heard before a three-member Hearing Panel are inapplicable.

16.5 Final Report by Review Board. At the conclusion of a matter before the entire Review Board, the Board shall deliberate and, by majority vote, shall adopt and prepare a final report with respect to the complaint or matter under consideration. **The Review Board shall not obtain or consider personnel records, including internal affairs reports, or information obtained from personnel records in connection with a matter before it.** This report shall include findings as to the facts relating to any complaint, as well as an overall conclusion as to any complaint as specified in Section 16.6 below. Dissenting members may set forth reasons for their dissent in writing and any such dissent(s) shall be included in the final report. **The final report adopted by the Review Board shall not include statements of the Subject Officer, or any other employee of the same employer, given during any closed sessions of the hearing. The final report of the Review Board may reflect, but shall not disclose, information obtained from the Subject Officer, or any other employee of the same employer, during any closed session of the hearing.**

16.6 Conclusions in Final Report. The Final Report of the Review Board shall contain an overall finding as to each allegation of the complaint in the following manner:

- (a) If the investigation shows the alleged act did not occur, the finding shall be "Unfounded".

- (b) If the investigation fails to support the allegations but the allegations cannot be shown as false, 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 supports the allegations and the action is not justified, the finding shall be "Sustained".

A finding of "Sustained" should include an explanation of the finding of improper conduct; recommendations relating to the imposition of discipline, including the facts relied on in making such recommendations, and recommendations relating to any trends in regard to employees involved in citizen complaints; and/or recommendations for remedial changes in policies or practices where appropriate.

16.7 Consideration of Subject Officer's Disciplinary History. Only after a finding of "sustained" with respect to an allegation of improper or illegal conduct by a Subject Officer, should the Review Board consider the Subject Officer's disciplinary history in determining the appropriate recommendation for discipline. The details of the Subject Officer's disciplinary history will be held confidential by the Review Board and will not be made a part of the Final Report.

16.8 Transmittal of Final Report. The final report adopted by the Review Board shall be immediately forwarded to the Board of Supervisors, the Sheriff or Chief Probation Officer, the Complainant, and each Subject Officer. **Any report to the Complainant or a Subject Officer, or any report made public, shall use a coded identifier which maintains the confidentiality of the Subject Officer's name.**

16.9 Reconsideration of Final Report. Upon request by the complainant, subject officer or their representatives, the Final Report may be re-opened for reconsideration by the Review Board provided that: (a) previously unknown relevant evidence is discovered which was not available to the Review Board before it issued its Final Report, and; (b) there is a reasonable likelihood the new evidence will alter the findings and recommendations contained in the Final Report. A Final Report may also be re-opened for reconsideration by the Review Board at the request of the Board of Supervisors or upon initiative of the Review Board when such reconsideration is in the public interest.

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 the Review Board before the request or proposal is acted upon.

SECTION 17: PROCEDURES WHEN NO CITIZEN COMPLAINT REQUIRED.

In cases involving death arising out of or in connection with activities of peace officers or custodial officers employed by the County, and in such other matters where the Review Board is authorized to act pursuant to Ordinance #7880, as amended (Article XVIII, Sections 340.9(c)-(h) of the San Diego County Administrative Code), the Review Board has authority to review and investigate regardless of whether a citizen complaint has been filed. In such cases:

- (a) The Review Board will undertake such review and investigation when a Board member requests the action and a majority of the Review Board then votes to initiate the review and investigation.
- (b) The review and investigation, including the investigative hearing procedures for such cases, shall otherwise proceed in the same manner, pursuant to these rules as regulations, and in cases initiated by a citizen complaint.

SECTION 18: DELEGATION OF FUNCTIONS TO EXECUTIVE OFFICER.

The Review Board may, in its discretion, from time to time delegate to the Executive Officer certain of the procedural and administrative functions or duties assigned to the Review Board by these Rules and Regulations. The Review Board shall not, however, delegate to the Executive Officer any functions, duties or responsibilities which are required by the Ordinance to be performed by the Review Board.

SECTION 19: AMENDMENTS TO RULES AND REGULATIONS.

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 the Review Board, and any such amendments are subject to approval by the Board of Supervisors.