

**SUMMARY OF SAN DIEGO COUNTY'S
CITIZENS' LAW ENFORCEMENT
REVIEW BOARD**

SAN DIEGO COUNTY CITIZENS' LAW ENFORCEMENT REVIEW BOARD

BACKGROUND

In 1990, San Diego County put to the voters a Charter Amendment establishing the Citizens' Law Enforcement Review Board ("CLERB") and vesting it with subpoena power. The Charter Amendment required the Board of Supervisors to enact an ordinance that established CLERB and set forth its duties. The ordinance was enacted in 1991 and CLERB's duties are (1) to receive, review, and investigate citizen's complaints, (2) to review and investigate peace officer related deaths in the jail or on patrol, (3) to prepare reports on the results of any investigations including recommendations relating to the imposition of discipline, (4) to prepare annual reports to the Board of Supervisors, (5) to notify in writing any citizen who filed a complaint with CLERB of the disposition of his/her complaint, (6) to establish rules and regulations for the conduct of CLERB business, and/or (7) to review and make recommendations on policies and procedures of the Sheriff's Department¹.

The Charter Amendment was challenged in a taxpayer action alleging that the County did not have the authority to create CLERB or to vest it with subpoena power. In 1994, the California Supreme Court held that the County did have such authority, although the Court did recognize that CLERB could not interfere with the investigative function of the Sheriff.

Dibb v. County of San Diego.

CLERB was initially not well received by Sheriff's Deputies. Every time CLERB staff tried to interview a Sheriff's Deputy as part of an investigation into a citizen's complaint, the Deputy refused to answer by asserting his/her Fifth Amendment rights. CLERB eventually began serving subpoenas on Deputies and they again asserted their Fifth Amendment rights and refused to testify. CLERB eventually filed with the Court a motion to compel a Deputy's response to questions on the basis that in a civil proceeding a witness may not refuse to testify based on the Fifth Amendment but must assert the Fifth on a question by question basis. At the hearing on the motion, the Judge made it clear to the Deputies' union and to CLERB that it was going to get very expensive for both sides to litigate these motions to compel on a regular basis and suggested in strong terms that the two sides reach a compromise, which they did. In lieu of the subpoena process, the union agreed that CLERB could submit written questions to Deputies and Deputies had 10 days to respond to the questions. That is still the process today. The Sheriff's Department reviews the responses to make sure they are complete, and then they are forwarded to CLERB. If CLERB finds that the responses are not adequate or responsive, it will send them back to the Deputy for more information.

CLERB AND ITS STAFF

CLERB is comprised of 11 volunteer Board members, a full time Executive Officer, two investigators, and one secretary. Any member of the public may apply to be a CLERB Board

¹ CLERB is also tasked with overseeing San Diego County's Probation Department but that is not applicable here.

member. All applications are submitted to San Diego's Chief Administrative Officer ("CAO") who reviews them and makes nominations from the applications. The nominations are provided to the Board of Supervisors who make the final appointments. Each CLERB member serves at the pleasure of the Board of Supervisors and serves no more than two consecutive three year terms. New CLERB Board members must go through training with the Sheriff's Department and the County Counsel's Office before they begin their term.

CLERB meets once a month in the County Administration Building and its staff posts the agendas. The results of all investigations are discussed in closed session under Government Code section 54957(b)(1), to hear complaints or charges brought against Sheriff's employees and/or to deliberate regarding discipline recommendations.

The Executive Officer, who is a County employee, is selected by CLERB subject to Board of Supervisors' approval. The Executive officer selects the remaining staff, who are also County employees, subject to Board of Supervisors' approval.

CLERB INVESTIGATIONS

The two CLERB investigators conduct all of the investigations. They interview the complainant and/or any witnesses identified by the complainant or identified in the police reports, if there are any, they prepare written questions which are submitted to the involved Deputies, they review relevant Sheriff's policies and procedures as well as applicable law, and finally they make findings and/or recommendations. CLERB requests pertinent documents from the Sheriff and the documents are typically produced. While CLERB has the authority to issue subpoenas for witnesses and documents, they use their subpoena power only to subpoena Sheriff's homicide files. The Sheriff's Department provides homicide files to CLERB only after the homicide investigation is completed. According to the Executive Officer, because of the cooperation they have received from the Sheriff's Department, CLERB has not needed to subpoena any witnesses or any other types of documents for many years.

CLERB investigates citizen's complaints even if the Sheriff or the DA is conducting their own investigations. Neither the Sheriff nor the DA has objected to CLERB conducting a concurrent investigation. At the conclusion of an investigation, CLERB investigators make findings regarding the merits of the complaint. They can also summarily dismiss a complaint if CLERB lacks jurisdiction to investigate or the complaint clearly lacks merit.

The investigator prepares a summary of the investigation and recommended findings that are submitted to the CLERB Board at their monthly meetings. The cases are discussed in closed session and a majority of the CLERB Board carries the vote. CLERB will make public the various cases without using names or identifying information of the Deputies. However, CLERB does provide to the complainant the result of the investigation.

CLERB's decision is then forwarded to the Sheriff's Department and if a complaint is substantiated, CLERB makes a recommendation for discipline or policy change. CLERB's recommendations are advisory only and are not binding on the Sheriff.