

**CIVIL SERVICE COMMISSION MINUTES**

**May 1, 2024**

A meeting of the Civil Service Commission was held at 2:30 p.m., in-person in room 402-A at the County Administration Center; 1600 Pacific Hwy.; and via Videoconference/Teleconference.

Present:

P. Kay Coleman  
Bryan J. Fletcher  
Will Rodriguez-Kennedy  
Peter B. Smith

Absent:

Melissa Johnson

Comprising a quorum of the Commission

Support Staff Present:

Todd Adams, Executive Officer  
Morgan Foley, Commission Legal Advisor.

**Approved**  
**Civil Service Commission**  
**July 3, 2024**

**SAN DIEGO COUNTY CIVIL SERVICE COMMISSION  
MEETING MINUTES  
MAY 1, 2024**

- 1:30 p.m. CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation
- 2:30 p.m. OPEN SESSION: Attend in-person at the County Administration Center, 1600 Pacific Highway, 4<sup>th</sup> Floor, Room 402A, San Diego, California; or
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Notice pursuant to Government Code Section 54954.2.

**CLOSED SESSION AGENDA**

**County Administration Center, Room 458**

Members of the public may be present at this location to hear the announcement of the closed session agenda.

- A. Commissioner Smith: CONFERENCE WITH LEGAL COUNSEL - PENDING LITIGATION (GOV. CODE SEC. 54956.9(a)) Rico Dominguez, Esq., on behalf of **2023-045P**, Deputy Sheriff-Detentions/Court Services, appealing the Citizens' Law Enforcement Review Board's sustained finding.
- B. PUBLIC EMPLOYEE PERFORMANCE EVALUATION (GOV. CODE SEC. 54957(b)) Title: Executive Officer.

**OPEN SESSION AGENDA**

**ORDER OF BUSINESS**

A. **ROLL CALL**

**Present:** Coleman, Fletcher, Rodriguez-Kennedy, Smith

**Absent:** Johnson

B. **APPROVAL OF MINUTES:** Regular meeting of March 6, 2024.

**Motion by Commissioner Rodriguez-Kennedy to approve the minutes of March 6, 2024; seconded by Commissioner Coleman.**

Motion carried with all Commissioners present in favor.

C. **NON-AGENDA PUBLIC COMMENT:**

None.

D. **AGENDA ITEM DISCUSSION:**

None.

E. **FORMATION OF CONSENT AGENDA**

Item No. 2 has been pulled for discussion.

Item Nos. 1, 3-7 are available for approval on the Consent Agenda.

**Motion by Commissioner Coleman to approve the Consent Agenda; seconded by Commissioner Fletcher.**

Motion carried with all Commissioners present in favor.

F. **DISCUSSION ITEMS**

**AGENDA ITEMS**

**CONFIRMATION OF ASSIGNMENT**

1. Commissioner Rodriguez-Kennedy: **2024-012**, former Deputy Public Administrator-Guardian, appealing a Final Order of Removal and Charges from the Health and Human Services Agency.

**CITIZENS' LAW ENFORCEMENT REVIEW BOARD APPEAL**

**Findings**

2. Commissioner Smith: Rico Dominguez, Esq., on behalf of **2023-045P**, Deputy Sheriff-Detentions/Court Services, appealing the Citizens' Law Enforcement Review Board's sustained finding.

**FINDINGS AND RECOMMENDATIONS:**

Employee 2023-045P, a Deputy Sheriff, appealed the Findings of the Citizens' Law Enforcement Review Board, ("CLERB"), in which it sustained allegations against Employee in the Sheriff's Department. The Commission appointed me, Commissioner Peter B.

Smith, to hear the appeal and submit findings and a proposed decision to the Civil Service Commission. Thereafter, a hearing was held on March 21, 2024. Both the Employee and CLERB were represented by counsel.

The Commission's authority to hear this appeal is derived from Civil Service Rule XV, Section 15.1.1 g, in that the CLERB Finding charges Employee as follows: "Use of Force Resulting in Great Bodily Injury - Deputy used force resulting in injury...." Specifically, CLERB found Employee violated the use of force policy in that he used more force than necessary while escorting an incarcerated person ("IP") which resulted in injury to the IP. Section 15.1.7 states as follows: "The burden of proof shall be on CLERB to demonstrate through a preponderance of the evidence that the incident or act, which was the basis for the complaint sustained by CLERB, occurred and did constitute improper conduct."

CLERB reviewed this case and found misconduct on the part of the Employee as follows:

On December 29, 2022, while transporting an inmate, [the IP] within the George Bailey Detention Center ("GBDF"), the Employee used unreasonable, excessive, force when he forced [the IP] to the ground, resulting in a laceration to the [IP's] eyebrow.

CLERB's evidence was offered through documentary exhibits and testimony of four witnesses: its Special Investigator; two Deputy Sheriffs; and a Sheriff Sergeant.

The Employee offered documentary exhibits and produced additional evidence through his own testimony.

The Employee disputes the finding of his use of force against the IP as unreasonable or excessive. He also disputes that he used improper takedown techniques when using force resulting in the IP striking his head against the floor.

The Employee asserts that prior to his transport to the infirmary the IP was involved in two fights with a fellow detainee ("Fellow Combatant"), both of whom were housed in Module 6C; that IP was uncooperative in the cell where the second fight occurred, and would not comply with the directives and admonitions from the Employee and other deputies; that while escorting the IP to processing at the infirmary following the second fight, the IP would not walk on his own, forcing the Employee and a fellow deputy to support him by holding his biceps to prevent the IP from

falling; and that the IP made threatening statements to the Employee and other deputies.

The Employee asserts that throughout the Employee's involvement with the IP, there was continued assaultive behavior on the part of the IP, and that he spoke with him throughout to calm him down and obtain his cooperation. He points out that the 2-second incident, where the IP went from pressed against a cell door to when the IP was taken to the floor, should be considered in the totality of circumstances.

All parties agree that the San Diego County Sheriff's Deputies are bound by the San Diego County Sheriff's Department Policy and Procedures Manual. Specific to this appeal are Procedure Sections relating to: Treatment of Persons in Custody, Use of Force, and Addendum Section F - Use of Force Guidelines.

All parties also agree that California law allows that peace officers may use "objectively reasonable force to effect [an] arrest, to prevent escape or to overcome resistance."

The Commission agrees with the Employee that when CLERB conducts an investigation into the use of force by County peace officers, they must consider the "totality of the circumstances."

The "totality of the circumstances" in this matter includes the following:

- A. On December 29, 2022, between 9:17 and 9:30, the IP and the Fellow Combatant were both housed at the GBDF, in Module 6C. On or around 9:17 the IP and the Fellow Combatant engaged in a fight in the day room. At some time between 9:20 and 9:21 their fight continued in a cell on the second floor of Module 6C.
- B. Module 6C of the GBDF is used to house the most violent inmates, or those committing the most serious of crimes.
- C. Four deputies responded to the fight between the IP and the Fellow Combatant; three of the deputies - the Employee, Deputy 1, and Deputy 2 - arrived in the day room of the module and (after climbing the stairs to the second floor) entered into a cell where the IP and the Fellow Combatant were fighting.
- D. After breaking up the fight the Fellow Combatant was handcuffed behind his back, then positioned outside of the

cell, face down in the corridor. The deputy originally posted on the day room floor joined those on the second floor and escorted the Fellow Combatant out of the module. The Fellow Combatant was cooperative and walked on his own, with the single deputy accompanying him to the infirmary.

- E. The IP actively resisted cooperating with the deputies and would not comply with the directions, admonitions, or commands of the three deputies, including the Employee, as they attempted to handcuff and remove him from the cell in order to transport him to the infirmary for processing.
- F. While *en route* to processing the IP willingly refused to use his legs to walk, requiring the Employee and Deputy 2 to each support his body weight by grasping his biceps and guiding him the entire time.
- G. While *en route* to the infirmary the IP was directing verbal remarks to the Employee, including comments to the effect to "remember this day," that "today was [Employee's] last day and I'm going to find you."
- H. The Employee understood these comments from the IP to be threats of physical harm that might come to him. In response the Employee repeatedly tried to calm the IP by assuring him that he was only going to processing following his fight with the Fellow Combatant, and to cooperate.
- I. An assault can be verbal threats, where it includes the possibility that the person making the threats can physically harm the victim.
- J. The IP acknowledged that despite being handcuffed in the back, it was possible for a detainee, such as himself, to cause physical harm to guards.
- K. Upon entering the corridor for processing at the infirmary the IP's body twisted and suddenly veered to the left, causing Deputy 2 to lose his grip on the IP's left bicep, and the reaction of the Employee to grab the IP's shirt beneath his left shoulder and control this sudden body shift with both hands resulted in a counter reaction swinging the IP's body toward the wall and door on the right. From IP's sudden body movement to the left, to the Employee's reaction to the movement resulting in the IP's face and body being forced into the wall and metal door, only one second passed. Only one more second passed while

the IP's body was pressed to the wall and metal door by the Employee, and during the passage of another second in time the IP's body moves backwards and he has fallen to the floor.

- L. While briefly holding the IP pressed to the metal door and wall the Employee felt the sudden movement from the IP (describe as a movement of the head or shoulder), which he interpreted as an effort to commit battery on either himself or the other deputies. To protect each of them the Employee initiated takedown techniques to gain control of the IP and prevent further actions of resistance. Applicable training and policies support that a takedown of a struggling and uncooperative person, even with handcuffs, is appropriate to gain control of the situation.
- M. At the point that the IP's body has collapsed to the floor, but prior to his head making contact, both of his feet are visible pointing an approximately 45° obtuse to the wall and metal door, with no sign of entanglement with each other or anything else.
- N. At the same time, just prior to the IP's head striking the floor, the Employee is standing in the middle of the corridor with both feet planted on the ground, and with both hands holding onto the IP's shirt.
- O. As a result of his head striking the floor the IP sustained a cut to the anterior portion of his head, across the outside edge of his left eyebrow, which required nine stitches that must be performed at the hospital, not the infirmary. The IP was transported to the hospital after being interviewed by the Sergeant.

While there is some speculation that the Employee used a "leg sweep," as the takedown technique to gain control of the IP, the video evidence fails to support that the Employee used a leg sweep. Further, the Employee has consistently identified his takedown technique as "hands on," and "pulling" the IP to the ground, which is supported by the video reflecting both the IP's feet together, at a 45° angle to the wall, and the position of the Employee with his feet planted in the middle of the corridor. It is more credible that the Employee could not have used a leg sweep in so few seconds that he could end up with both feet in the middle of the corridor. It is also more credible that the Employee utilized a "hands on" and "pulling" approach to take the IP to the ground.

Further, although the IP suffered an injury to his head, requiring nine stitches such that the procedure could not be conducted at the GBDF infirmary, there is no accepted definition of "great bodily injury," in either Penal Code section 835a, or Section 4.3 (c) of the CLERB Rules and Regulations. However, even if a cut on a person's forehead requiring nine stitches could be considered "great bodily injury," by some, the Commission hesitates to make that the threshold to apply here. Experience and common-sense support that the most vulnerable and easily cut areas of any person's body (eyebrow, chin, skull, knuckles, elbows, knees, etc.) are where the bones are closest to the surface of the skin and they are struck by a hard object, including another person's head, the ground, or other hard surface.

In summary, this Hearing Officer cannot support that the IP suffered "great bodily injury," due to the takedown performed by the Employee. However, even if the cut to the eyebrow area of a person's face requiring nine stitches could be defined as "great bodily injury," the takedown technique used by the Employee was more likely than not a "hands on," "pulling," maneuver, as consistently reported by the Employee from his initial report, his supplemental report, his CLERB Sheriff Employee Response Form, and testimony at the hearing, which was necessary when considering the totality of the circumstances in that short period of time.

It is this Hearing Officer's opinion that if CLERB had the benefit of hearing the Employee and other witnesses provide testimony in an interview during the investigation, as I had the benefit of receiving during the hearing, CLERB might not have concluded Employee's use of force against the IP was unreasonable or excessive and might not have sustained that allegation.

Based on the findings set forth above, it is recommended:

That the allegation of the use of force sustained by CLERB in the Complaint against Employee referred to as CLERB Case #23-010 be deemed Not Sustained; and that this proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Discussion:**

Commission Smith stated they he has been on the Civil Service Commission for almost 6 years, and this has been the first CLERB issue he has worked on. He stated that he found the process to be very interesting and well-



intended but to a certain extent flawed.

In this case, he stated that the investigator for CLERB was very conscientious, professional, and seemed to have no bias or goal other than to do the right thing.

Commissioner Smith stated that he also found the Sheriff Deputy to also be very conscientious, professional and had no bias or goal other than to do the right thing.

Both the CLERB Investigator and the Sheriff Deputy were very creditable witnesses and I believe their testimony was truthful and straight forward.

Commissioner, Rodriguez-Kennedy, ask if CLERB had access to employee for an interview. It was stated that employees could opt-out of testifying at the hearing. Commissioner Smith stated that if CLERB had access to interview the appellant and witness; they may have made a different decision.

Commissioner Rodriguez-Kennedy concurred with Commissioner Smith that the process may be some flawed. He also asked if CLERB would be willing to give a presentation on their investigation process. Commission staff said that could be arranged.

Commissioner Fletcher asked for a clarification of "Great Bodily Harm".

It was stated that the CLERB process is to have the employee fill out a form with multiple questions. CLERB can subpoena witnesses; but that was not done in this case.

In addition to several hundred pages of exhibits outlining witness statements, rules and regulations and training procedure there were 6 videos from surveillance cameras and a recorded phone interview. We also heard from 5 witnesses that were either at the scene or had direct participation in gathering statements. All the witnesses were well spoken and there was no indication that they were not telling the whole truth and nothing but the truth.

This is a lot of information to review for an action that took less than 3 seconds.

Commissioner Smith stated that it is his opinion, based on the circumstances leading up to and during the incident, the prior training of the officer, the officer's years of experience, the corroborating testimony from the witnesses, that the action taken by the officer was appropriate and consistent with his training. I found no evidence of abuse of authority or the use of inappropriate force.

**Motion by Commissioner Smith to approve the decision by the Commission; seconded by Commissioner Coleman.**

**Motion carried with all Commissioners present in favor.**

## **SELECTION PROCESS**

### **Findings**

3. **2024-013**, Applicant, appealing the Department of Human Resources' removal of their name from the employment lists for Correctional Deputy Probation Officer.

4. **2024-014**, Applicant, appealing the Department of Human Resources' removal of their name from the employment lists for Deputy Sheriff Cadet and Deputy Sheriff Cadet-Detentions/Court Services.

**Ratified.**

## **EXTENSION OF TEMPORARY APPOINTMENTS**

5. Health and Human Services Agency

2 Office Assistants: **2024-015** and **2024-016**

1 Stock Clerk: **2024-017**

1 Community Health Program Specialist: **2024-018**

1 Social Worker I: **2024-019**

6 Senior Data and Research Analysts: **2024-020**, **2024-021**, **2024-022**, **2024-023**, **2024-024**, and **2024-025**

3 Staff Nurses: **2024-026**, **024-027**, and **2024-028**

**Ratified.**

## **INFORMATION**

6. **2023-053**, Senior Laundry Worker, withdrawal of appeal of an Order of Suspension and Charges from the Sheriff's Department. (Commissioner Smith)

7. Rico J. Dominguez, Esq., on behalf of **2023-046P**, **2023-047P**, **2023-048P**, and **2023-049P**, Deputy Sheriffs, withdrawal of appeals of the Citizens' Law Enforcement Review Board's sustained findings. (Commissioner Johnson)

**Withdrawn.**

ADJOURNED: **3:23 p.m.**

**ASSISTANCE FOR THE DISABLED:** Agendas and records are available in alternative formats upon request. Contact the Civil Service Commission office at (619)531-5751 with questions or to request a disability-related accommodation. Individuals requiring sign language interpreters should contact the Americans with Disabilities Coordinator at (619)531-4908. To the extent reasonably possible, requests for accommodation or assistance should be submitted at least 24 hours in advance of the meeting so that arrangements may be made. An area in the front of the room is designated for individuals requiring the use of wheelchair or other accessible devices.