

**CITIZENS' LAW ENFORCEMENT REVIEW BOARD
POLICY RECOMMENDATION**

PROACTIVELY REVIEW EMPLOYEE SOCIAL MEDIA ACTIVITY

BACKGROUND:

The California State Auditor (CSA) conducted an audit of the Los Angeles County Sheriff's Department, the California Department of Corrections and Rehabilitation, and the municipal police departments in San Bernardino, San Jose, and Stockton to assess the departments' efforts to guard against biased conduct (CSA Report #2021-105, released on April 26, 2022). The audit identified a handful of officers who made biased statements or promoted biased content in their personal social media activity.

Biased statements and the promotion of biased content in social media posts by some law enforcement officers has also been documented nationwide, specifically by the Plain View Project during its examination of Facebook accounts of almost 3,000 active and at least 600 retired officers in eight departments across the country.

The San Diego County Probation Department (Probation Department) has limited Policy and Procedures (P&P) pertaining to social media, as follows:

Policy Section 930, "Employee Speech and Expression:"

930.1 PURPOSE AND SCOPE

This policy is intended to address issues and to provide guidelines for the regulation and balancing of employee speech and expression with the needs of the Department.

Nothing in this policy is intended to prohibit or infringe upon any communication, speech or expression that is protected or privileged under law. This includes speech and expression protected under state or federal constitutions as well as labor or other applicable laws. For example, this policy does not limit an employee from speaking as a private citizen, including acting as an authorized member of a recognized bargaining unit or officer associations, about matters of public concern, such as misconduct or corruption.

Employees are encouraged to consult with their supervisor regarding any questions arising from the application or potential application of this policy.

930.1.1 APPLICABILITY

This policy applies to all Department employees.

930.2 POLICY

Probation Department employees shall obtain permission from the Division Chief/POSM prior to making any public statement in any medium that would cause a person to reasonably believe the statement was an official position or reflect the policy of the County of San Diego or the County of San Diego Probation Department. Any public statement made by a Probation Department employee while in uniform will be considered one that falls within the requirements of this policy.

930.3 ADDITIONAL INFORMATION

Employees are referred to County Policy 117 (Social Networking) for information regarding the proper use and responsibilities for employees posting, making publication to or communicating on social media or social network sites.

San Diego County Policy 117, "Social Networking," provides general guidance for personal use of social media:

During work hours:

- a. Employees' personal use should not be attributable to the County or to the employee's job function with the County. An employee's use and comments made at a social media site are subject to First

Amendment protections. However, any personal use made of social media sites while at work (for example during break periods), must be conducted in such a manner that a reader would not think that the employee is speaking for or on behalf of the County unless they have been designated as such.

- b. Personal use must be in conformance with relevant portions of workplace policies and all relevant laws and regulations. Employees' use of such sites must be in compliance with the County's relevant policies, including its harassment and discrimination policies, confidentiality policies, ethics rules, code of conduct, and other policies, as well as with state Ethics Law, Federal Copyright law, and other applicable laws and regulations.
- c. The appointing authority may allow personal use of social media during work hours; such exceptions are based on acceptable business risks or needs. Personal use must be limited, reasonable and not interfere in the performance of duties.

During non-work hours:

Postings, publications or any communications made or generated from non-County equipment and/or systems are included in this ban on confidential information; this applies to off-duty use.

One other applicable Probation Department P&P is as follows:

P&P Section 903.6.3, "Discrimination, Oppression or Favoritism:"

Discriminating against, oppressing or providing favoritism to any person because of age, race, color, creed, religion, sex, sexual orientation, gender identity or expression, national origin, ancestry, marital status, physical or mental disability, medical condition or other classification protected by law, or intentionally denying or impeding another in the exercise or enjoyment of any right, privilege, power or immunity, knowing the conduct is unlawful.



These policies do not acknowledge that social media posts of biased conduct or other activity that would tend to indicate discriminatory conduct or beliefs undermines the credibility and legitimacy of the Probation Department and creates doubt that all communities will be served equitably.

The Citizens' Law Enforcement Review Board (CLERB) believes the Probation Department must take all necessary and legal measures to establish and maintain the public's trust. The Probation Department should amend current policy to mandate the routine review of employees' publicly available social media posts and department-issued cellphones and computers to ensure there is no biased content or other activity that would tend to indicate discriminatory conduct.

POLICY RECOMMENDATION:

Pursuant to Section 340.9(g) of the San Diego County Administrative Code, the Citizens' Law Enforcement Review Board (CLERB) shall have the authority to review and make recommendations on policies and procedures of the San Diego County Sheriff's Department and San Diego County Probation Department (Probation Department) As such, CLERB recommends the Probation Department add the following, or words to that effect, to the Policy and Procedures (P&P) Section 930, "Employee Speech and Expression:"

Management will routinely review employees' publicly available social media posts and department-issued cellphones and computers to ensure there is no biased content or other activity that would tend to indicate discriminatory conduct, as such conduct undermines the credibility and legitimacy of the Probation Department and creates doubt that all communities will be served equitably.

Submitted by: 	Date: 11-7-22	Reviewed by: 	Date: 11-7-22
Paul R. Parker III, Executive Officer		Lynn Setzler, Supervising Special Investigator	