



# Office of County Counsel

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# Civil Litigation

The background features a series of overlapping, semi-transparent geometric shapes in various shades of blue and teal. These shapes are primarily located on the right side of the frame, creating a modern, layered effect. The overall aesthetic is clean and professional.

# Topics

- ▶ What is Office of County Counsel
- ▶ Legal Representation
- ▶ Theories of Liability
- ▶ Anatomy of a Lawsuit

# Office of County Counsel

- ▶ What is the Office of County Counsel?
  - ▶ Downtown Office (CAC)
  - ▶ Juvenile Dependency Office (COC)
- ▶ **Civil** (money/equitable relief) not criminal
- ▶ Approximately 80 Attorneys, 17 paralegals, 3 claims reps, 4 investigators and staff

- ▶ Legal Representation is in-house
- ▶ Approximately 600 cases filed against the County yearly, and roughly 1,000 open cases pending resolution at any one time
- ▶ Annual Sheriff Cases: 150-160 claims and 50-60 lawsuits
- ▶ 92 percent win/loss record (County prevails in Court)

# Representation

Talk to my lawyer

# Letter of Representation

- ▶ What it means
- ▶ What it says

## Attorney-client relationship

- ▶ Board's role
- ▶ Derivative client



# Attorney's Fees, Damages, and Costs

- ▶ Who pays?
  - ▶ Compensatory damages
  - ▶ Representation
  - ▶ Plaintiff's attorneys' fees
  - ▶ Punitive damages

# Theories of Liability

# Sources of Liability

## Federal

- ▶ 42 U.S.C. Section 1983

## State

- ▶ County and employees liable for damages only if there is a statute authorizing liability

# Who is Liable

- ▶ Individual Liability
- ▶ Supervisory Liability
- ▶ County Liability

# Qualified Immunity

- ▶ What is it?
- ▶ What does it apply to?
- ▶ What it is not

# Anatomy of a Lawsuit

From start to finish

# Why do you need to attend a presentation on civil litigation?

## ▶ Personal

If you were involved and named as a party or you were a witness

If you trained your staff, or developed a policy/procedure

# Why do you need a presentation on civil litigation?

## ▶ Supervisory

If your staff is named or a witness

Recent examples of accessing databases and not responding to discovery requests



# Pre-Lawsuit : Claims/Inquiries/Investigations

1. Detainee “Jail” Grievances
  - ▶ Exhaust administrative remedies
2. Tort Claims
  - ▶ Filed within 6 months
3. Collateral County Investigative Bodies
  - ▶ Citizens’ Law Enforcement Review Board (CLERB)
  - ▶ Critical Incident Review Board (CIRB)

# Start of the Lawsuit

(1) A complaint is filed (2) the lawsuit is served and (3) a response must be made.

# Complaint

A Complaint is filed by a Plaintiff

- ▶ Who will be named as a Defendant?
  1. County Employee(s)
  2. County of San Diego

# Service of Process

- ▶ The Lawsuit (complaint + summons)
- ▶ Employee: will be personal service
- ▶ Suggestions on Receipt of Process
  - ▶ Don't sign anything
  - ▶ IMMEDIATELY notify supervisor and Sheriff's Legal
  - ▶ Sheriff's legal sends documents to County Counsel
  - ▶ Retain/send a copy (include stamp-cancelled envelope)

**SUMMONS  
(CITACION JUDICIAL)**

NOTICE TO DEFENDANT: (*Aviso a Acusado*)

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

YOU ARE BEING SUED BY PLAINTIFF:  
(*A Ud. le está demandando*)

You have **30 CALENDAR DAYS** after this summons is served on you to file a typewritten response at this court.

A letter or phone call will not protect you; your typewritten response must be in proper legal form if you want the court to hear your case.

If you do not file your response on time, you may lose the case, and your wages, money and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).

*Después de que le entreguen esta citación judicial usted tiene un plazo de 30 DIAS CALENDARIOS para presentar una respuesta escrita a máquina en esta corte.*

*Una carta o una llamada telefónica no le ofrecerá protección; su respuesta escrita a máquina tiene que cumplir con las formalidades legales apropiadas si usted quiere que la corte escuche su caso.*

*Si usted no presenta su respuesta a tiempo, puede perder el caso, y le pueden quitar su salario, su dinero y otras cosas de su propiedad sin aviso adicional por parte de la corte.*

*Existen otros requisitos legales. Puede que usted quiera llamar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de referencia de abogados o a una oficina de ayuda legal (vea el directorio telefónico).*

The name and address of the court is: (*El nombre y dirección de la corte es*)

CASE NUMBER: (*Número del Caso*)

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(*El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es*)

DATE:  
(*Fecha*)

Clerk, by  
(*Actuario*)

Deputy  
(*Delegado*)

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (*specify*):
- on behalf of (*specify*):

under:  CCP 416.10 (corporation)  
 CCP 416.20 (defunct corporation)  
 CCP 416.40 (association or partnership)  
 other:

CCP 416.60 (minor)  
 CCP 416.70 (conservatee)  
 CCP 416.90 (individual)

- by personal delivery on (*date*):

Form Adopted by Rule 982  
Judicial Council of California  
982(a)(9) [Rev. January 1, 1994]

(See reverse for Proof of Service)  
**SUMMONS**

WEST GROUP  
Official Publisher

CCP 412.20

**United States District Court**  
SOUTHERN DISTRICT OF CALIFORNIA

vs

**SUMMONS IN A CIVIL ACTION**  
Case No. \_\_\_\_\_

TO: (Name and Address of Defendant)

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and  
serve upon PLAINTIFF'S ATTORNEY

An answer to the complaint which is herewith served upon you, within \_\_\_\_\_ days after  
service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment  
by default will be taken against you for the relief demanded in the complaint.

W. Samuel Hamrick, Jr.

CLERK

DATE

By

Deputy Clerk

NAME AND ADDRESS OF SENDER:	TELEPHONE NO.:	For Court Use Only:
BAR # <b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b> COUNTY COURTHOUSE, 220 W. BROADWAY, SAN DIEGO, CA 92101-3814 HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101-3827 MADGE BRADLEY BLDG., 1409 4TH AVE., SAN DIEGO, CA 92101-3814 FAMILY COURT, 1555 6TH AVE., SAN DIEGO, CA 92101-3814 NORTH COUNTY DIVISION, 325 S. MELROSE, SAN DIEGO, CA 92106-1500 EAST COUNTY DIVISION, 250 E. MAIN, SAN DIEGO, CA 92101-3814 RAMONA BRANCH, 1428 MONTELEONE, SAN DIEGO, CA 92108-1500 SOUTH COUNTY DIVISION, 1428 MONTELEONE, SAN DIEGO, CA 92108-1500		
PLAINTIFF:		
DEFENDANT:		
ACKNOWLEDGMENT OF RECEIPT		Case Number:

(Insert name of individual being served)

and other documents being served pursuant to Section 415.30 of the California Code of Civil Procedure. Your failure to comply with this summons may subject you (or the party being served) to liability for the costs and expenses incurred in serving a summons on you in accordance with the law.

being served on behalf of a corporation, partnership, association (including a partnership), or other entity, this form must be signed by you in the name of such entity and authorized to receive service of process on behalf of the entity. In all other cases, this form must be signed by a person authorized by you to acknowledge service of process on your behalf. Section 415.30 provides that this acknowledgment(s) are deemed served on the date of the acknowledgment of receipt below, if you return it to me within 20 days of the date of service.

Signature of sender

**ACKNOWLEDGMENT OF RECEIPT**

I hereby acknowledge receipt of: (To be completed by sender before mailing)

of the summons and of the complaint.

of the summons and of the Petition (Marriage) and:  
 of the Confidential Counseling Statement (Marriage)  
 of the Cause (Marriage)  
 of the Declaration  
 of the Declaration

(To be completed by recipient)

Date of receipt: \_\_\_\_\_

Date this form is signed: \_\_\_\_\_

(Type or print your name and name of entity, if any, on whose behalf this form is signed)

# Response

- ▶ Limited time to respond once served
- ▶ Answer
- ▶ Motion to Dismiss



# Discovery

The who, what, when, where and how

## ▶ Discovery methods

- ▶ Written discovery

- ▶ Depositions

  - ▶ Personal Witness

  - ▶ PMK

## ▶ Documentation & Evidence Preservation

## ▶ Everything you put in writing may be discoverable

# Common Issues

- ▶ Consistency with policy
- ▶ Unwritten customs or practices
- ▶ How actions compared to training
- ▶ Preservation of documents
- ▶ Accurate report writing
- ▶ Statements on BWC are being captured

# Consistency with Policy

Q While you were there in the hallway did you at any point after Mr. Phounsy was in the maximum restraints see Mr. Phounsy on his side in the recovery position?

A No.

Q Did you roll him into the recovery position at any point in the hallway?

A No.

Q Did you check the restraints to make sure Mr. Phounsy was still able to breathe while you were in the hallway?

A No.

# How Actions Compare to Training

- ▶ Employees are well-trained
- ▶ Every event is a training opportunity
- ▶ Training does not only occur in a classroom setting
- ▶ The other side is look to show how actions do not conform with training

# Preservation of Documents

- ▶ Litigation hold letters
- ▶ Applies to emails, text messages, photographs etc
- ▶ Negative impact on case for failure to comply



# Production of Documents

- ▶ Take the request seriously
- ▶ Put some thought and effort into what is being requested
- ▶ Negative impact on case for failure to provide requested documents

# Production of Documents

14 CATEGORY NO. 9:

15 Documents showing whatever training each of the SDSD personnel who helped  
16 restrain Lucky Phounsy (at any point during the incident) had, at the time of the incident,  
17 in the use of restraints, including the use of “maximum restraints” and the “recovery  
18 position.”



# Production of Documents

## Maximum Restraint/Excited Delirium Comprehension Test

Check (X) the blue box next to the best answer for each question. Fill out Name & Arjls/Date/Station in blue boxes below. After completing the test, save the file and either print or e-mail to your station/facility training coordinator. LMS does not save a copy of the completed test.

Name & Arjls#:

Marcos Collins

Date:

7/17/2015

Station:

Lakeside Substation

1) The maximum restraint cord cuff technique may be used to restrain violent subjects that pose a danger to themselves, others or property.

X

True  
False

2) When maximally restraining a subject, the ankle cord cuff will be attached to:

X

A. The handcuff chain  
B. The wrist cord cuff  
C. The subject's belt loop  
D. All of the above

3) When preparing to control a subject exhibiting "super human strength" and an increased pain tolerance, which technique/tactic is likely the least effective?

X

A. Carotid restraint  
B. Multiple deputy takedown/ swarm technique  
C. Pain compliance techniques  
D. TASER in probe mode

4) What are the signs or symptoms of excited delirium that may represent an increased risk of sudden in-custody death?

X

A. Profuse sweating  
B. Irrational bizarre behavior  
C. Fixation toward glass or metallic objects  
D. Paranoid delusional behavior  
E. All of the above

5) Excited delirium is considered a medical emergency as well as a law enforcement emergency.

# Production of Documents



# Production of Documents

1 REQUEST FOR PRODUCTION NO. 46[sic]:

2 Any and all DOCUMENTS which refer to the health, licensing, ownership,  
3 possession, control, training, and evaluation of the K-9 which attacked PLAINTIFF  
4 during the INCIDENT.

# Accurate Report Writing

- ▶ Reports should be consistent with any video or other recordings
- ▶ Justification for force should be described

# Accurate Report Writing

Mickail failed to comply with Deputy Banks command and I yelled once again, "Get on your knees now!" When Mickail failed to comply a second time, I went to place his left hand behind his back. As I went to grab his left arm, I observed Mickail start to turn his body toward me and felt his muscles tense up. Fearing Mickail was going to strike myself or fellow deputies resulting in potential injury; I attempted to place him in a rear wrist-lock to control his arm but noticed he attempted to pull away from my grasp. While I was attempting to gain control of his left arm, Deputy Brumfield #6936 immediately moved in and gained control of Mickail's right arm.

# Accurate Report Writing

the vehicle. Myles had been non-compliant throughout the entire incident. Myles would not follow clear and concise commands given to him.

I decided quick and decisive action was needed to take Myles into custody to lower injury to myself, my partners and Myles. I used my right hand to grasp Myles by the back of his neck. My plan was to push Myles down to his knees, so Myles could be handcuffed. I grasped Myles' neck and began to push his

head down and forward. Myles ducked his head down and escaped my grasp. After Myles escaped my grasp, he walked backwards out of my view and was behind me. Deputy Allison, Deputy Bushnell and Deputy Brumfield were on the right side of Deputy Allison's patrol vehicle. I did not know how close my partners were to me. I feared Myles was going to assault me from behind, causing injury to me. Myles would have an advantage over me, if he attacked me from behind. I believed Myles was an imminent

# Statements on BWC are being captured

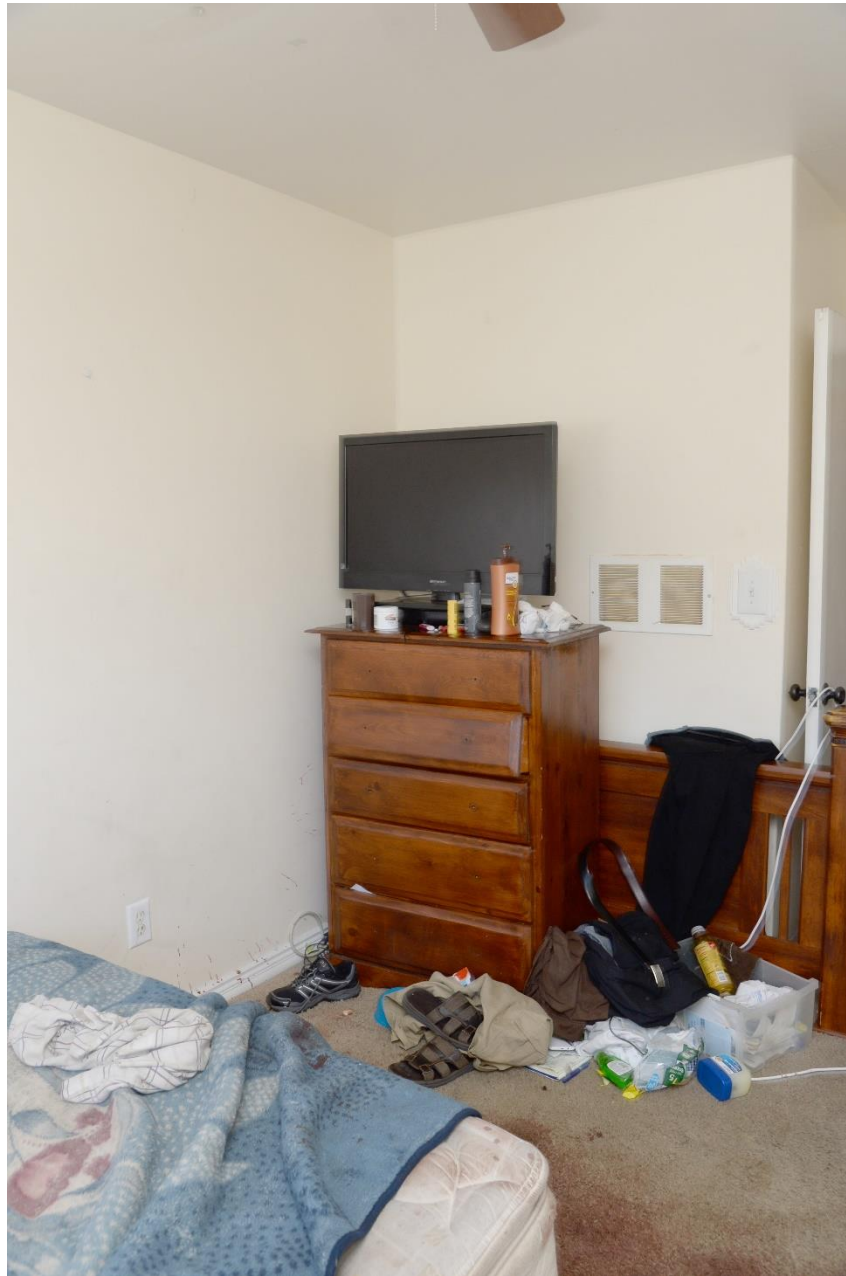


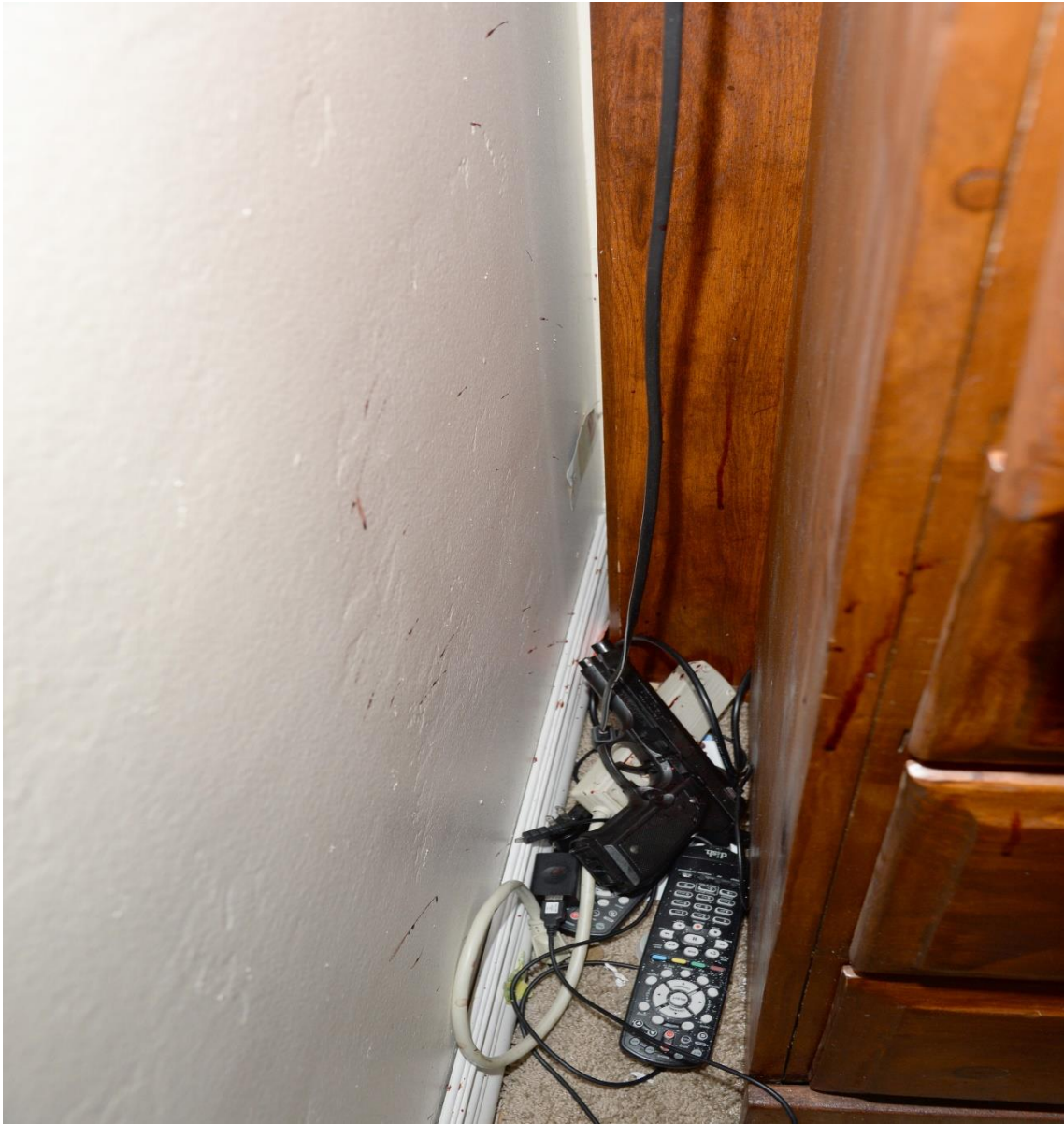
# Statements on BWC are being captured





# Importance of Documents













# Depositions

- ▶ What are they?

- ▶ Good practices

  - ▶ Preparation

  - ▶ Accuracy

  - ▶ Being yourself

- ▶ Bad Practices

  - ▶ Being argumentative or visibly upset

  - ▶ Over volunteering information

  - ▶ Speculating or guessing

  - ▶ Adopting attorney's statement



# Adopting the other attorney's statement

On a scale of 1 to 10, with 10 being as hard as you could push down, how hard were you holding Mr. Phounsy's head down?

A I was holding it a good 9 to 10. He was moving that -- that strong so . . .

Q So you were holding him essentially as hard as you could hold someone down?

A Yeah.



# Motions for Summary Judgment



# What is it?

- ▶ Dismisses entire case or individual claims or defendants
- ▶ No genuine dispute of a material fact
- ▶ Can be difficult for use of force cases, even when there is video of the incident

# Resolution of the Lawsuit

Trial, Settlement or Dismissal

# Settlement

- ▶ Who decides to settle?
- ▶ Input from you, Sheriff and County Counsel
- ▶ Why? Many factors:
  - ▶ Costs of trial v. settlement value
  - ▶ Other individual defendants
  - ▶ Missing documents/witnesses
  - ▶ Attorney's fees
  - ▶ Punitive damages exposure

# Trial

- ▶ Try to win the entire case
- ▶ Changing landscape/jurors
- ▶ Verdicts

# Appeals

- ▶ Adds to length of litigation
- ▶ Based on MSJ denial and/or trial result





# Questions