



# 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

# Immunities

- ▶ Statutory Immunities
- ▶ Qualified Immunity

# New Developments

▶ SB 2

▶ AB 48

▶ AB 490

▶ Qualified Immunity

# 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

**ADDENDUM F SECTION  
USE OF FORCE GUIDELINES**

The preservation of order and the observance of law are best achieved through compliance rather than force or compulsion. The higher the level of public voluntary compliance and cooperation, the less need for the use of force. To that end, the use of force must always be considered secondary to the desirability of voluntary compliance.

The enforcement of law and performance of law enforcement duties may require the use of physical force and physical restraint. Both law and department policy authorize the use of force. Deputies are protected under criminal and civil law when using force in an appropriate and proper manner. It is incumbent on the department and all sworn officers to ensure force and restraint are used in a manner that not only provides for the safety of the public, but in such a way as to engender public trust and confidence as well.

**POLICY:**

It shall be the policy of this Department whenever any Deputy Sheriff, while in the performance of his/her official law enforcement duties, deems it necessary to utilize any degree of force, the force used shall only be that which is necessary and objectively reasonable to effect the arrest, prevent escape or overcome resistance. Deputies shall not lose the right to use force by the use of reasonable force to effect the arrest, prevent escape, or overcome resistance (per 835(a) P.C.). Deputies shall utilize appropriate control techniques which employ maximum effectiveness with minimum force to effectively terminate the incident. The use of force and subsequent reporting must be in accordance with the procedures set forth in these guidelines (see Policy and Procedure Section 6.48).

# Anatomy of a Lawsuit

From start to finish



# 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 \_\_\_\_\_, Deputy  
(*Actuario*) (*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 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (individual)  
 other:

- 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 92101-3814 EAST COUNTY DIVISION, 250 E. MAIN, SAN DIEGO, CA 92101-3814 RAMONA BRANCH, 1428 MONTELEONE, SAN DIEGO, CA 92101-3814 SOUTH COUNTY DIVISION, 1428 MONTELEONE, SAN DIEGO, CA 92101-3814		
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. In all other cases, this form must be signed by a person authorized by you to acknowledge service of process on behalf of the entity. Section 415.30 provides that this acknowledgment(s) are deemed served on the date of receipt of this summons. Section 415.30 provides that this acknowledgment of Receipt below, if you return it to me within 20 days 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.

(Signature of sender)

**ACKNOWLEDGMENT OF RECEIPT**

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

the summons and of the complaint.

the summons and of the Petition (Marriage) and:

Pre-nuptial Counseling Statement (Marriage)

Cause (Marriage)

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

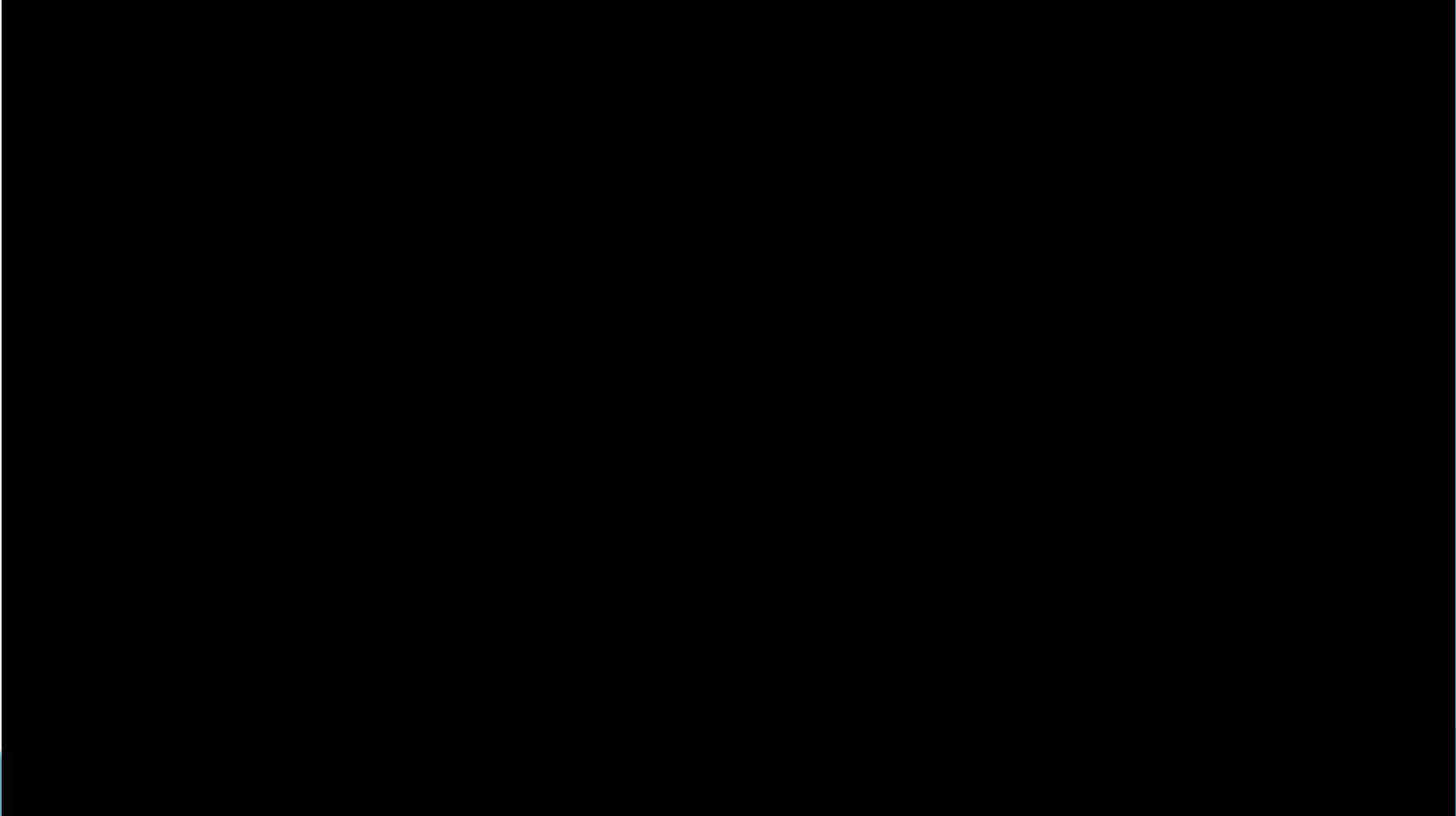
## ▶ Documentation & Evidence Preservation

## ▶ Everything you put in writing may be discoverable

# 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





“

Q. Do you agree that police officers should not remove a firearm from the holster or display firearms unless there is sufficient justification?

”

“

A. Not necessarily. It would depend on the circumstances.

”

“

Q. And he continued to behave in an erratic fashion and at that point not even use words in addressing you. Is that fair to say?

”



“

A. Yes. I never heard Mr. Smith say any words that I could understand up to that point.

”

“ Q. Now, would you mind, just as you did for the second floor, describing the general geography of the first floor to me. ”

“

A. It has a vehicle sally port where when a new arrestee is brought to Central Jail, there - the arresting agent will bring him in -- bring in the arrestee, his property, his arrest paperwork, gets processed, the charges are put into what we call their "fish slip."

The inmate is then -- is -- he is then photographed. If he is compliant, once he's photographed, he is met and screened by our medical staff.

Then if he gets through that, he goes next door and goes through a body scanner, and the body scanner is used to try to identify hidden contraband either on the person or inside the person.

Once that is completed, they go next door, and they're called to a window, and depending on what their charges are, that's how we know what color wristband to put on them to process them.

There's a different system for different charges for "wristbanding" inmates.

Once that is completed, they're placed in what we call an "intake holding cell" until they're called out to be booked or fingerprinted.

It really doesn't matter which one. It's what's ever available. Once those steps are completed on the first floor, they can go to the second floor to continue processing.

”

“ Q. Could you tell me, with respect to that, to determine whether somebody is under the influence of methamphetamine or not, what you personally do to evaluate. ”

“

A. · Well -- and this is just me. · If I was evaluating somebody that I suspected that was under influence and they're showing the signs and symptoms -- you know, they're -- they're racing...

”

... He may be a candidate to go in the sobering cell. **Those are the type of individuals that we want in the sobering cell.**

“

Q. Would you like to apologize to Mr. Jones about anything that happened that day?”

# 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



# Ending the Lawsuit

Trial, Settlement or Dismissal

# Trial

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

# 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

# Appeals

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



# Questions