



Mecklenburg County Sheriff's Office

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|  | MCSO General Order # 3 | Effective Date: May 15, 2020 |
| | Subject: Use of Force | |
| | Rescinds: December 1, 2009 | Revised: February 18, 2020 |
| | Approved: Sheriff Garry L. McFadden  | |

Applicable Standards: CALEA 4.1.1 – 4.1.5, 4.2.1 – 4.2.4, 4.3.1 – 4.3.4

I. Purpose:

The purpose of this General Order is to provide guidance for uniformed personnel of the Mecklenburg County Sheriff's Office (MCSO) on the use of force reasonably necessary to accomplish lawful objectives. **MCSO will not tolerate excessive force.**

The explanation of the limitations of the law regarding use of force by uniformed personnel will give them the necessary knowledge to perform their duties confidently and wisely and without subjecting themselves to criminal or civil liability. MCSO uniformed personnel will comply with the guidelines and directions given during all use of force training by the MCSO Training Academy.

II. Policy:

MCSO recognizes and respects the value of human life. It is the policy of the Mecklenburg County Sheriff's Office that uniformed personnel may only use force when it is objectively reasonable, proportional and necessary given the totality of the circumstances. These circumstances include but are not limited to the force necessary to effect an arrest, control an individual, lawfully detain a subject, prevent escape, or to protect themselves or others.

MCSO employees will attempt to gain the voluntary compliance of subjects when feasible and consistent with personal and public safety. Uniformed personnel will use de-escalation techniques to reduce or prevent the need for force when it is safe and feasible to do so based on the totality of the circumstances.

MCSO uniformed personnel will continually assess the situation, modifying the use of force as circumstances dictate and increasing or decreasing the level of force as circumstances evolve. Uniformed personnel may enter or exit the use of force continuum at whichever level of force is appropriate.

III. Discussion:

A. North Carolina State Law and the United States Constitution limit the use of force by officers. When officers exceed the limits set by the law, they no longer are protected by

their office and badge - they are subject to liability. An officer who uses force in excess of that allowed by law or who uses force in a situation where it is not permitted by law may be liable for damages to the person against whom force is used and may be subject to criminal prosecution.

- B.** The law distinguishes between deadly force and non-deadly force. “Deadly force” means force likely to cause death. “Non-deadly” force is any other physical force. Firing a gun at someone is always deadly force. Once the weapon is discharged, the officer has used deadly force.

Other examples of deadly force are the use of strangulation techniques such as a choke hold or striking someone in the head area with a flashlight or baton. A baton and similar objects are normally non-deadly force, but can constitute deadly force, depending on the manner of use.

- C.** Examples of non-deadly force include the following actions: Striking someone with a fist or open hand, using a come-along hold, or applying wrist locks.

D. Graham v. Connor:

The decision to use force “requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to safety of the officer or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.”

In addition, “the reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight...the question is whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them.” *Graham v. Connor, 490 U.S. 386 (1989)*

IV. Statement of Law: North Carolina General Statute 15A-401 (d)

A. Non-Deadly Force:

Subject to the provisions of Section IV-B (below), a law enforcement officer is justified in using force upon another person when, and to the extent, the officer reasonably believes it necessary:

1. To prevent the escape from custody or to effect an arrest of a person who the officer reasonably believes has committed a criminal offense, unless the officer knows that the arrest is unauthorized.
2. To defend himself/herself or a third person from what the officer reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect an arrest, while preventing or attempting to prevent an escape or effect compliance with a lawful order.

B. Deadly Force:

An officer is justified in using deadly physical force upon another person for a purpose specified in Section IV-A (above) only when he/she reasonably believes it necessary:

1. To defend him/her or a third person from what the officer reasonably believes to be the use or imminent use of deadly force.
 2. To affect an arrest or to prevent the escape from custody of a person who the officer reasonably believes is attempting to escape by means of a deadly weapon, or who by his/her conduct or any other means indicates that he/she presents an imminent threat of death or serious physical injury to others unless apprehended without delay.
- C. Nothing in this subdivision constitutes justification for willful, malicious, or criminally negligent conduct by any person that injures or endangers any other person or property, nor shall it be construed to excuse or justify the use of unreasonable or excessive force.

V. Limits on Force:

Any use of force (deadly or non-deadly) must be in accordance with the Mecklenburg County Sheriff's Office policy and training.

A. Objectively Reasonable:

The determination that the necessity for using force and the level of force used is based upon the officer's evaluation of the situation in light of the totality of the circumstances known to the officer at the time the force is used and upon what a reasonably prudent officer would use under the same or similar situations.

B. De-Escalation:

Taking action or communicating verbally or non-verbally during a potential force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources can be called upon to resolve the situation without the use of force or with a reduction in the force necessary. De-escalation may include the use of such techniques as command presence, advisements, warnings, verbal persuasion, and tactical repositioning.

1. An officer shall use de-escalation techniques and other alternatives to higher levels of forces consistent with his or her training whenever possible and appropriate before resorting to force and to reduce the need for force.
2. Whenever possible, and when such delay will not compromise the safety of the officer or another and will not result in the destruction of evidence, escape of a suspect, or commission of a crime, an officer shall allow an individual time and opportunity to submit to verbal commands before force is used.

C. Use of Force Continuum:

The Use of Force Continuum is the scale of force options available to an officer in response to varying degrees of resistance offered by a subject. An officer can move up or down the scale as is appropriate, necessary and reasonable. An officer may begin at whichever level of force is initially appropriate and then move up or down the use of force continuum as is objectively reasonable and necessary given the totality of the circumstances.

D. Oleoresin Capsicum (OC):

Oleoresin Capsicum, commonly called OC or pepper spray, is a concentrated form of oil

and resin of red or cayenne pepper. It is not a manufactured chemical. OC spray is considered a non-deadly use of force that can be used to temporarily disable a person. Officers should exercise caution when forced to use OC spray on obviously pregnant women, children under 12 years of age and the elderly. Uniformed officers, except those working in a General Housing/Classification PODS, performing Sheriff's Office functions, on-duty or off-duty, shall carry the OC spray issued by the Agency. Officers operating in plain clothes capacity may carry the issued OC spray.

1. The OC spray will normally be used when:
 - a. The officer reasonably believes it is necessary to affect an arrest, secure an arrestee, or provide for the safety of the officer or others.
 - b. Physical restraint of a person is not reasonably likely to safely bring the person under control.
 - c. To discourage an attack by a dangerous animal.
2. The officer using the OC spray will thoroughly document the incident on a Use of Force Form (F-10 SO) as provided by Section VI. Officers shall document thoroughly the events that led to the use of the spray and the subject's reaction to the OC spray, including the following:
 - a. The subject's actions and/or statements prior to discharging the OC spray.
 - b. The deputy/detention officer's approximate distance from the subject when OC spray was discharged.
 - c. The approximate amount of OC spray discharged, such as the number of bursts or seconds of spray.
 - d. The time after exposure for the OC spray to take effect.
 - e. The manner in which the subject is initially restrained following the use of OC spray.
 - f. Deputy/detention officer's efforts to conduct post-use care of the subject.
 - g. Recovery time of the exposed subject.
 - h. Whether medical treatment was provided for the subject and how the medical treatment was obtained (Contracted Medical Provider, First Responder, MEDIC, Emergency Room, etc.)
 - i. The name(s) of the personnel at the facility notified of the use of OC spray on the subject.
3. Any person affected by OC spray, either intentionally or accidentally, will be provided post-use care by the deputy/detention officer who used the OC spray or by another deputy/detention officer if the deputy/detention officer who used the spray is unable to conduct the post-use care.
 - a. Post-use care consists of rinsing the exposed areas with a saline solution or water as soon as possible following the exposure, placing the exposed person in a well-ventilated area, and observing the person in a manner consistent with the training provided concerning post-use care.

deputy/detention officer reasonably believes there is an imminent threat of serious bodily injury to himself/herself or a third person **and** the deputy/detention officer has no other reasonable alternative for defending himself/herself or the third person.

3. Kinetic Impact Projectiles (bean bags) – This munition will be used for crowd management and violent combative inmate/subject control. While bean bags are considered less lethal munitions, care should be given whenever used due to the potential for death or serious injury. Bean bags may be launched from a 37-mm launcher or a 12-gauge pump shotgun. Target areas of the body are the lower abdomen, thighs and arms. Bean bags will not be launched or fired at the head or any persons unless the use of deadly force is appropriate. Medical attention will be provided immediately or as soon as conditions return to a condition where it is reasonably safe to do so. The use of bean bags will be considered a use of force and must be reported by completing the F-10 SO. The projectile and spent shell will be collected and forwarded to OPC with the F-10 SO.
4. 37 millimeter (37mm) Wooden/ Rubber Batons – This munition will be launched from a 37-mm launcher for the purpose of crowd management, (dispersal) by “skip shooting” the floor or ground approximately 6 feet in front of persons to be dispersed. Due to the potential for serious injury or death, these munitions will not be launched directly at any subject/inmate unless the use of deadly force is appropriate. Medical attention will be given immediately or as soon as conditions return to a state where it is safe to do so. All wooden/rubber batons used in the incident will be collected and forwarded to OPC with the F-10-SO for review.

G. Conducted Energy Weapon:

The Conducted Energy Weapon (CEW) is considered a less than lethal weapon. The device is designed to incapacitate a subject up to twenty-one feet away with little threat of serious bodily injury or death, thus making the CEW a less violent tool for ending a dangerous situation than the use of a firearm. A CEW uses propelled wires to conduct energy that affects the sensory and motor functions of the central nervous system. Probes can penetrate through two cumulative inches of clothing and do not have to penetrate the flesh or cause bodily harm to be effective. The device can also be used in direct contact (Drive Stun Mode).

1. A CEW can be used when:
 - a. The deputy/detention officer reasonably believes it is necessary to affect an arrest, secure an arrestee or resident, or defend the deputy/detention officer or another person from the use of imminent use of force.
 - b. Use of lesser force is not reasonably likely to safely bring the person under control.
2. The deputy/detention officer deploying a CEW will thoroughly document the incident using the Use of Force Form, F-10-SO, as provided by Section VI of this General Order. Deputy/detention officers shall document thoroughly the events

that led to the use of the CEW and the subject's reaction to the CEW including the following information:

- a. Describe in detail why the deputy/detention officer thought it was reasonably necessary to use the CEW.
 - b. Describe in detail the subject's actions and/or statements immediately prior to deploying the CEW.
 - c. The deputy/detention officer's approximate distance from the subject when the CEW was deployed.
 - d. Documentation as to the location of where the probes contacted the subject's body and who removed probes.
 - e. The approximate number of exposures the subject received before he/she was brought under control.
 - f. Recovery time of the exposed subject.
 - g. Whether medical treatment was provided for the subject and how the medical treatment was obtained (contracted medical provider, first responder, MEDIC, emergency room etc...).
 - h. The name(s) of supervisors notified of the use of the CEW.
3. The CEW will be worn support side carry, cross draw in an issued holster. Only certified uniformed deputy/detention officers are permitted to carry and deploy a CEW or remove the probes from the subject. Universal precaution should be utilized when removing probes from a subject. Used probes are considered sharps and should be disposed of in a bio-hazard container. Medical personnel must remove probes if attached to the facial/head, genital area or breast area of a subject.
 4. The CEW should be aimed center mass of a subject. When possible, a low center mass is preferred for efficient disabling of a subject's stability muscles. However, as certified uniform deputy/detention officers are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving, center mass aim may not always be possible, and promptly subduing, securing, and then assisting the subject (if needed), should be the primary concern.
- H. **Firing at or From a Moving Vehicle:**
- This action may be used **only** when the deputy/detention officer reasonably believes there is an imminent threat of serious bodily injury or death for the deputy/detention officer or for a third party if the deputy/detention officer does not do so.

Before discharging a firearm at or from a moving vehicle, a deputy/detention officer must reasonably believe that the only reasonable means of protecting him/herself and/or a third party is the use of deadly force. The deputy/detention officer shall consider the safety of bystanders in determining the reasonableness of firing at or from a moving

vehicle.

I. Warning Shots:

Warning shots are strictly prohibited. **MCSO doesn't authorize the use of warning shots under any circumstances as they are considered use of deadly force.**

J. Strangle Holds/Choke Holds:

Holds that may choke or restrict the ability of an individual to breathe are considered the use of deadly force and may be administered only when the deputy/detention officer reasonably believes there is an imminent threat of serious bodily injury or death for them or a third person.

K. Handcuffing or Shackling to Fixed Objects:

Handcuffing or shackling an individual to a fixed object is not allowed by MCSO personnel.

L. Proficiency Training:

MCSO personnel that are authorized to carry agency issued firearms and Conducted Energy Weapons must successfully meet the Criminal Justice and North Carolina Sheriffs' Education and Training Standards Commission requirements prior to the weapons being issued.

All sworn and armed MCSO personnel will attend annual training and successfully demonstrate proficiency with agency issued firearms and Conducted Energy Weapons. Sworn and armed personnel must attend annual training and demonstrate proficiency in less than lethal uses of force to include handcuffing, empty hand control techniques, impact weapons and use of Oleoresin Capsicum (OC) spray.

If a sworn or armed personnel fails to demonstrate proficiency, then they must attend remedial training, and successfully pass the required qualification or recertification course prior to being authorized to carry agency issued firearms or Conducted Energy Weapons.

All sworn and armed personnel authorized to carry agency issued lethal and less lethal weapons shall understand the legal implications, weapon operations, care procedures and the proper documentation required following any use of force.

VI. Procedures Following the Use of Force by a Mecklenburg County Sheriff's Office Employee:

A. The purpose of filling out each part of the Use of Force Packet (F-10-SO) is for the immediate documentation of the force used so that, should a complaint be filed, the pertinent facts will be readily available. The form will also be used to assist in identifying training and equipment needs. The existence of one or more Use of Force packets cannot be used in a deputy/detention officer's performance evaluation. Furthermore, since the form merely records a historical event, the existence of one or more Use of Force packet (s) cannot be the basis for discipline. Force that is justified is permissible, regardless of the number of usages.

1. Medical Treatment:

a. The deputy/detention officer shall contact a supervisor who shall either

authorize the transportation of that subject or make arrangements necessary for transportation of that subject to a place where needed medical care can be obtained. If the deputy/detention officer is in doubt as to the necessity of medical treatment, the supervisor shall observe the subject and make that decision.

- b. OC spray and the use of a CEW require additional post-use care. Specifically, when OC spray is used, washing the affected area with saline solution or water is required. When the CEW is utilized, a medical person will be called to examine the affected person to determine if further treatment is necessary.

2. **Documentation:**

- a. Each deputy/detention officer who uses force on a subject shall contact his/her immediate supervisor at once. The deputy/detention officer shall also complete the "Officer Record" portion of F-10-SO and forward it to his/her immediate supervisor by no later than the end of the tour in which the force was used. A deputy/detention officer that witnesses another MCSO employee during an application of force is required to complete the "Witness Record" portion of the F-10-SO. The deputy/detention officer's supervisor must be notified of all uses of force and must thoroughly investigate and determine when an F-10-SO is required. The supervisor is responsible for investigating the incident and ensuring that all involved employees complete the appropriate record detailing their involvement during an application force. The investigating supervisor is also responsible for compiling all the Officer, Witness and Subject Records prior to completing a thorough and comprehensive Event Record.
- b. **Notwithstanding the provisions of this section, a deputy/detention officer shall not complete an F-10-SO when the deputy/detention officer discharges a firearm and the Office of Professional Compliance has assumed responsibility for the investigation nor, shall the deputy/detention officer's immediate supervisor conduct the use of force investigation unless requested by the Office of Professional Compliance.**
- c. If the immediate supervisor is unavailable, the form shall be submitted to the scheduled on-duty supervisor. The on-duty supervisor will ensure the deputy/detention officer's immediate supervisor receives the original copy no later than the next business day for review by the deputy/detention deputy/detention officer's Chain of Command.
- d. Off-duty deputy/detention officers involved in use of force situations are subject to the same reporting procedures as on-duty deputy/detention officers. When an off-duty deputy/detention officer is involved in a use of force situation, he or she shall notify the MCSO Communications Center

and an on-duty supervisor immediately. MCSO Communications Center shall assist with locating an on-duty supervisor as needed.

- e. Listed below are some examples of situations where completion of an F-10-SO is required. Each deputy/detention officer using force must prepare an Officer Record. The agency has attempted to identify all situations where an F-10-SO is required. However, a report is required in any situation that clearly involves a use of force.
- i. A deputy/detention officer exercising official authority uses force that causes any visible or apparent physical injury, or which results in the subject saying that he/she was injured.
 - ii. A deputy/detention officer exercising official authority uses any object, including baton, flashlight, hand, fist, or foot to strike a blow to a subject.
 - iii. A deputy/detention officer exercising official authority uses force that in any way causes a subject to suffer a blow to the head.
 - iv. A deputy/detention officer exercising official authority bodily removes or drags a resisting subject from one place to another.
 - v. A deputy/detention officer exercising official authority uses OC spray or a Conducted Energy Device on a subject.
 - vi. A deputy/detention officer exercising official authority uses CS gas. In the event the gas is used to affect the arrest of a suspect or disperse rioters, mobs, crowds, or barricaded subjects, the appropriate supervisor on the scene shall initiate the F-10-SO.
 - vii. **A deputy/detention officer exercising official authority draws and points their agency issued firearm, but does not fire shall initiate the F-10-SO.**
 - viii. **A deputy/detention officer exercising official authority draws, points, and discharges his/her firearm, regardless of duty status or whether the discharge was accidental or intentional, subject to the conditions set forth in Section VI A 2(b) - B. Exception: Bomb Squad's use of a weapon on an explosive device as an approved disarming tactic.**
 - ix. A deputy/detention officer exercises official authority on a subject resulting in the subject losing consciousness.
 - x. Whenever force is used to place a subject in the restraint chair.

3. Any employee who witnesses a use of force which is required to be reported (under Section VI A-2 of this policy), shall immediately notify his/her supervisor and complete a Witness Record F-10 SO.

4. The Chain of Command shall be notified as soon as possible whenever injuries have been inflicted by a MCSO employee sufficient to cause the injured party to need medical attention.
 - a. Notification shall be by the immediate supervisor of the employee involved.
 - b. In the absence of a command level officer and/or during night hours or weekend, the on-duty supervisor shall be notified.
 5. With the consent of the injured person, the supervisor notified shall have photographs taken of the injuries. Deputy/detention officers with visible injuries shall be photographed as well.
 6. Upon completion of all parts of the F-10-SO, a supervisor shall obtain a File Number from the Office of Professional Compliance. The File Number will be placed in the front upper left-hand corner of the F-10-SO. This number will serve as a control number.
 7. The File Number issued will be assigned to the supervisor requesting it, and all records of the incident shall reflect the file number assigned.
 8. The completed F-10-SO shall be forwarded to the Chief Deputy via the officer's Chain of Command before the end of the tour of duty, during which the incident occurred unless authorized by a Supervisor.
 9. After the review and completion, the Chief Deputy will then forward the original F-10-SO to the Office of Professional Compliance. The Office of Professional Compliance will log and file the form.
 10. If the force used is such that the affected individual requires hospitalization, the Supervisor shall notify the Commander of the OPC immediately, regardless of the hour of the day.
 11. If an officer encounters a degree of resistance sufficient to justify a charge of resisting arrest or assaulting a law enforcement officer, the officer is to ensure these charges are made immediately. The Supervisor should ensure this is completed.
- B.** Whenever a service firearm or approved off-duty weapon is discharged, regardless of duty status and regardless of whether the discharge was accidental or intentional, the deputy/officer discharging the firearm shall immediately report the incident to an on-duty supervisor. Firearms' training is excluded from this requirement.
1. The officer will document the incident on the Officer Record (F-10-SO) and submit said form as explained in Section VI - A of this General Order.
 2. In the event of an accidental discharge that does not result in an injury; the supervisor or investigating officer (including other agencies) will take custody of the weapon that has been discharged and submit the weapon to the Office of Professional Compliance in the same condition in which it was received.

3. In firearms discharged as an application of deadly force, the weapon is likely to be seized by the investigating law enforcement agency and will be held by the investigating agency until such time as the investigation into the discharge of the weapon and processing by the crime laboratory and disposition of the case are complete.
4. At the discretion of the Sheriff or designee; deputies will be given a replacement service pistol when the weapon that has been discharged is submitted for examination. The deputy who surrendered the weapon will contact the Training Division to secure a replacement service pistol. Privately owned weapons will not be replaced and will be returned as soon as practical.
5. A Shooting Review Board shall convene to review all incidents involving the discharge of firearms as described above. The Board shall be comprised of the affected deputy/detention officer's Chain of Command as well as the Range Master or designee.

VII. Use of Force Investigations (Criminal and Administrative):

In the event of a deputy/detention officer involved shooting that results in the death or serious injury of a person, the deputy/detention officer's actions will be investigated by the State Bureau of Investigation (SBI) as required by the Mecklenburg County District Attorney. This is a criminal investigation to determine if the deputy/detention officer's application of force was lawful.

Concurrent with the criminal investigation being conducted by the SBI, the Office of Professional Compliance (OPC) will also conduct an internal administrative investigation to determine whether the application of deadly force was within the guidelines set forth in MCSO policy.

- A. The criminal and administrative investigations are purposely separated to ensure that deputy/detention officers and their legal representatives know precisely what their rights and responsibilities are under each different investigative format. The criminal investigation has investigative priority over the administrative investigation and is the umbrella under which the administrative investigation takes place.
- B. **Deputies/detention officers have a right to be represented by legal counsel during any criminal investigation and are strongly encouraged to consult with their legal representative prior to giving statements to law enforcement.**
- C. **MCSO employees do not have the right to legal counsel during an internal administrative investigation conducted by the Office of Professional Compliance.**
- D. **Criminal investigators may share information with administrative investigation personnel. Absent the limited purposes allowed by law, administrative investigators shall not, by any means, share information that results from the administrative investigation.**
- E. In all cases wherein any person has been seriously injured or killed using deadly force by a deputy/detention officer; the involved deputy/detention officer will be required to undergo an examination and any other course of treatment recommended by a licensed

mental health professional chosen by the Sheriff's Office.

- F. Any deputy/detention officer seriously injured, as a result of a deadly force encounter shall also be required to undergo an examination by a licensed mental health professional and be medically cleared by a licensed healthcare professional before being cleared to return to work. MCSO must ensure that the employee is psychologically and physical fit to perform the requirements of their position.

VIII. Administrative Assignment After Incidents Involving Serious Injury or Death:

- A. Any deputy/detention officer involved in a use of force incident that causes serious injury or death will be removed from operational assignments pending the criminal and administrative review.
- B. The Sheriff or Chief Deputy will determine the employee's status throughout the course of the criminal and/or administrative investigation.
- C. Deputies/Detention Officers assigned to an Administrative Duty Status may be assigned to work in another division.
- D. Like limited-duty status, employees assigned to an Administrative Duty Status will wear professional business attire as specified in General Order # 9 Personal Appearance and Working Attire Section XI.
- E. MCSO personnel may be placed on Administrative Leave pending the criminal and administrative investigations. While on Administrative Leave if it's determined that the employee is needed for official interviews and/or to be updated on the progress of the investigation the employee will avail themselves during business hours; Monday through Friday 8:00 AM – 5:00 PM.
- F. Administrative Leave shall be without loss of pay or benefits, pending the results of the investigation. The assignment to Administrative Leave shall not be interpreted to imply or indicate that the employee has acted improperly.

IX. Purging of Use of Force Forms:

The Office of Professional Compliance is responsible for purging all Use of Force forms after a period of three years unless there is a pending investigation, a pending administrative proceeding, and/or a pending court action.

- X. The Chief Deputy and OPC Division Major will conduct an annual Use of Force analysis of those reports required by this policy. A review of these reports may reveal patterns or trends that could indicate training needs, equipment upgrades, and/or policy modifications.
 - A. The analysis should identify:
 1. Dates, times, location and number of uses of force.
 2. Types of encounters resulting in uses of force.
 3. Trends or patterns related to race, age and gender of subjects involved.
 4. Trends or patterns resulting in injury to any person including employees.

5. Impact of findings on policies, practices, equipment, and training.

XI. Closing:

Questions regarding the Use of Force Policy should be referred to your Chain of Command or the Office of Professional Compliance.

