

**HAWAI'I COUNTY POLICE COMMISSION  
REGULAR SESSION MINUTES  
MARCH 19, 2004  
HAWAI'I COUNTY COUNCIL ROOM**

**CALL TO ORDER**

Chair Hara called the meeting to order at 9:04 a.m.

**ROLL CALL**

Present:	Horace S. Hara	Also Present:	Harry Kubojiri, Deputy Chief
	Dwight K. Manago, Vice Chair		Charles Chai, Assistant Chief
	John M. Bertsch, Member		James Day, Major
	Paul M. de Silva, Member		Paul Ferreira, Captain
	James A. Frazier, Member		Henry Tavares, Captain
	Pudding Lassiter, Member		Lincoln Ashida, Corporation Counsel
	Betsy Mitchell, Member		Josie Pelayo, Secretary
	Walter Moe, Member		
	Peter P. Muller, Member		

A quorum was present.

Chair Hara introduced incoming Commissioner Kathleen "Pudding" Lassiter of Council District 1 who replaced Phoebe Lambeth.

Chair Hara presented certificates of appreciation from Mayor Kim to outgoing commissioners Phoebe Lambeth and Walter Moe for their service on the commission.

**APPROVAL OF AGENDA**

Vice Chair Manago motioned to approve the agenda. Commissioner Muller seconded the motion. Discussion: Commissioner Frazier asked to add Complaint HPC 03-24 and Correspondence 04-1.1, Corporation Counsel's response to 04-1 onto the agenda. Corporation Counsel Ashida explained that HPC 03-24 was an older investigation in which the officer and the complainant had previously come before the commission. The investigator recently completed the investigation, and it is his last case under the contract. The motion carried unanimously with the addition of HPC 03-24 and 04-1.1.

**STATEMENTS ON AGENDA ITEMS** - Open to the public

Corporation Counsel Ashida explained that the commission would be going into executive or closed session for testimony on Correspondence 04-1 for two reasons. One because of a pending lawsuit against an officer and the county and two because the commission would be directing questions to him, their attorney.

NELLIE FEJERAN (Complaint HPC 03-36) came before the commission and stated that during the incident, she wasn't near the DUI roadblock. She reversed to Verna's Drive-In and parked her truck because she had previously gone through the roadblock and didn't want to go through it again. At the station she asked Officer Mahuna why her truck was towed, and he told her that someone left it unattended. She asked him if it was illegal to park a vehicle. She told the officer that she was the driver of the vehicle, and he told her that she was lying. She did not reverse in a reckless manner. The officer told her it might

take 48 hours to get her truck back or it might drag on. She parked the truck in the stall. It was alleged that Manual Santos, her brother, was driving the truck. She reverse away from the roadblock because she felt harassed by it. Her sister was with her when she spoke to Officer Mahuna at the police station. The officer was not professional. He didn't give an explanation as to why they towed her truck. He said it was under investigation and he couldn't explain.

Chair Hara pointed out that the officer's report stated that the driver was a local male who stuck his left arm out in the air and then reversed away.

Ms. Fejeran stated that she was the driver and that she was alone. The officer's conduct was bad, and he triggered her to get very upset

**STATEMENTS ON AGENDA ITEMS (EXECUTIVE SESSION)** - Closed to the public  
Commissioner Moe motioned to meet in executive session to consider discipline and charges against officers or employees of the Hawai'i County Police Department where consideration of matters affecting privacy will be involved and a closed session is requested and to consult with Corporation Counsel on questions and issues pertaining to the commission's powers, duties, privileges, immunities, and liabilities pursuant to HRS 92-5 (2) and Hawai'i County Charter Section 13-20 (b). Commissioner Bertsch seconded the motion and it carried unanimously.

The commission convened into executive session at 9:35 a.m. and reconvened back into regular session at 9:55 a.m.

### **APPROVAL OF MINUTES**

Vice Chair Manago motioned to approve the minutes of February 12 and 20, 2004, regular and executive sessions. Commissioner Frazier seconded the motion, and it carried unanimously.

### **PERSONNEL ORDERS**

*(Including but not limited to work assignments, training assignments, promotions, reallocations, severance from service, automobile allowances, and appointments.)*  
Vice Chair Manago motioned to accept Personnel Orders Nos. 2004-013 to 2004-021. Commissioner Muller seconded the motion, and it carried unanimously.

### **COMMUNICATIONS**

Vice Chair Manago motioned to accept the communications as listed, including 04-1.1. Commissioner Muller seconded the motion, and it carried unanimously.

### **COMMITTEE REPORT**

- Budget and Finance (Hara/Manago): Vice Chair Manago reported that they met with the County Council to review the police department's 2004-05. It went pretty well, although they had some major issues such as the antiquated generator which is used for the 911 system.

Chair Hara thanked Vice Chair Mango for a well-done presentation, but stated that the police commission and the police department need to work together on their priorities.

- Office Management and Staffing (Muller/Mitchell): The committee had no report.
- Rules and Policies (Bertsch/de Silva): Commissioner de Silva reported that he has been working on the draft of changes to the rules. He asked that changes be directed to him or Commissioner Bertsch. After Chief reviews their recommendations to the disciplinary system, they might need to make more changes to the rules.

Commissioner Bertsch stated that the time of the meeting should be 9:00 a.m.

Chair Hara stated that they will have a public hearing for changes to the rules.

Commissioner de Silva inquired whether he could send the draft to all commissioners via e-mail. Corporation Counsel Ashida stated that he could legally send it to the secretary and she could then make the distribution.

- Contractual Services (Frazier/Moe): This being Albert Bee's last presentation, Commissioner Frazier commended Mr. Bee for his investigations. Chair Hara thanked him and stated that his reports were detailed and very good. The committee had no report.
- Public Relations (Hara): The committee had no report.  
Chair Hara asked Commissioner Lassiter to sit on the Public Relations Committee

### **CHIEF'S REPORT**

Including:

- Crime: AC Chai summarized the written report of Area I. They have had a number of break-ins in the Akaka Falls and Rainbow Falls areas. Two known ice users were caught when one person tried to cash a check at a bank, and the teller alerted the police. In the industrial area, soda machines had been broken into, so Community Policing Officers staked out a particular area and caught two individuals who admitted being responsible for many of the break-ins. At Honokaa School, they had problems with break-ins, the biggest damage being to locks that were super glued.
- Traffic: AC Chai summarized the written report, pointing out that the DUI arrest needed to be corrected to reflect the fiscal year.

Major Day summarized the written report of Area II. He reported that over the past months, they worked on the missing person case of Joshua Mettler. Last month they found the responsible person and that it was a murder.

Commissioner Moe inquired whether the department was looking into increasing the Puna staff, especially because of the high crime statistics. The Puna District has

experienced a lot of growth. There is a perception of under-service in the whole district, and there is a great sense of fear developing.

Assistant Chief Chai stated that they have not increased their patrol staff. There are 48 officers assigned to the Puna District, and they try to have 8-9 officers on duty on each shift. Detectives are assigned to the Puna area. Building a new station in Puna and South Kona is a priority.

- Personnel: Captain Ferreira summarized the written report. They have 45 sworn and 7 civilian vacancies. One recruit was called up for military duty and another resigned.
- Finance: Captain Ferreira summarized the written financial report.
- Commendations: Deputy Chief Kubojiri reported receiving 8 commendations since the last meeting. He thanked Vice Chair Manago for supporting the police department at the hearing before the County Council and agreed with Chair Hara that they should have done a better job.

Deputy Chief Kubojiri reported that many of the traffic accidents around the island have been attributed to speed and inattention. They have been using the speed board to warn drivers of their speed. They hope that by next month or early May they will have the defensive driving course which all officers will go through. With this, they hope to reduce the number of accidents as well as their insurance rates.

Vice Chair Manago reported that he did some research and found that in the past three years 41,000 new vehicles have been added onto the roadways.

Chair Hara reported that the next staff meeting is scheduled for March 23, at 1:30, at the Shultz Siding Building.

- Commanders' meeting minutes: Vice Chair Manago reported that at the last commanders' meeting, it was pointed out that some sergeants are making more money than some EM captains. The TSA is always looking for men, and he would hate to lose men to TSA. Oahu, Kauai, and Maui are also having vacancy problems.

Commissioner Frazier expressed concern that the Mayor found more money for other departments who will be receiving more personnel, but not the police department.

Deputy Chief Kubojiri stated that they are unable to fill their current vacancies.

**UNFINISHED BUSINESS** - None.

**NEW BUSINESS**

- Correspondence 04-1, from Officer Iris McGuire requesting legal counsel in Civil No. 03-1-0288. Commissioner de Silva motioned to accept Corporation Counsel's

recommendation and provide legal counsel for the officer. Commissioner Mitchell seconded the motion, and it carried unanimously.

- Correspondence 04-2 and 04-3, invitation to the 2004 State of Hawai'i Police Commissioners' Conference on Maui May 6-7, 2004, and request for suggested topics for discussion. Chair Hara asked the commissioners to inform the secretary of topics they would like to discuss. They will need to fly over the day before in order to make the morning session.
- Correspondence 04-4, from George Melvich concerning problems he has had with the postal service and police officers. Vice Chair Manago stated that he is totally confused by the letter, and motioned to file it. Commissioner Bertsch seconded the motion, and it carried unanimously.
- Correspondence 04-8, from John Paul Hammel, Jr., requesting information on his criminal case. Vice Chair Manago motioned to file the letter. Commissioner Moe seconded the motion, and it carried unanimously.
- Correspondence 04-9, Darlene Tomel's request to withdraw her Complaint HPC 03-31. Commissioner Moe motioned to accept the complainant's request to withdraw the complaint. Commissioner Muller seconded the motion.

Discussion: Commissioner Frazier questioned whether they should take action before they receive a letter of withdrawal. Ms. Pelayo stated that when Ms. Tomel called her to withdraw the complaint, she was told to send a letter to confirm this. Commissioner De Silva read the rule which states that a complaint may be withdrawn by a notice or letter of withdrawal signed and dated by the complainant. Chair Hara asked if the notice had to be written. Corporation Counsel Ashida stated that the notice or letter should be read in the conjunctive which means that it should be in writing.

The motion died when only Commissioner Muller voted aye.

Vice Chair Manago motioned to defer Correspondence 04-9 to the next meeting in order to receive the letter of withdrawal. Commissioner Bertsch seconded the motion.

Discussion: Commissioner Frazier stated that he would like to hold off on assigning this to the investigator. Ms. Pelayo stated that she had not yet received the new investigator's signed contract, and was told to wait for it before making any referrals. Chair Hara stated that they would defer this to the next meeting and not refer it to the investigator before then. Since the complainant is now living on Maui, has no permanent address, and had recent contact with the Maui Police Department, he asked for the police department's assistance in obtaining her address in order to contact her for the letter of withdrawal.

Corporation Counsel Ashida stated that it is a better policy to require a written withdrawal. This would protect the secretary if a complainant later states that he did not withdraw the complaint.

The motion carried unanimously.

Corporation Counsel Ashida asked Officers Springer and Stewart, who were in the audience, if they wanted to make a statement in response to the letter from SHOPO's attorney Michael Wong. Mr. Ashida explained that the letter requested that the commission cancel its executive session meeting. The letter was not received in time to be placed on the agenda but would be on April's agenda. Mr. Ashida further stated that he believes Mr. Wong thought that the commission would be going into executive session to discuss new disciplinary procedures involving officers. That was not the case. The executive session would be to discuss old complaints utilizing the commission's existing procedures that they have utilized in the past. Further discussion on the disciplinary procedures would be done at the next meeting in April.

Officer Emory Springer stated that he had nothing to say, and that some of the contents in the letter from SHOPO's attorney can be clarified at the next meeting.

### **EXECUTIVE SESSION**

Vice Chair Manago motioned to meet in executive session to consider discipline and charges against officers or employees of the Hawai'i County Police Department where consideration of matters affecting privacy will be involved and a closed session is requested and to consult with Corporation Counsel on questions and issues pertaining to the commission's powers, duties, privileges, immunities, and liabilities pursuant to HRS 92-5 (2) and Hawai'i County Charter Section 13-20 (b). Commissioner Frazier seconded the motion, and it carried unanimously.

Recess was called at 10:45 a.m.

Executive session convened at 10:58.

Regular session reconvened at 11:55 a.m.

### **ACTION ON EXECUTIVE SESSION MATTERS**

Investigation and deliberation of complaints.

- HPC 03-24: Complainant alleged that during her husband's traffic stop, three officers were intimidating, hostile, sarcastic, and unprofessional. Albert Bee of Akal investigated the complaint. Commissioner Bertsch motioned to not sustain the charges of Truthfulness, Impartial Attitude, Overbearing Conduct, and Conduct towards the public for all three officers. Vice Chair Manago seconded the motion, and it carried unanimously.
- HPC 03-34: Complainant alleged that two officers were negligent in performing their duties, partial in handling the situation, and participated in the kidnapping of his son. Albert Bee of Akal investigated the complaint. Vice Chair Manago motioned to exonerate the two officers on the charges of Misuse of Position or Office and Impartial

Attitude. Commissioner Muller seconded the motion, and it carried with a nay from Commissioner Bertsch.

- HPC 03-36: Complainant alleged that an officer had her truck towed, told her that it would not be returned until after the investigation which could drag on, and that he called her a liar. Commissioner Bertsch motioned to refer the complaint to the investigator. Vice Chair Manago seconded the motion, and it carried with a nay from Commissioner Frazier.

**STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS** – None

**ANNOUNCEMENTS**

Chair Hara announced that the next monthly meeting is scheduled for April 16, at 9:00 a.m., at the Ohana Keauhou Beach Resort, 78-6740 Alii Dr., Kailua-Kona

**ADJOURNMENT**

The meeting was adjourned at 12:05 p.m.

SUBMITTED:

APPROVED:

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JOSIE PELAYO, SECRETARY

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HORACE S. HARA, CHAIR