

**HAWAI'I COUNTY POLICE COMMISSION
REGULAR SESSION MINUTES
MAY 21, 2004
WAIMEA COMMUNITY CENTER**

CALL TO ORDER

Chair Hara called the meeting to order at 9:00 a.m.

ROLL CALL

Present:	Horace S. Hara, Chair	Also Present:	Lawrence Mahuna, Chief
	Dwight K. Manago, Vice Chair		Thomas Hickcox, Assistant Chief
	John M. Bertsch, Commissioner		Elroy Osorio, Major
	Paul M. de Silva, Commissioner		Kay Nishibashi, Accountant
	James A. Frazier, Commissioner		Lincoln Ashida, Corporation Counsel
	Pudding Lassiter, Commissioner		Josie Pelayo
	Pete Muller, Commissioner		

Absent: Betsy Mitchell, Commissioner

A quorum was present.

APPROVAL OF AGENDA

Vice Chair Manago motioned to approve the agenda with the following additions: Correspondence 04-24.1, Corporation Counsel's response to Correspondence 04-24, and Correspondence 04-28, Corporation Counsel's status report to Correspondence 04-11 which is under unfinished business. Commissioner Bertsch seconded the motion, and it carried unanimously.

STATEMENTS ON AGENDA ITEMS - Open to the public.

Corporation Counsel Ashida stated that the commission would adhere to its five-minute time limit. The commissioners received copies of the complaints well in advance and are familiar with each case. He asked that people not repeat what they had already submitted to the commission and to only add something new. Statements in open session will be taken first and those in closed session will follow.

KELLY M. DUFF-DE POYO (COMPLAINT HPC 04-13): Stated that she was there because of a complaint against Officer John Kahalioumi who was helping her at her place of business. She was present the entire time that Jennifer Raulerson said the incident happened. The officer did not act in any way that was misconduct. He never was rude, never yelled, never threatened, or threatened to arrest her. He conducted himself with the utmost respect, and as far as she's concerned, the way a police officer should act. Miss Raulerson is known for lying. Officer John gave her information on the rights of an employer and helped her with an 86 form. He tried to get them to mediate. At no time did he force Ms. Raulerson to sit down. There were times during the whole meeting that he could have thrown her in the back of his car because of her rudeness, her loudness, and her remarks. The officer was very calm about the situation. She has a three-year TRO against Miss

Raulerson because of evidence she provided to the court that she is a very dangerous person. As far as Officer John is concerned, he did nothing that was inappropriate. She found out about the complaint when officer John went to her and the other businesses involved and asked if they felt that he had done anything improper. She never met the officer before the incident.

OFFICER RANDY BELL (Complaint HPC 04-16): Stated that the complainant indicated numerous allegations as a result of a motor vehicle accident in Keaau. When he asked Ms. Best for information that was required on the accident report, she became uncooperative, argumentative, and refused to provide the information because the vehicle belonged to her boss. She did not want to provide any information relative to her boss. He kept explaining to her that the information was required on the traffic accident report was specific to the vehicle involved. He may have raised his voice at her, when she became argumentative, but he did not yell or scream. During his investigation, he detected a strong odor of liquor on her breath, and asked her on several occasions if she had any alcohol to drink. His training and experience led him to believe that she was under the influence of alcohol. She verbally said that she had a drink. Officer Tingle did the DUI investigation and he did the traffic accident. She refused everything. She was very uncooperative, and the other operator involved testified to that. At the Keaau police station she was very uncooperative and refused all their direction. The only force used was during the handcuffing, which she refused. He had to use a firm handgrip to grab her hand, her arm, and then place the handcuffs. There were no takedown, no arm bars, just a firm handgrip.

JENNIFER RAULERSON (HPC 04-13): Talked at great length about problems she and her children have had with Kelly Duff-De Poyo, patrons of the local swimming pool, and merchants of the Kona Shopping Center. On several occasions she had be reminded that she needed to focus on the misconduct of the police officer. Ms. Raulerson stated that the police officer aided and abetted a person in the harassment and conspiracy to arrest her, slander her, demean her, and to take photographs of her to place in the store.

Ms. Pelayo informed that the officer called and informed that he was unable to attend the meeting because he had to be in court that morning.

MS. DE-POYO stated that she found out that the officer would be in court when he came by her store and asked if she felt he acted improperly.

MARY URIBES (HPC 04-12): Stated that she has a three-year restraining order against Richard Swangel and anybody who comes and does anything on his behalf. It includes her husband and those who live with her. In the beginning, officers responded to her calls of violations. As time proceeded, violence occurred and Richard Swangel tried to murder her husband. Swangel was subsequently arrested but not for attempted murder, just for harassment. She doesn't understand this because a weapon was involved, an axe. It upsets her that she has an order from the judge, and the officers continually let

this man go. She has had two threats on her life which she reported. She has had calls at work that they would run her over. She wants the officers to know that she got a restraining order because she cannot handle this by herself, and she has a great deal of fear. Richard Swangel is a police informant, and she thinks this is one of the reasons why they continually look the other way. He should have been arrested when she had threats to her life by three different individuals. Would like the police to realize that a person doesn't get a restraining order for anything but fear, which she has, and she wants the police to honor the restraining order. The last time that she had a death threat, she called the police, but they never got back to her. There have been times when she called and they did not respond at all. In the incident with her husband, Richard threatened to beat her. Her husband stepped in, and they had a physical altercation. The police did not respond to her restraining order. Her husband got in trouble after the fact when Richard went to the public defender.

WADE THOMAS (HPC 04-13): Seventeen year old son of Jennifer Raulerson stated that he went into the store for five minutes, and the lady Kelly told him to get out. She called the cops on him.

ELIZABETH HALL (HPC 04-02): Stated that she was denied due process by being put at her fault solely on testimony of witnesses who were not under oath and without looking at any of the physical evidence

TIM HALL (HPC 04-02): Stated that it all comes back to the officer making out the little slip of paper and not telling his wife that they had witnesses against them. They did not get due process. The captain wrote a statement saying that he didn't feel they were at fault. If an officer is not trained to investigate, they must not be put in box #1 and they must not give out forms not filled out properly. The police didn't look at the skid marks, didn't look at the accident properly, and put them in box #1. The officer wasn't trained to properly investigate an accident when someone is seriously injured.

NGAIRE BEST (HPC 04-16): Stated that after the accident, Officer Watanabe checked the back of the truck which only had a cooler, barbeque items, and no alcohol. Officer Bell did a DUI road test on a hillside which Officer Watanabe pointed out to him. Officer Bell did not have permission to enter her truck when he placed her paperwork in it. If he went into the truck he would have smelled or seen alcohol. He did not. Officer Watanabe would also have found or smelled it. Officer Tingle's report said she had red, glassy, watery eyes. She worked out doors with heavy equipment hauling macnuts with dust that goes into her eyes. She had just gotten through with work. She was also crying because of what happened to her boss's truck. She didn't want to give her boss's phone number because she wanted to be the one to tell him about the accident. While in the processing room, Officer Tingle ordered her to sit, and when she said, "No," he grabbed her thumb, twisted her arm, and forced her into the cell. Her daughter started crying, and Officer Bell came in and took her out of the room. Her daughter should not have been in there to begin with. Officer Tingle started yelling CPS, that he was going to have the truck towed,

and send her to the Hilo station. She is a single mom and her daughter would have had nowhere to go. Her daughter started crying. Officer Tingle did not read her all the forms. He put down that she refused to sign. She did not refuse to sign. Sergeant Huston processed her. He never asked her to take any tests. She did not answer the questions pertaining to her health. Officer Tingle did it all. She was not asked to take the test prior to Officer Tingle forcing her into the cell. She didn't consume alcohol. She only told Officer Bell that she had one so that he would stop asking her if she had any.

RAYMOND URIBES (HPC 04-12): Stated that the officers in Ka'u told his wife to put a TRO on Swangel, so she did. The judge signed a TRO to protect his wife and him against this man, and the officers don't do their job. He got himself in trouble because of this man. He wants to know why the cops are not doing their job. His wife and Swangel have been divorced for a while, and he just wants to make it hard on both of them

VERNAL LINDSEY (HPC 04-10): Stated that he had an altercation at his house and wanted George Pai kicked out. The officer more or less said that he couldn't do it because Pai had a verbal contract with his brother, that the verbal contract superseded property rights, and that he would have to give him 45 days according to the landlord tenant code. Property rights are not superseded by a verbal contract. Mr. Pai needed a place to stay, so they gave him a job landscaping the property. In return, his brother gave him free rent. It was a verbal contract, and he stayed there about a month. He was a tenant.

THOMAS SCHMIDT(HPC 04-21): Stated that he would like his complaint deferred to the Kona meeting in July so he could get the balance of the court transcripts. Chair Hara stated that they would defer the case but would allow the officer to give a statement.

STATEMENTS ON AGENDA ITEMS (EXECUTIVE SESSION) - Closed to the public
Vice Chair Manago motioned to meet in executive session 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 Lassiter seconded the motion, and it carried unanimously

The commission convened into executive session at 10:15 a.m. and reconvened back into regular session at 11:58 a.m.

STATEMENTS ON AGENDA ITEMS – Open to the public

RICHARD KAMOKU (HPC 04-09): Stated that his authorized representative (Alfred Spinney) would speak on his behalf.

ALFRED SPINNEY: Stated that they requested a private hearing in executive session because this is a private matter and was rejected because he wanted to come in with Mr. Kamoku as an authorized representative. They are dealing with a contract, common law, and copyright. He will not debate the issue because it is in the affidavit. The officers stepped outside of their jurisdiction when they put their hands on the property of the

private contract between the bank and the debtor. The two officers had actually pushed the vehicle out of the garage to be hooked up to a tow truck to be repossessed. There was a breach of contract because agents stepped into the contract. They reserve the right to hold the third parties accountable and liable for their actions in their private capacity as an individual because they understand there are bonds on the police officer, but as an individual there is substantial damage. He asked for a copy of the minutes, to which Chair Hara stated that he could get it from the secretary. He would like correspondence addressed to "Authorized Representative."

MR. SPINNEY stated that whether the car payments were up to date or not was irrelevant to what happened. The loan was paid off.

MR. KAMOKU stated that the car was paid off in full. The tow truck driver came and showed him documents. They took the title when they took the car.

APPROVAL OF MINUTES

Vice Chair Manago motioned to approve the minutes of April 16, 2004, regular and executive sessions. Commissioner Lassiter 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. 2004-035 to 2004-048. Commissioner Bertsch seconded the motion, and it carried unanimously.

COMMUNICATIONS

Vice Chair Manago motioned to accept communications as listed. Commissioner Frazier seconded the motion, and it carried unanimously.

COMMITTEE REPORT

- BUDGET AND FINANCE (Hara/Manago): The committee had no report.
- OFFICE MANAGEMENT AND STAFFING (Muller/Mitchell). The committee had no report.
- RULES AND POLICIES (Bertsch/de Silva):
 - Review of draft of revised rules: Deferred to June meeting.
- CONTRACTUAL SERVICES (Frazier): The committee had no report.
- PUBLIC RELATIONS (Hara/Lassiter): The committee had no report.

CHIEF'S REPORT

INCLUDING:

- **CRIME:** Assistant Chief Hickcox summarized the written report.
- **TRAFFIC:** Assistant Chief Hickcox summarized the written report.
- **PERSONNEL:** Major Osorio introduced the department's new Accountant IV, Kay Nishibashi. He reported having 51 sworn and 6 civilian vacancies.
- **FINANCE:** There were no questions for Ms. Nishibashi on the written report.

Chair Hara stated that he met with Ms. Nishibashi to go over the next fiscal year's budget on conferences. The HSLEOA conference will be held at the Hapuna Prince this year, and they will save approximately ten airfares. They worked it out where they could possibly send one more commissioner to the national conference. They could discuss it. Normally the chair and vice attends. He asked the commissioners to let him know if anyone is interested in attending.

Commissioner de Silva stated that he couldn't understand why the chair and vice were going to the conference when they only have two more meetings after they return. He doesn't know if it's a reward for all their hard work and asked what good it would be for the commission.

Chair Hara stated that as far as he knows, it's been a precedent over the years. He thinks the only bennie the chair and vice chair has is to have a trip. But it's up to them, and they can change it.

Commissioner Frazier inquired into the commission's effort for a new computer, to which Assistant Chief Osorio stated that he wasn't aware of the request and would look into it.

- **COMMENDATIONS:** Chief Mahuna reported receiving 13 commendations since the last meeting.
- **COMMANDERS' MEETING MINUTES:** Chair Hara stated that they did not receive a copy.
- **OTHER DEPARTMENTAL ACTIVITIES:** Chief Mahuna stated that he is disturbed by the number of traffic fatalities. He has directed the commanders to come up with proactive methods of traffic, and receives weekly status reports. They are still running special enforcement during rush hours on the Queen Kaahumanu Highway.

Commissioner Frazier asked if they could send the message out in the newspaper that the road is under construction and to create some kind of awareness about unhealthy driving.

Chief Mahuna stated that they have given out a lot of citations and have done a lot of arrests.

Commissioner Bertsch stated that with the road widening that is happening on the Queen K Highway, they have been diverting traffic both to the right and left as they repaved. The road has not been restriped and they only have temporary markers. A lot of tourists, people who are not familiar with the road, and more aggressive drivers feel more compelled to use this new, wide shoulder. If you drive down the highway now, and you haven't been on the highway in prior years, you would think it's a four-lane highway because it's not marked appropriately.

Chief Mahuna stated that he received a letter from a bike rider stating that they like the bigger shoulders, but now cars think it's another driving lane.

Chair Hara commended the chief and the department for a nice police week and a well-attended memorial service.

Chief Mahuna reported that the County Council recently gave them thirteen funded positions, eight in Kona and five in Puna. They will be advertising for the positions. They are attracting applicants from other islands, especially because the Big Island has more affordable housing.

Commissioner Bertsch inquired about a shooting range in West Hawai'i, to which Chief Mahuna stated that Assistant Chief Hickcox is looking into it. Officers have to qualify yearly with their duty weapon and any other supplemental weapons.

Vice Chair Manago inquired about the cadet program, to which Chief Mahuna reported that he has talked to the schools. The largest high schools are all for it, and want them to implement a program. He is waiting for the SROs to get into the schools to work on it. Hopefully they will develop mentorship. They hope to get the SROs in the schools around February of next year after their training is completed.

Lunch recess was called at 12:55 p.m. The meeting reconvened at 2:40 p.m.

UNFINISHED BUSINESS

- CORRESPONDENCE 04-09, DARLENE TOMEL'S REQUEST TO WITHDRAW HER COMPLAINT HPC 03-31. Vice Chair Manago motioned to accept her written withdrawal notice. Commissioner Frazier seconded the motion, and it carried unanimously. Ms. Pelayo informed that after she received the written withdrawal notice, Ms. Tomel left a phone message stating that she had not yet sent the commission any notification. She also left a non-working phone number. Commissioner Bertsch asked that they send a thank you letter to the Maui P.D. for tracking her down.

NEW BUSINESS

- CORRESPONDENCE 04-10, CORPORATION COUNSEL ASHIDA'S COMMENTS ON THE COMMISSION'S RECOMMENDATIONS FOR IMPROVEMENT TO THE DISCIPLINARY SYSTEM OF THE HAWAI'I COUNTY POLICE DEPARTMENT. Commissioner de Silva stated that they could not do anything about this until the issue with the labor relations board is done. He suggested that they defer the matter. Commissioner Lassiter motioned that they defer this indefinitely. Vice Chair Manago seconded the motion. Discussion: Corporation Counsel Ashida suggested that they continue to carry it on the agenda next month and in succeeding months so that they don't lose track of it. The motion carried unanimously.
- CORRESPONDENCE 04-11, FROM CORPORATION COUNSEL ASHIDA REGARDING A PROHIBITED PRACTICE COMPLAINT FILED BY SHOPO. Corporation Counsel asked to speak to the commission in executive session in order for him to relay what he learned from the Honolulu Police Department and because it may affect the commission's potential exposure.
- CORRESPONDENCE 04-12, FROM COMMISSIONER DE SILVA REQUESTING AN INQUIRY INTO THE ALLEGED ATTENDANCE OF TWO HAWAI'I COUNTY POLICE COMMISSIONERS IN A PROCEEDINGS OF THE ADMINISTRATIVE REVIEW BOARD. Chair Hara reported that they received responses from two commissioners and the chief.

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 Lassiter seconded the motion, and it carried unanimously.

- DISCUSSION ON POLICE COMMISSIONERS ATTENDING ARB HEARINGS
- INVESTIGATION AND DELIBERATION OF COMPLAINTS

The commission convened into convened into executive session at 2:40 p.m. and reconvened into regular session at 4:04 p.m.

ACTION ON EXECUTIVE SESSION MATTERS

- DISCUSSION ON POLICE COMMISSIONERS ATTENDING ARB HEARINGS.
Commissioner de Silva motioned to defer this matter because he has many questions, and doesn't think they will be able to complete the inquiry until after the labor relations

decision is made. Commissioner Frazier seconded the motion, and it carried unanimously.

- **INVESTIGATION AND DELIBERATION OF COMPLAINTS.**

HPC 04-02: Complainant alleged that two officers failed to maintain an impartial attitude towards her by putting her at fault in a vehicle accident. Commissioner Bertsch motioned to refer this to the investigator. Commissioner de Silva seconded the motion, and it carried with a nay from Vice Chair Manago. Instructions to the investigator: 1) find origination of witnesses, 2) why witnesses were not provided to the complainant, and 3) look at the accident as a whole.

HPC 04-06: Complainant alleged mistreatment when he was taken to the hospital. Commissioner Frazier motioned to exonerate the officer on all charges. Commissioner de Silva seconded the motion, and it carried unanimously.

HPC 04-07: Complainant alleged mistreatment by an officer. Commissioner Bertsch motioned to refer this to the investigator. Vice Chair seconded the motion, and it died with nays from Commissioners de Silva and Frazier. Commissioner Frazier motion to exonerate the officer. Commissioner Lassiter seconded the motion, and it died with nays from Commissioner Bertsch and Manago. The complaint was deferred to the next meeting.

HPC 04-09: Complainant alleged that officers breached the peace and committed theft when they assisted in the repossession of his vehicle. Commissioner de Silva motioned to refer the complaint to the investigator. Commissioner Frazier seconded the motion, and it carried unanimously. Instructions to investigator: Was car paid in full and who had title?

HPC 04-10: Complainant alleged that an officer interpreted the law instead of enforcing it when he asked to have someone removed from his residence. Commissioner Bertsch motioned to not sustain the charges. Vice Chair Manago seconded the motion, and it carried unanimously.

HPC 04-11: Complainant alleged that an officer used force when he was arrested for DUI. Vice Chair Manago motioned to exonerate the officer. Commissioner Frazier seconded the motion, and it carried unanimously.

HPC 04-12: Complainant alleged that the Ka'u Police have not been responding to their ongoing calls of harassment, threats, and TRO violations. Commissioner Lassiter motioned to refer the complaint to the investigator. Vice Chair Manago seconded the motion, and it carried unanimously. Instructions for the investigator: 1) look at specific TRO violations and no responsive by the police, 2) what relevance the witness protection program has in this case, and 3) how the husband got into an altercation and the TRO not being brought forward.

HPC 04-13: Complainant alleged that an officer was guilty of abuse of power when he responded to her being issued a trespass warning notice. Commissioner de Silva motioned to not sustain the charges. Vice Chair Manago seconded the motion, and it carried unanimously.

HPC 04-16: Complainant alleged that two officers mistreated her when she was arrested for DUI following a traffic accident. Commissioner Bertsch motioned to defer the complaint to the next meeting and to request the presence of Officer Tingle and the sergeant who was on duty at the time. Vice Chair Manago seconded the motion, and it carried unanimously.

HPC 04-18: Complainant alleged that during his traffic stop, and officer had a racist attitude, lied, and falsified the charges. Commissioner de Silva motioned to exonerate the officer. Commissioner Lassiter seconded the motion, and it carried unanimously.

HPC 04-21: Complainant alleged that an officer committed perjury. Chair Hara stated that at the complainant's request, the complaint would be deferred to the next meeting in Kona.

STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS - None

ANNOUNCEMENTS

Chair Hara announced that the next monthly meeting is scheduled for June 18, 2004, at 9:00 a.m., at the Hawai'i Naniloa Resort, 93 Banyan Drive, Hilo.

ADJOURNMENT

The meeting adjourned at 4:25 p.m.

SUBMITTED:

APPROVED:

JOSIE PELAYO, SECRETARY

HORACE S. HARA, CHAIR