

**HAWAI'I COUNTY POLICE COMMISSION
SPECIAL MEETING MINUTES
REGULAR SESSION
JUNE 18, 2004
NANILOA SURF RESORT, PALM LOUNGE**

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		Harry Kubojiri, Deputy Chief
	John M. Bertsch, Commissioner		Thomas Hickcox, Assistant Chief
	Paul M. de Silva, Commissioner		James Day, Major
	James A. Frazier, Commissioner		Elroy Osorio, Major
	Pudding Lassiter, Commissioner		Henry Tavares, Captain
	Betsy Mitchell, Commissioner		Craig Masuda, Deputy Corp. Counsel
			Josie Pelayo, Secretary

Absent: Peter Muller, Commissioner

APPROVAL OF AGENDA

Vice Chair Manago motioned to approve the agenda. Commissioner Frazier seconded the motion, and it carried unanimously.

STATEMENTS ON AGENDA ITEMS - Open to the public – None.

Deputy Corporation Counsel Craig Masuda explained that officers have the right to request a closed session.

STATEMENTS ON AGENDA ITEMS (EXECUTIVE SESSION) - Closed to the public.

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.

The commission convened into executive session at 9:10 a.m., and then reconvened back into open session at 10:14 a.m.

APPROVAL OF MINUTES

Vice Chair Manago motioned to approve the minutes of May 21, 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. 2004-049 to 2004-063. Commissioner Lassiter seconded the motion, and it carried unanimously.

COMMUNICATIONS

Vice Chair Manago motioned to accept communications as listed with the addition of Correspondence 04-35.1, from Commissioner de Silva giving additional information on previous NACOLE conferences. Commissioner Frazier seconded the motion, and it carried unanimously.

COMMITTEE REPORT

- BUDGET AND FINANCE (Hara/Manago) – No report.
- OFFICE MANAGEMENT AND STAFFING (Muller/Mitchell) – No report.
- RULES AND POLICIES (Bertsch/de Silva)
 - Review of draft of revised rules (Follows action on executive session matters.)
- CONTRACTUAL SERVICES (Frazier): Commissioner Frazier reported that he made contact with the new investigator who stated that he is appreciative of the police department's assistance. He acknowledged receiving information on directions for the investigations and will be providing the commission with status reports.
- PUBLIC RELATIONS (Hara/Lassiter) – No report.
Chair Hara thanked Commissioner Lassiter for sending information on the State of Hawaii Police Commission Conference on Maui to the newspaper. However, he asked that committee members share information with each other before releasing information.

CHIEF'S REPORT

Including:

- CRIME: Assistance Chief Hickcox summarized the written report.
- TRAFFIC: Major Day summarized his written report. Speeding enforcement is being conducted in certain areas, and the speed boards seem to have an effect on speeding.
- PERSONNEL: Major Osorio reported having 55 sworn vacancies. As far as recruitment is concerned, they are behind the curve. The next class will start up in August. Even with the recruit class, the numbers will not diminish.

- FINANCE: Accountant Kay Nishibayashi stated that they are using a new accounts payable system, and have a new format for their monthly financial report.
- COMMENDATIONS: Chief Mahuna reported receiving eight commendations.
- COMMANDERS' MEETING MINUTES: No discussion.
- OTHER DEPARTMENTAL ACTIVITIES
 - FIVE-YEAR VISION PLAN: Chief Mahuna stated that the plan is the direction that they will be following. He asked for input from the commission.

Vice Chair Manago stated that this is a work in progress and is not bound in cement. The department will look at needed changes every year. The County Council requested this plan in order for them to project the needs of the districts.

UNFINISHED BUSINESS

- CORRESPONDENCE 04-24 AND 04-24.1, REQUEST FOR LEGAL COUNSEL BY OFFICER JEFFREY NATIVIDAD IN CIVIL NO. 03-1-0288. (No action taken at last meeting.) Chair Hara stated that Corporation Counsel recommended approval. Vice Chair Manago motioned to approve legal counsel. Commissioner Lassiter seconded the motion, and it carried unanimously.
- INQUIRY INTO THE ALLEGED ATTENDANCE OF TWO HAWAI'I COUNTY POLICE COMMISSIONERS ATTENDING A PROCEEDING OF THE ADMINISTRATIVE REVIEW BOARD. Commissioner de Silva stated that it never was his intention to punish anyone. When they received the papers from the union with the accusations, many of them were curious as to what the facts were. His intention in initiating the inquiry was to discover problems from which they could learn solutions. He would like to ask Captain Tavares and Assistant Chief Hickcox questions.

Commissioner Bertsch suggested that if the questions were employee related, that they do it in executive session. He asked if officers made statements that could affect their employment, whether that would be a basis for executive session.

Deputy Corporation Counsel Masuda stated that if the inquiry remains along the lines of whether or not the officer assented, and does not go into the basis of the initial ARB, or does not name specific officer, then the line of questionings could be appropriate. He reminded the commission that the members of the commission were not employees and not subject to the G.O.

Vice Chair Manago stated that since he was at the ARB hearing, if they were going to vote later at some time, he would like to be excused so that he would not influence anything.

Chair Hara excused him.

Assistant Chief Hickcox requested an executive session.

Chief Mahuna advised that there were other officers present during the ARB hearing who may want their rights of privacy protected.

Commissioner Frazier 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). FRAZIER: Commissioner Lassiter seconded the motion, and it carried unanimously.

Commissioner Bertsch stated that he felt obligated to leave the meeting as well, and asked to be excused. Chair Hara excused him.

Executive session convened at 11:17 a.m. Open session reconvened at 11:45 a.m.

- RECOMMENDATIONS FOR IMPROVEMENT TO THE DISCIPLINARY SYSTEM OF THE HAWAI'I COUNTY POLICE DEPARTMENT. UPDATES ON RECOMMENDATIONS FROM CORPORATION COUNSEL AND THE AD HOC COMMITTEE. Commissioner de Silva stated that he would like to consult with Mr. Ashida on this matter since he has been with them all along. Since they were doing it on an ad hoc basis, and it's no longer necessary, he suggested that they dissolve the ad hoc committee and that they handle it as a commission.

Being that there were no objections, Chair Hara stated that they could dissolve the ad hoc committee.

Commissioner Bertsch expressed confusion over what the ad hoc committee was assigned to do. He was under the impression that they were supposed to work on the fourth draft of the rules.

Chair Hara stated that the committee was assigned to look at the ARB portion of the recommendations and then finalize it.

Commissioner de Silva stated that Mr. Ashida's sent them a memo with some concerns over the recommendations, and they were supposed to make changes to the recommendations.

Commissioner Frazier motioned to dissolve the ad hoc committee. Vice Chair Manago seconded the motion, and it carried unanimously.

Commissioner Bertsch stated that the June minutes did not reflect the formation of the ad hoc committee.

- PROHIBITIVE PRACTICES COMPLAINT FILED BY SHOPO. SHOPO BELIEVES THAT IT IS ILL-ADVISED AND PREMATURE FOR THE POLICE COMMISSION TO ADOPT NEW RULES AND PROCEDURES. Deputy Corporation Counsel Masuda stated that Deputy Corporation Counsel Brandon Gonzalves has been involved with this matter, and they are discussing a possible settlement.

Lunch recess was called at 11:52. The meeting reconvened at 1:30 p.m.

NEW BUSINESS

CORRESPONDENCE 04-29, COUNCIL MEMBER ELARIONOFF'S REQUEST TO MAKE A POWER POINT PRESENTATION ON CHARACTER BUILDING. Ms. Pelayo informed that Council Member Elarionoff wants Police Department Personnel, the Chief and his staff, and the commissioners to be present because he wants the commissioners and police staff to attend the conference in Oklahoma and then come back and train department personnel. Chair Hara stated that he would be placed on the agenda after action on executive session matters.

- CORRESPONDENCE 04-30, RECOMMENDATIONS FOR EXCLUDED MANAGERIAL COMPENSATION ADJUSTMENTS. Chief Mahuna informed that Mike Ben, Director of Personnel, made a counter offer. Vice Chair Manago stated that the committee made a very good proposal. The system they now have does not encourage the best people to be in the higher ranks. Chair Hara stated that he doesn't agree with it being blanketed for all EMs in all departments. Commissioner Bertsch stated that the commission wants to do everything they can to make sure that everybody is getting proper and equal pay, whether it's the Chief or it's the rank, or the field officers. He doesn't think it's in their purview as the commission to address any of this other than to put the political heat on. He asked the Chief what the commission could do to fix the situation. Chief Mahuna stated that they could set up a meeting with the Mayor.

Vice Chair Manago motioned to accept the proposal by the Excluded Managerial Compensation Plan Review Committee and send a letter to the Mayor that they are in support of the plan as proposed. Commissioner Frazier seconded the motion, and

it carried unanimously carried. Chair Hara stated that they would write a letter to the Mayor supporting the proposal and set up a meeting for dialogue. The motion carried unanimously.

- CORRESPONDENCE 04-33, REQUEST FOR RECONSIDERATION OF COMPLAINT HPC 04-18. Chair Hara explained that the complainant called him and was not happy with the commission's decision to exonerate the officer.

Commissioner de Silva motioned to reconsider the complaint. Commissioner Lassiter seconded the motion.

Discussion: Commissioner de Silva stated that the complainant's reason for not coming seems to be a good reason. However, if he were not interested in coming and explaining it once he's been given notice, then he'd vote against it in the future. He would like to give the complainant the benefit of the doubt. Chair Hara reported that the complainant said he would be able to make today's meeting in Hilo.

The motion carried with a nay vote called by Vice Chair Manago.

- CORRESPONDENCE 04-34, REQUEST FOR RECONSIDERATION OF COMPLAINT HPC 04-06. Ms. Pelayo stated that the complainant called and asked for a reconsideration. He did not provide additional information. Vice Chair Manago stated that he doesn't think the request qualifies for a reconsideration. No motion was made to reconsider the complaint.
- CORRESPONDENCE 04-35, POLICE COMMISSION'S ATTENDANCE AT THE NACOLE CONFERENCE. Commissioner de Silva motioned to establish a policy concerning the NACOLE conference as written in Correspondence 04-35. Commissioner Frazier seconded the motion.

Discussion: Commissioner Lassiter asked how they established who goes to the conference and what budget determines available money.

Chair Hara stated that they have a budget under travel and conference. The NACOLE conference will be in October, which is in the next fiscal year. When he came on the commission in the year 2000, he was told that the precedent for attendance went to the Chair and Vice Chair, and if one of them or both could not attend, then it would go to the person that the Chair recommended.

Commissioner Lassiter asked if how they could train everybody when they're at the end of their term.

Chair Hara stated that this is not a training session but rather a conference where they contribute and receive.

Vice Chair Manago stated that he would not be able to attend this year's conference. At the conference they have dialogue with other people on different commissions. Being that the Chair is the person who does a lot of the work, he has the best ability to see a lot of the things that they do as a commission and is able to contribute ideas. The Chair is the representative and the voice of the commission. There are a lot of things the Chair can contribute in this conference being that he has had much experience on the commission. After last year's conference, they brought back a lot of material to share with the other commissioners. Who's to say that a Chair cannot come back and make changes in two months? He is against the motion. The Chair's voice is for twelve months, not ten.

Commissioner Lassiter asked who determined who goes, and if it is a shared thing, shouldn't everybody have an equal opportunity.

Vice Chair Manago stated that they have had a straw pull with those who said they wanted attend. If they set this precedence, does that mean that the fifth year member should not be going to HSLEOA and state police commission conferences also? They should be consistent. If it's a waste of money, then it should be a waste of money for the HSLEOA and state police commission conferences

Commissioner Lassiter stated there is a lack of communication here. Nobody bothered to communicate with her what the conferences were about. She had to guess.

Chair Hara asked the maker of the motion if he would change the word NACOLE to read national, state, and local conferences.

Commissioner de Silva stated that he didn't think it was appropriate. He became interested in this when he heard there was a controversy when Mr. Okabe went to the conference with only a couple meetings left in his term. After the last conference, Commissioner Manago came back with a big bag of material. If a commissioner is interested in looking at material, the more appropriate, efficient, and beneficial way to look at it would be on the internet, not from a bag. Coming back from the conference and making a short presentation will have very insignificant benefit. The argument that Mr. Manago is trying to make that Commissioner Hara would come back and make a presentation that's going to change policy for the commission is a bunch of baloney. Those who believe you attend the conference because you want to benefit the community through the Police Commission should vote for the motion. Those who believe that it's really a reward for someone for being Chairman and Vice Chairman should vote against it.

Commissioner Bertsch stated that this topic has become quasi emotional. This is a topic that needs to be addressed. He's not so sure that the motion at hand is the resolution.

His recommendation is that the Chair and the junior most member of the commission attend the conference. The Chair puts a tremendous amount of effort and time into the commission, and if it is a perk for him to attend, so be it because he needs to represent them at the NACOLE conference. That person needs to be educated in the way the commission does business. That person needs to be mature enough to be able to disseminate information to NACOLE in such a manner that lends itself reputably to NACOLE. If this were causing so much hostility amongst the group, then he would vote that anybody that wants to go could go. If money is an issue, then he'll give the check because this is not about money. They need to set up a clear and concise procedure on who needs to go. His suggestion is it would be Chair and the junior most. If the Chair can't go, it would be the Vice Chair. If the junior most can't go, it would be the second junior most. In that way everybody on the commission would have the opportunity to attend NACOLE at least once.

Chair Hara stated that with the first NACOLE conference that he attended, several of them wanted to attend, so they had a draw, and he was selected. With that he felt an obligation that he should take a leadership role with the commission. That's why he accepted becoming the Vice Chair with the idea that he would Chair it the following year, which he did. Last year he told his wife it was his final year. So, when he came home in December and told her he would be Chair another year, she said she thought he paid his dues. The only perk he could see out of it was attending NACOLE. Now, he will not attend the NACOLE conference because the commissioner will not settle for it. Furthermore, it should be changed to national, state, and local conferences. He does not intend to spend any of the commission money to go to the HSLEOA conference, and he will not make the opening address. He will not attend the NACOLE Conference, so if the commissioners want this motion, he will support it

The motion carried with ayes from Commissioners Frazier, de Silva, Lassiter, Mitchell, and Hara. Commissioners Manago and Bertsch called nays.

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 the carried unanimously.

The commission convened into executive session at 2:28 p.m., and reconvened back into regular session at 3:00 p.m.

ACTION ON EXECUTIVE SESSION MATTERS

• **INVESTIGATION AND DELIBERATION OF COMPLAINTS.**

HPC 04-03: Complainant alleged that an officer was unprofessional when he left a message for her at school rather than the contact numbers she gave him. Commissioner Frazier motioned to sustain the complaint. Commissioner Bertsch seconded the motion, and it carried with a nay by Commissioner de Silva.

HPC 04-07: Complainant alleged that an officer mistreated him when he responded to a call for assistance from hospital personnel. Commissioner Bertsch motioned to refer the complaint to the investigator. Commissioner Frazier seconded the motion, and it carried unanimously.

HPC 04-14: Complainant alleged that while dropping his daughter off at her mom's, an officer stopped traffic, got out of his vehicle and told him he was a known drug dealer and searched him for drugs. Chair Hara stated that the complaint was received beyond 60 days. Commissioner de Silva motioned to dismiss the complaint because it was received beyond the 60-day deadline. Vice Chair Manago seconded the motion, and it carried unanimously.

HPC 04-15: Complainant stated that while shopping at the farmer's market, he tied his dog to a post. He alleged that an officer threatened to call the pound to pick up his dog, although vendors had their dogs tied under their tables. Commissioner Bertsch motioned to exonerate the officer. Commissioner de Silva 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 refer the complaint to the investigator. Commissioner Lassiter seconded the motion. The motion died when Commissioners Manago, de Silva, Frazier, Mitchell, and Hara called nays. Vice Chair Manago motioned to not sustain the charges. Commissioner Frazier seconded the motion, and it carried with a nay by Commissioner Bertsch.

HPC 04-17: Complainant alleged that an officer is not following through with her son's case and has not notified her. Vice Chair Manago motioned to dismiss the complaint because it was received beyond the 60-day limit. Commissioner de Silva seconded the motion, and it carried unanimously.

Vice Chair Manago stated that this is an ongoing investigation, and motioned to reconsider the commission's decision. Commissioner Frazier seconded the motion, and it carried unanimously.

Vice Chair Manago motioned to exonerate the officer. Commissioner Lassiter seconded the motion, and it carried unanimously. Commissioner Lassiter asked that

they give the detective the complainant's phone number in order for him to follow-up with her.

HPC 04-19: Complainant complained about the manner in which an officer handled an incident between his mother and his son. Commissioner de Silva motioned to refer the complaint to the investigator. Vice Chair Manago seconded the motion, and it carried unanimously.

HPC 04-20: Complainant's daughter was involved in an altercation at school. He alleged that an officer did not administer first aid. Commissioner Bertsch motioned to exonerate the officer. Vice Chair Manago seconded the motion, and it carried unanimously.

HPC 04-22: Complainant received a citation in the mail from District Court saying that she owned a fine for not paying a citation. She alleged that an officer incorrectly gave her a citation. Commissioner Bertsch motioned to exonerate the officer. Vice Chair Manago seconded the motion, and it carried unanimously.

HPC 04-23: Complainant alleged that an officer conducted an intimidating and harassing method of investigation when she made a complaint about her neighbor. Commissioner Lassiter motioned to refer the complaint to the investigator. Commissioner Bertsch seconded the motion, and it carried unanimously.

- REVIEW OF DRAFT OF REVISED RULES. Commissioner Bertsch requested that this portion of the minutes be verbatim.

DE SILVA: I put it in this folder because if we don't want to finish it today, we can all pass the folder back to Josie, and then we can use it again next time. I changed one provision from Draft 4 that was changed. It is the administrative review board auditor, Rule 10. I added to it, "If General Orders of the Police Department allow the attendance of Police Commission at Administrative Review Board hearing subject to the provisions thereof." The Chairman can do the appointing. At the beginning of this situation, Chairman Hara and I talked briefly about it, and I'm not sure whether the Chairman wants to include this in the discussion to day or do it later or what.

HARA: Page one gives you a synopsis of the changes. What I'd like to do is go down page by page. Commissioner de Silva has underlined the revisions. Page 3 under Rule 3, Powers Duties, paragraph (f).

DE SILVA: What we're trying to do is to conform to the rules of the Charter because when the Charter was amended in 2001, our rules weren't amended. That's why this provision is added. It's the same language as the charter. If you look at (i), it says,

"Requires the police chief to have such additional duties and functions as the commission may deem appropriate." That also comes straight out of the charter. So I put that in to conform with the Charter.

HARA: Shall we vote on that together?

FRAZIER: One by one.

MASUDA: Is it the intent of this body today to move to formally adopt these rules? This is going to be the final draft?

HARA: If we complete it, yes. We're going to send it to Corp. Counsel for review.

MASUDA: You got to make some changes already.

DE SILVA: This is my typing.

HARA: For clarification again, if we approve these changes, it will go to Corp. Counsel for their review and approval, language, and everything else. Okay, going back to page 3, (f).

FRAZIER: Move to accept 3, (f).

DE SILVA: Second.

Motion carried unanimously.

HARA: (i) Require the police chief to have such additional powers, duties, and functions as the commission may deem appropriate.

FRAZIER: Move to accept (i).

DE SILVA: Second.

Motion carried unanimously.

HARA: Page 4, paragraph (d).

DE SILVA: That's part of the commentary, Mr. Chairman. It is just to explain where I got that.

HARA: That's your note there.

DE SILVA: Yes.

HARA: Okay. So, we're okay as far as compliance with the Charter on these three? Rule 4, Standards of Conduct. This whole thing is new.

BERTSCH: I motion to withdraw Rule 4, Standards of Conduct in its entirety.

DE SILVA: Are you serious? I was going to second it.

PELAYO: That's not a motion?

BERTSCH: No. a) I agree with. b) and c), I have no understanding whatsoever.

HARA: John before you do that, let's go down item by item.

BERTSCH: That's what I'm doing.

HARA: I want to do that.

BERTSCH: Oh, you're the Chair. You have the right.

HARA: a) Commissioners must represent unconflicted loyalty . . . Is there a motion?

BERTSCH: I have no problem with that.

HARA: Do you want to motion?

BERTSCH: Motion to accept.

FRAZIER: Second.

Carried unanimously.

HARA: b). This accountability supersedes any conflicting loyalty . . .

DE SILVA: I can explain it to John.

BERTSCH: I need clarification because the wording that I have question on, it says, "This accountability." It also says that on c). What accountability?

DE SILVA: Accountability as stated in a) is what it meant, but it doesn't quite say that, so maybe we should—

BERTSCH: Yes, because there's no accountability. I think that you can get rid of b) and c) and leave a) because basically b) and c) is reiterating what a) is asking you to do, right? Unconflicted loyalty is unconflicted loyalty to the interest of the community.

DE SILVA: This is true except that it points out particular problems that occur so often, I thought that they should be mentioned, and this came from some other state thing. because conflicting loyalty such as to advocacy or interests groups and membership in other commissions or staff. In other words, that reminds people if you're doing these other things, it shouldn't conflict with your loyalty to the police commission.

BERTSCH: Maybe a way to handle that, Paul, is that under i) where you have gotten into subparagraphs, familiar relationships, witnessing events, being a party to the complaint, maybe b) and c) ought to be subtopics of a) as more of reference because that would make sense.

HARA: So, b) and c) would then be sub i. and ii.

DE SILVA: No, I would like to speak against that because if you're looking at i., i. is talking about—

BERTSCH: No, you have examples. You see under i., it says examples of personal bias, and then you go to the next page, top of 5, how you've listed them. Wouldn't b) and c) be examples of a)?

DE SILVA: That's a different matter that you're talking about because in i., you're talking about disqualification in the outcome of the complaint. So, you're not disqualified in the outcome of the complaint if you have conflicting loyalty to the community necessarily. We're talking about two different ethical—

BERTSCH: No, no, what I'm recommending is that a) would still stand but b) and c) would be sub headings of a).

DE SILVA: I thought you said i.

BERTSCH: No, no, I'm saying the format.

DE SILVA: Okay.

BERTSCH: I'm saying the format. I'm saying follow the format as exemplified in i. That would clarify it.

DE SILVA: You want to make that motion?

BERTSCH: I motion that b) and c) be sub indexed to a) as exemplified in i.

HARA: Sub i. and sub ii.

DE SILVA: Second.

Carried unanimously.

BERTSCH: I would like to make a motion or a suggestion that these particular proceedings that we keep verbatim minutes so as in two or three years from now should these be challenged, we can determine the intent of the commission as to adopting these rules. Any objections?

DE SILVA: You mean a transcript?

BERTSCH: Well, verbatim minutes. We don't normally take verbatim minutes.

HARA: We have her tape. Can we file the tape?

BERTSCH: All I'm saying is we need to have a record, a verbatim record of how we're getting to the end of these rules so that should they get challenged, somebody can go back in ten years and look and understand why we did what we did because we don't have that now with some of our older information.

DE SILVA: My only objection would be logistical. Otherwise, maybe that's a grand idea. But, I'm not making a formal motion.

BERTSCH: It's a suggestion. We can move forward.

HARA: d).

PELAYO: It's just a suggestion? There were two suggestions, verbatim and refer to the tape.

HARA: Your minutes should be as close as possible.

BERTSCH: If you can.

PELAYO: I'll do it anyway.

HARA: d) (read)

MASUDA: Mr. Chairman, if we're going to make b) and c) small i. and small ii., respectively, I think you're going to re-alphabetize all of them.

BERTSCH: Well, we need to, but for the purpose of expedition of this particular meeting, I think we should hold with the actual titles and then reformat the document at a later date.

HARA: Can we do that, secretary?

DE SILVA: Am I the secretary?

HARA: No, I'm asking the secretary. If that's okay, when we refer to d), we actually mean paragraph d).

PELAYO: Yes.

HARA: Because now we have a), a. i., a. ii., so d) becomes b). We can just go ahead and do that. Just go from d) down, b), c), d), e), f), g) on that first page. Okay?

BETSCH: Okay, we're on—

HARA: b) To the full extent authorized by law . . .

BERTSCH: We're on b), aka. d). I have a problem with this particular paragraph simply because it seems to be more in line with procedures of the commission, not with individual conduct.

HARA: May we have discussion.

BERTSCH: I agree with the message, but I don't think it applies to standards of conduct. I think it's more procedural and maybe should be some place else. Because I can't image bringing charges up to somebody for not doing this.

DE SILVA: Coincidentally, can I say something about that? I think it's kind of important. These standards of conduct are just meant as guidelines. There's no provision in any of this that allows anybody to pursue anybody else or move that anybody be punished for it or anything. Although, he does have a point. I just wanted to make that clear. I looked at standards of conduct from several civilian review boards, and a few of them have provisions relating to some kind of sanctions against people who don't abide by them. Maybe someday we might want to consider that, but I didn't put any of that in here. But, John has a point.

BERTSCH: Well, at the end of your paragraph, when I was reading these, you actually asked a question, "Should there be a process to deal with misconduct by commissioners?" And that's when I posed that question that's on page 6. I asked Josie if there was any precedence set, and we got that letter back from Corp. Counsel. Right, that was in the packet, Josie?

JOSIE: I gave it to you because you asked for it.

BERTSCH: Oh, I was the only one that got it?

JOSIE: I sent it to Craig and the Chair.

HARA: John, would you like to make a motion?

BERTSCH: No. I would like to get some direction. How do you want to handle this before we make a motion? I don't think that this belongs under standards of conduct. I think it's procedural.

HARA: Commissioner de Silva.

DE SILVA: I agree. I move to strike it.

MANAGO: Second.

HARA: Moved to strike paragraph d) To the full extent authorized by law . . .

Carried unanimously.

HARA: b) Commissioners must avoid any conflict of interest with respect . . .

BERTSCH: My comment is, "Must avoid," is too strong. "Must attempt," might be a little better because sometimes a conflict of interest isn't exactly what some may perceive to be a conflict of interest may not be perceived as a conflict interest by others, so to use "Commissioners must avoid any conflict of interest," is, not that I'm as educated as the judge in wording, but to put it on street smarts, there's no wiggle room.

HARA: So, you would like to amend that by saying commissioners must attempt to avoid?

BERTSCH: Unless somebody can give me a better word. I mean, I understand the meaning of it.

FRAZIER: What about striking "any?"

HARA: What's that? I'm sorry.

BERTSCH: If you put the word "attempt," it kind of opens it up again. Well, I attempted not to be conflicting, but gosh, it just didn't happen.

DE SILVA: That's why it does bother me the way it is. I don't care if you reconsider it or not. I also wouldn't object to the language and changing it by striking "any" add "conflicts." I move to accept it the way it is just so that we can make some sort of a decision.

BERTSCH: Second.

Carried unanimously.

HARA: c) There must be no self-dealing or any conduct of private . . .

BERTSCH: I have objection to that. I think it's nefarious.

DE SILVA: Nefarious?

BERTSCH: Yes, sir. Because the way it's written, it says, "Any conduct of private business or personal services between any commission member and the police department." So is that to say that, Paul, I can't go mow your lawn?

DE SILVA: Yes, you can't.

BERTSCH: I cannot?

DE SILVA: No. I wouldn't let you mow my lawn. Seriously, no self-dealing of any conduct of private business or personal services between any commission member. What's wrong with that? There shouldn't be any self-dealing.

BERTSCH: So, I can't go and paint Dwight Manago's hotel?

DE SILVA: Dwight Mango isn't a policeman. It would be true if he were a policeman.

BERTSCH: Well, it says—

DE SILVA: Between any commission member and the police department.

BERTSCH: Personal services. Can you define personal services?

DE SILVA: Well, traditionally, we'll never be able to get really exact because these are general concepts, but usually when you talk about personal services you're talking about janitorial services or yard cleaning services or those sorts of things is what I had in mind.

BERTSCH: Again, this is why we're trying to keep verbatim on this because personal services to me would be Captain Dawrs calls me up and says, "I've got a problem with something. Can you as the commissioner come down and assist me with this?" And I would come down and maybe brainstorm something with him or maybe go back out and outreach in the community which I feel is my responsibility. Would that be considered a personal service to the police department?

DE SILVA: Good point.

BERTSCH: I think it would.

HARA: How about John as a building contractor, one of the police officers want to build something and asks you because he knows you, wants to build his house or whatever?

BERTSCH: Well, conversely, I have been asked by the Chief and the Assistant Chief to consult on a building and provide them with costs simply as an expert, certainly with no remuneration

HARA: That would be covered under this, then. You cannot.

BERTSCH: I'm just saying how can we not be friends of the police. I'm not asking for special favors. They're asking for special assistance just as much as the Judge is assisting with looking at the way we do mace. I'm helping the Chief out with how we build buildings.

DE SILVA: The exception is looking at mace is part of my job as a commissioner to work with the police in that manner. The other example is the business between you and the department. No one is every going to say I'm doing this because I want special favors from the police. No one is going to say that. The other side of it is usually it doesn't happen. The problem is there's an appearance when you do business with the police department in your business. If you're trying to get a job for your boss and you negotiate with the Chief, I don't think that's ethical, but I don't now. So, when it says, what were we talking about, private business when he—

MASUDA: Personal service—

DE SILVA: And personal service. Personal service bothers me a little bit, but I don't know.

BERTSCH: I'm not against it. Maybe I'm using the wrong term, but that's why I think that statement is a bit nefarious. The way I read it is that it's all encompassing, and in order for me to abide by f), I have to sever all communication and all ties with the police department so that there is no misinterpretation of that. And all I can do is do what I'm supposed to be doing which, quite frankly, I'm not prepared to do because I deal with these guys all the time, not in a business. If I'd known that being a police commissioner all of a sudden, I'm not allowed to do business with the county, because theoretically I do business with the county all the time. Now, granted if all of a sudden the Chief comes to me and gives me a \$2 million contract because I'm the commissioner, and it wasn't put out to bid or there wasn't a formal bid procedure, yes, I think the community's going to take care of that quicker than any rule we're going to have on this in here.

FRAZIER: What about personal services.

HARA: At this point in time, we're losing people. Can we suspend this to the next meeting because we're missing three commissioners? We stop right there and continue on to paragraph c) There must be no self-dealing or any conduct.

BERTSCH: I guess this was the other point I was trying to make. For some reason I had it in my head that the ad hoc committee was going to go through all of these and because I knew that going through this is going to take a meeting in itself, and so that's why I recommended we have the special meeting, and maybe I wasn't paying attention. The last of my intent was to ask for a special meeting to go through all of these.

DE SILVA: That isn't a bad idea.

BERTSCH: May be the ad hoc committee can go through these unless we're already through with them.

HARA: Call another ad hoc committee?

DE SILVA: I think these things are important for everybody.

BERTSCH: Why don't we chip away at it meeting by meeting?

HARA: Yeah, if you don't mind the detail.

DE SILVA: If you would write your name on the upper right hand corner and hand them in to Josie, and she can give them back.

STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS – None.

ANNOUNCEMENTS - Hara

Chair Hara announced that the next monthly meeting is scheduled for July 16, 2004, at 9:00 a.m., at the Mayor's Kona Office Conference Room, 75-5706 Kuakini Highway, Suite 103, Kailua-Kona.

Chair Hara stated that on the September scheduled meeting, Corporation Counsel and his entire staff will be having their annual conference and will not be able to attend the commission meeting. The Chief and Deputy will also be attending that conference. He asked if they could move the meeting to September 10. There were no objections.

ADJOURNMENT

The meeting was adjourned at 3:38 p.m.

SUBMITTED:

APPROVED:

JOSIE PELAYO, SECRETARY

HORACE S. HARA, CHAIR