

**HAWAI'I COUNTY POLICE COMMISSION
REGULAR SESSION MINUTES
JULY 21, 2006
AUPUNI CENTER CONFERENCE ROOM**

INVOCATION

Commissioner Betsy Mitchell gave a blessing.

CALL TO ORDER

Chair Lassiter called the meeting to order at 9:03 a.m.

ROLL CALL

Present:	pudding Lassiter, Chair	Also Present:	Lawrence K. Mahuna, Police Chief
	Melvin S. Morimoto, Vice Chair		Elroy Osorio, Assistance Chief
	James A. Frazier, Member		James Day, Assistance Chief
	Louis Kaiwi, Member		Ronald Nakamichi, Assistant Chief
	Karolyn P. Lundkvist, Member		Jason Cortez, Detective
	Betsy Mitchell, Member		Kay Nishibayashi, Accountant
	Anita Politano Steckel, Member		Lincoln S. Ashida, Corporation Counsel
	Tom Whittemore, Member		Josie Pelayo, Secretary

Absent: Commissioner Kaloa Robinson

A quorum was present.

CHIEF'S REPORT (Given at beginning of meeting.)

- **Commendations:** Chief Mahuna reported receiving 14 commendations since the last meeting.
- **Other Departmental Activities:** Chief Mahuna reported working with Data Systems for updating and transferring data via microwaves. They have joined the Joint Terrorism Task Force for tracking terrorists. It is for identification purposes and is not profiling. Any response to a terror attack would be done by county and federal agencies.

Commissioner Lundkvist entered at 9:17 a.m.

APPROVAL OF AGENDA

Commissioner Whittemore moved and Commissioner Kaiwi seconded to approve the agenda. The motion carried unanimously.

STATEMENTS ON AGENDA ITEMS – None

APPROVAL OF MINUTES

Commissioner Whittemore moved and Commissioner Politano Steckel seconded to approve the minutes of June 16, 2006, regular and executive sessions. The motion carried unanimously.

PERSONNEL ORDERS

Nos. 2006-068 to 2006-078 (*Including, but not limited to work assignments, training assignments, promotions, reallocations, severance from service, automobile allowances, and appointments.*) Commissioner Lundkvist moved and Commissioner Whittemore seconded to accept the Personnel Orders as listed. The motion carried unanimously.

COMMUNICATIONS

Vice Chair Morimoto moved and Commissioner Frazier seconded to accept the communications as listed. Discussion: Commissioner Frazier pointed out the May 17 minutes of the Maui Police Commission and their discussion regarding the State of Hawai'i Police Commission Conference. There seemed to be a lack of understanding, and they need to clarify why SHOPO was uninvited. Chair Lassiter stated that she will meet with the Chairs of the other commissions during the HSLEOA conference. The motion carried unanimously. She will also look into SHOPO's suggestion for an educational seminar.

COMMITTEE REPORTS

- **Budget and Finance** (Frazier/Morimoto): Commissioner Frazier reported that the fiscal year 2005-06 is complete. There were no major circumstances to look at.
- **Office Management and Staffing** (Lundkvist/Mitchell): Commissioner Lundkvist stated that Ms. Pelayo has been in meetings regarding the county building renovations. Ms. Pelayo reported that the Police Commission's new office will be slightly larger than its current office, and will be situated next to the Office of Information and Complaints. Commissioner Lundkvist displayed a plaque of the Police Department's mission statement that will be displayed in the commission's office. A smaller one was given to Corporation Counsel Ashida.
- **Rules and Policies** (Kaoiwi): The committee had no report.
- **Contractual Services** (Robinson): The committee had no report.
- **Public Relations** (Lassiter/Politano Steckel): The committee had no report.

CHIEF'S REPORT

Including:

- **Crime:** AC Day explained the written report.
- **Traffic:** AC Nakamichi summarized the written report. Commissioner Frazier pointed out that there was a marked drop in DUI arrests for 18-21 year olds.
- **Personnel:** Assistant Chief Osorio reported that they have had five recruit classes in the past year. The next recruit graduation will be in November. Detective Cortez, of Internal Affairs, reported that it takes a while to conduct background checks, and it does vary depending on where the applicant comes from. They do background checks on all employees, including school crossing guards. AC Osorio stated that they are

getting at least one or two recruits from the mainland in every recruit class. They have had discussions with Civil Service about having an agency on the mainland do background checks. Regarding attrition, employees are not obligated to give them notice, but they generally have a fair idea of who will be retiring. They don't have a danger of over-recruiting.

- **Finance:** Accountant Kay Nishibayashi reported that the new budget has just been submitted. The expenditure report for June is only a preliminary report. They still have to wait for the county audit to be completed. Each section will submit their equipment and CIP requests along with their budget. The commission will be given a copy of the budget. Commissioner Frazier pointed out that the County Council has been very supportive of the Police Department.
- **Commander's meeting minutes of June 15, 2006:** No discussion.

UNFINISHED BUSINESS

- Response to the Cost of Government Commission's request for input to their questions regarding its effort to promote economy, efficiency, and improved services. Vice Chair Morimoto inquired into whether the department seeks grant funding. AC Osorio stated that there are websites directed at federal money, and they receive direct mailings. Grants are under constant review. The commission agreed to submit the response that Commissioner Frazier drafted. The Police Commission would be available for further discussion.
- National Association for Civilian Oversight of Law Enforcement Conference: Chair Lassiter again asked if any of the members were interested in attending the annual NACOLE conference in Boise, Idaho. No one was interested, and she suggested that Ms. Pelayo accompany her to the conference. All agreed to her suggestion. Commissioner Frazier pointed out that there are many benefits to attending the conference, and it ties in with the commission's investigation of complaints.

Recess was called at 10:01 a.m. The meeting reconvened at 10:19 a.m.

INVESTIGATION AND DELIBERATION OF COMPLAINTS

STATEMENTS ON COMPLAINTS (open to the public)

- JACK EBNER, COMPLAINT HPC 06-10: Stated that he is aware of the 60-day rule. At that time his lawyer advised him not to make a Police Commission complaint. Ninety-nine percent of the officer's report is fictitious. The officer stopped him because of where he was and when. He was not intoxicated. The officer based his not stopping at the stop sign on not seeing his brake lights. He didn't use his brake because he has a five speed and he was going uphill. The judge dismissed the insurance charge because he has insurance. It was around 10:30 when he left the restaurant and about 10:35 when he was stopped. The officer said it was 12:01. He showed photos of injuries that he said incurred when the officer slammed him down on the pavement. He

blew .02. After he drew the preliminary breath test, it should have stopped, but the officer didn't do that. The officer did not read him the consent form. No breath test was offered at the station. Judge Florendo convicted him of the DUI. He decided to file the complaint and give the system time to work. When the officer took his driver's license he said he smelled alcohol on his breath.

Commissioner Frazier expressed concern about Ebner's statements that nothing was read to him, unless it was done while he was blacked out, and that the police on this island routinely get away with murder because they will not be held accountable.

Ebner stated that he was told this, and he put it in his complaint because the officer lied on the stand about 40 times. The officer did not have his lights on or his blue lights on and traveled without his lights for about half a mile. He turned his lights on after he turned onto Queen K. Highway. He had a friend with him in the car. He was told that the commission takes orders from the Chief of Police.

- GARY WILBUR, COMPLAINT HPC 06-10: Stated that he is a friend of Jack Ebner. He was not present during the incident. He has known Ebner for many years, and he is a good guy.
- OFFICER ROBERT WOLVERTON, COMPLAINT HPC 06-10: Read his written statement. Also stated that while at the station, Ebner refused to take a breath test. At the station, Ebner complained about everything. During the traffic stop, his passenger did not say a word. The friend appeared to be more intoxicated than Ebner. The friend refused a call for a taxi or a ride, and walked away.

EXECUTIVE SESSION (closed to the public)

Commissioner Mitchell moved and Commissioner Politano Steckel seconded to meet in executive session to consider discipline and charges against officers or employees of the Hawaii County Police Department where consideration of matters affecting privacy would 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 Hawaii County Charter Section 13-20 (b). The motion carried unanimously.

The commission convened into executive session at 11:10 a.m.

Regular session reconvened at 3:25 p.m.

ACTION ON EXECUTIVE SESSION MATTERS

- COMPLAINT HPC 06-04: Reconsideration of commission's decision that there was insufficient evidence to prove the complainant's allegations. Commissioner Frazier moved and Commissioner Kaiwi seconded that there was insufficient evidence to prove the complainant's allegations. The motion carried unanimously. Corporation Counsel Ashida will draft a letter to the Chief asking him for a follow-up on the commission's concerns.

- COMPLAINT HPC 06-07: Complainant was arrested for disorderly conduct. She alleged that while in jail, she was refused assistance for her incontinence, was mistreated, and humiliated. Commissioner Kaiwi moved and Commissioner Whittemore seconded that there was insufficient evidence to prove the complainant's allegations. The motion carried unanimously. Corporation Counsel Ashida will draft a letter to the Chief asking him for a follow-up on the commission's concerns. He will send a letter to the complainant explaining the commission's finding.
- COMPLAINT HPC 06-08: Complainant complained about the manner in which she was treated during a traffic stop. She also alleged that she was not told why she was being arrested. Vice Chair Morimoto moved and Commissioner Whittemore seconded that there was insufficient evidence to prove the complainant's allegations. The motion carried unanimously.
- COMPLAINT HPC 06-09: Complainant alleged that two officers did not acknowledge that he had joint custody of his daughter and that they allowed another party to take his daughter away. Commissioner Frazier moved and Commissioner Lundkvist seconded to defer the complaint to the next meeting and again ask the complainant and officers to attend and give a statement. The motion carried unanimously.
- COMPLAINT HPC 06-10: Complainant alleged that an officer created a contrived DUI charge and arrest and subsequently lied about the incident. Corporation Counsel Ashida stated that they could rule on the 60-day deadline or waive it and make a decision. The complainant was convicted in court.

Commissioner Lundkvist moved and Commissioner Whittemore seconded to decline acceptance and further investigation because the complaint was received more than 60 days from the date of the incident. Discussion: Commissioner Whittemore stated that the complainant did a negative campaign against the officer. He felt the officer handled himself very well. The motion was defeated with only Commissioner Lundkvist voting yes.

Vice Chair Morimoto moved and Commissioner Politano Steckel seconded to waive the 60-day rule. Discussion: Commissioner Lundkvist stated that the complainant was convicted in court, and he now wants to point the finger at the officer. Commissioner Whittemore stated that the officer said the complainant ran away and was tackled. The complainant stated that he was just standing. The judge must have seen all that. The motion to waive the 60-day rule carried with a no vote from Commissioner Lundkvist.

Commissioner Kaiwi moved and Commissioner Frazier seconded that there was insufficient evidence to prove the complainant's allegations. The motion carried unanimously.

Several commissioners expressed concern over statements made by complainants about things Councilman Jacobson told them. Corporation Counsel Ashida will draft a letter to Councilman Jacobson regarding complainants purporting that he stated that the commission doesn't do anything or are puppets of the Chief.

- COMPLAINT HPC 06-11: Complainant was cited for no seatbelt. He alleged that he should not have been cited because he is a taxi driver, and that the officer was rude. Commissioner Kaiwi moved and Commissioner Whittemore seconded that there was insufficient evidence to prove the complainant's allegations. The motion carried unanimously.
- COMPLAINT HPC 06-12: Complainant alleged that during his arrest, two officers slammed him onto his car, sprayed mace in his face, kicked him, and gave him a black eye. He also alleged that one officer withdrew his firearm and cocked it as he passed. Commissioner Whittemore moved and Commissioner Frazier seconded to defer the complaint to the next meeting and ask the complainant and officers to attend the meeting. The motion carried unanimously.
- CORRESPONDENCE 06-24.1, 06-24.2, AND 06-24.3 from Corporation Counsel Ashida regarding improvements to the investigatory process involving complaints against the Police Department and police officers. (These are privileged and confidential attorney-client communications.) This was deferred to the next meeting.

STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS – None.

ANNOUNCEMENTS

- Chair Lassiter announced that the Police Commission's next monthly meeting will be on August 11, 2006, in the Mayor's Kona Office Conference Room, Hanama Place, Suite 103, 75-5706 Kuakini Highway at 9:00 a.m.
- Collection of files and documents. – Done.

ADJOURNMENT

The meeting was adjourned at 3:51 p.m.

SUBMITTED:

APPROVED:

JOSIE PELAYO, SECRETARY

PUDDING LASSITER, CHAIR