

**HAWAI'I COUNTY POLICE COMMISSION
SPECIAL MEETING MINUTES
REGULAR SESSION
AUGUST 12, 2005
WAIMEA CIVIC CENTER**

CALL TO ORDER

Chair John Bertsch called the meeting to order at 9:12 a.m.

ROLL CALL

Present: John M. Bertsch, Chair
James A. Frazier, Member
Louis Kaiwi, Member
Karolyn P. Lundkvist, Member
Betsy Mitchell, Member
Anita Politano Steckel, Member

Also Present: Lawrence K. Mahuna, Police Chief
James Day, Assistant Chief
Elroy Osorio, Assistant Chief
Henry Tavares, Captain
Kay Nishibayashi, Accountant
Lincoln S. Ashida, Corporation Counsel
Josie Pelayo, Secretary

Absent: Pudding Lassiter Vice Chair
Melvin S. Morimoto, Member

APPROVAL OF AGENDA

Commissioner Frazier moved and Commissioner Politano Steckel seconded to approve the agenda. The motion carried unanimously.

STATEMENTS ON AGENDA ITEMS – None.

APPROVAL OF MINUTES

Commissioner Mitchell moved and Commissioner Kaiwi seconded to approve the minutes of July 15, 2005, regular and executive sessions. The motion carried unanimously.

PERSONNEL ORDERS

- Nos. 2005-078 to 2005-087. *(Including but not limited to work assignments, training assignments, promotions, reallocations, separation from service, automobile allowances, and appointments.)* Commissioner Frazier moved and Commissioner Mitchell seconded to add Personnel Orders 2005-088 and 2005-089 to the agenda as they are of interest the commission but is not of reasonably major importance to the public. Corporation Counsel stated it was permissible. The motion carried unanimously.

COMMUNICATIONS

- Commissioner Kaiwi moved and Commissioner Mitchell seconded to accept the communications as listed. The motion carried unanimously.

COMMITTEE REPORTS

- **Budget and Finance (Frazier):** 2006-07 Fiscal Year Budget: Commissioner Frazier reported that the proposed budget is mostly static. Salary and rental of equipment is contractual. There would be no change for telephone, printing & binding, repairs to equipment, mileage & auto expense, investigative services, provisions, and miscellaneous materials & supplies. Travel costs for conferences would go from \$15,750 to \$16,000; computer and office supplies from \$3,000 to \$1,500; and subscription and dues from \$250 to

\$750 to pay for membership to the National Association for Civilian Oversight of Law Enforcement and the Hawai'i State Law Enforcement Official's Association. Computer and office supplies went down because they plan to purchase a computer this year. However, they are looking at replacing the paper shredder.

Chair Bertsch reported that at the last meeting they found that Ms. Pelayo's computer was outdated, and would be purchasing a new desktop computer. Commissioner Kaiwi stated that Ms. Pelayo has been using her husband's laptop computer for police commission business. He is strongly against using personal equipment for government work, and the police commission should purchase its own laptop.

Commissioner Lundkvist moved and Commissioner Politano Steckel seconded to accept the budget as proposed. The motion carried unanimously.

- **Office Management and Staffing (Bertsch/Mitchell):** Chair Bertsch reported that the police commission is now sharing space with county council staff.
- **Rules and Policies (Bertsch/Lundkvist):** Chair Bertsch stated that suggestions for rule changes were distributed. In order to make changes to the rules, they must have a public hearing. They would like to schedule the public hearing just prior to the monthly meeting. The following are suggested changes:

Rule 3 (c) The annual report will also be submitted to the managing director.

Rule 4 (b) The regular meeting of the Police Commission will be changed from 10:00 a.m. to 9:00 a.m.

Rule 8 (e) The classification of case findings will be changed from "unfounded, exonerated, not sustained, and sustained" to "sufficient evidence and insufficient evidence".

Chair Bertsch explained that the current findings could jeopardize the police department's position if the department obtains additional information and then sustains a complaint after the commission exonerates an officer. Captain Tavares of Internal Affairs stated that an officer might file a grievance over this. Chair Bertsch stated that there have been discussions in the past about other changes, but these changes are not in dispute, and they want it done now.

Commissioner Lundkvist moved and Commissioner Kaiwi seconded to accept the changes. The motion carried unanimously.

Commissioner Lundkvist moved and Commissioner Kaiwi seconded to have a public hearing for the rule changes on October 21, 2005, 9:00 a.m., at the Kona Department of Liquor Control Conference Room, and the monthly meeting would follow at 9:30 a.m. The motion carried unanimously.

- **Contractual Services (Frazier):** No report.

- **Public Relations (Bertsch/Lassiter):** No report.

CHIEF'S REPORT

Including:

- **Crime:** Assistant Chief James Day explained the written report.

Lieutenant Marshall Kanehailua of the Ice Task Force gave a brief rundown on Operation Capsize, a major drug case in which drug dealers used cattle containers for shipping crystal methamphetamine. During the operation, they identified four large-scale crystal methamphetamine distribution networks on the Big Island. Over fifteen months, they did eleven wiretaps and twenty-five search warrants. Forty-seven individuals were arrested, nineteen of which were indicted federally. They seized \$429,677 in cash, eleven vehicles, 4 of which were dump trucks and big equipment, and one motorcycle. They also recovered 31 firearms.

- **Traffic:** Assistant Chief Nakamichi reported having three traffic fatalities in July.
- **Personnel:** Assistant Chief Osorio entertained questions to the written report, to which there were none.
- **Finance:** Accountant Kay Nishibayashi entertained questions to the written report. With regards to encumbered funds, she stated that the county council stated that they would hold the funds until the police department requests them.

Commissioner Kaiwi expressed concern about officers returning from active military duty. He inquired whether the department had budgeted to address psychological concerns. AC Day stated that when officers return, they go through a de-briefing process before returning to work. Chief Mahuna stated that they would look into integrating these officers, including use of force.

- **Commendations:** Chief Mahuna reported receiving eleven commendations for the month.
- **Other Departmental Activities:** Chief Mahuna reported that the RMS is supposed to be fully functional, although they are finding glitches, especially in remote areas of Area II. They had 34 burglaries in Volcano since January, and that is an excessive number for a small area. They have suspects, and arrests are forthcoming. He emphasized that the police department is dependent on the community for help. For the first time in history, the department is running three recruit classes in one year. Every year they lose about eighteen officers due to retirement, etc.

Commissioner Frazier expressed appreciation from the Waimea and North and South Kohala communities for the police department's assistance with the recent fires.

Commissioner Kaiwi thanked the Chief for allowing them to attend the department's monthly staff meeting which was very informative.

Recess was called at 10:45 a.m. The meeting reconvened at 11:00 a.m.

INVESTIGATION AND DELIBERATION OF COMPLAINTS

Commissioner Frazier moved and Commissioner Kaiwi seconded to meet in executive session. Discussion: Corporation Counsel Ashida stated that they have two members of the public and two officers to testify. He explained the difference between open and executive sessions. Being that two people asked to speak in open session, Commissioner Frazier withdrew his motion to meet in executive session, and Commissioner Kaiwi withdrew his second.

STATEMENTS ON COMPLAINTS

MICHAEL PESTANA (Complaints HPC 05-16, 04-29, and 04-37): Stated that his girlfriend's friend assaulted him, and nothing has been done. His girlfriend is selling heroin at the post office. He's been calling the prosecutor for a year, but nothing is being done. His girlfriend was caught at the airport with drugs, but nothing's happening. He wants answers.

Commissioner Bertsch stated that the last time Mr. Pestana came before them, they suggested that he contact the prosecutor's office because his criminal case was closed and referred to the prosecutor.

OFFICER EDWIN BUYTEN (Complaint HPC 05-13): Stated that the police commission should look into this complaint and exonerate him. While on his way to circuit court concerning a drug matter, he heard a call from a fellow officer in distress. When he got there, there were no beat officers on the scene, and he was the most senior officer. Mr. Booker did not understand that a police operation was underway. If a police officer tells someone 5-6 times to disperse, that person should do it. Mr. Booker claimed that he choked this person. He utilized the technique that he is trained and certified in. It really bothers him that the complainant wrote that all he saw that day was a white cop harassing a black man. He grew up in Hawai'i, and his father is 100% Indonesian from Jakarta. His mother is half Iroquois Indian raised on a reservation. The complainant stated that he swore at him. He is not a person who swears. He doesn't understand why Mr. Booker wouldn't get back. When a law enforcement officer tells you to stay, you stay away. If Mr. Booker didn't like what he saw, he could have addressed it with the watch commander.

FREDERIC BOOKER (Complaint HPC 05-13): He saw Mr. Buyten jump on Tyson's back. He heard gurgling. He was approximately 17 ½ feet from the officer. He only said one thing to Mr. Buyten, that he was hurting Tyson. In his complaint, he stated that the officer swore at him, but now he is not sure because there was so much yelling and commotion. Tyson does have an attitude, and the officers did what they had to. Officer Buyten held Tyson in a technical hold for maybe less than two minutes.

EXECUTIVE SESSION (closed to the public)

Commissioner Frazier moved, and Commissioner Kaiwi 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.

Executive session convened at 11:10 a.m. Regular session reconvened at 12:25 P.M.

OFFICER BUYTEN requested to speak to the commission again. He stated that this case frustrates him because the complainant put himself in the situation. Mr. Booker stated that he did not approach them; that was false. He approached them six to seven times. He does not recall swearing, although Decker was swearing. No force was put on Mr. Booker. He doesn't agree with Booker's 17 ft distance; they are trained with 21 ft.

Commissioner Frazier stated that the issue is that Decker choked for about two minutes.

Officer Buyten stated that a person would pass out in 30 seconds. He wants the police commission to investigate this complaint because this gentleman made allegations that he wasn't even involved in. He takes his job very seriously and would never misrepresent the uniform.

UNFINISHED BUSINESS

- **Suggestions for revisions to the chief of police evaluation form.** Commissioner Kaoiwi stated that his suggestions came from the Fire Commission's evaluation form. Commissioner Frazier reminded that they needed to look at the rating ranges. Chair Bertsch stated that he would like to discuss this further at the next meeting.

NEW BUSINESS

- **Correspondence 05-43, from Councilman Bob Jacobson requesting the commission's consideration to his concerns about unchecked police powers.** Corporation Counsel Ashida stated that the issue has been resolved because Deputy Chief Kubojiri stated that he would look at the position descriptions of the police department. The county council, same as the police commission, should not dictate to the police department what should be in or not in the job description. Corporation Counsel Ashida will respond to Councilman Jacobson on behalf of the commission.

ACTION ON EXECUTIVE SESSION MATTERS

- **Complaint HPC 04-23:** (*Investigated by Legal Eyes.*) Complainant alleged that an officer misused his position when he involved himself in an ongoing problem with her neighbor. Commissioner Frazier moved and Commissioner Kaoiwi seconded to defer this complaint to the next meeting since Legal Eyes investigated it, but Mr. Boe was unable to be there. The motion carried unanimously.
- **Complaint HPC 05-13:** Complainant alleged that while his neighbor was being arrested, an officer used profanity against him and threatened him with pepperspray. Commissioner Frazier moved and Commissioner Mitchell seconded to refer the complaint to Legal Eyes for further investigation. The motion carried unanimously.
- **Complaint HPC 05-14:** Complainant alleged that following her attack by a group of girls, an officer did not take her statement and never returned her calls. Commissioner Kaoiwi moved and Commissioner Mitchell seconded to exonerate the officer. The motion carried unanimously.

- **Complaint HPC 05-15:** Complainant alleged that following a verbal altercation, an officer gave his home address to the other party. Commissioner Kaoiwi moved and Commissioner Politano Steckel seconded to exonerate the officer. The motion carried unanimously.
- **Complaint HPC 05-16:** Complainant's truck was stolen more than two years ago. He wants answers. Commissioner Kaoiwi moved and Commissioner Frazier seconded to decline further investigation because the complaint was not received within 60 days of the incident.
- **Complaint HPC 04-29:** Complainant wants answers to his closed case. Chair Bertsch will send a letter stating that the case is closed, and that he was previously told to contact the prosecutor if he had any questions.
- **Complaint HPC 04-37:** Complainant wants answers to his closed case. Chair Bertsch will send a letter stating that the case is closed, and that he should contact the prosecutor if he has any questions.

STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS – None.

ANNOUNCEMENTS

- Chair Bertsch announced that the next monthly meeting is scheduled for September 30, at the Hawai'i County Council Room, and that the public hearing on the changes to the rules will be held on October 21, 2005, at 9:00 a.m. at the Kona Department of Liquor Control Conference.
- Collection of files and documents. – Done.

ADJOURNMENT

The meeting was adjourned at 12:50 p.m.

SUBMITTED:

JOSIE PELAYO, SECRETARY

APPROVED:



JOHN M. BERTSCH, CHAIR