

**HAWAI'I COUNTY POLICE COMMISSION  
REGULAR SESSION MINUTES  
AUGUST 14, 2009  
DEPARTMENT OF LIQUOR CONTROL, HILO**

**INVOCATION**

Commissioner Kaoiwi gave an invocation.

**CALL TO ORDER**

Chair Whittemore called the meeting to order at 9:10 a.m.

**ROLL CALL**

Present:	Tom Whittemore, Chair	Also Present:	Harry S. Kubojiri, Police Chief
	Louis Kaoiwi, Vice Chair		Marshall Kanehailua, Assistant Chief
	Richard J. Behenna, Commissioner		Henry Tavares, Assistant Chief
	Carol R. Ignacio, Commissioner		Sam Thomas, Major
	Donn S. Mende, Commissioner		James O'Connor, Captain
	Melvin S. Morimoto, Commissioner		Lincoln S. Ashida, Corporation Counsel
	Anita Politano Steckel, Commissioner		Josie Pelayo, Secretary
	Michael B. Sumja, Commissioner		

**APPROVAL OF AGENDA**

Commissioner Sumja moved to approve. Commissioner Ignacio seconded, and it carried unanimously.

**STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS**

TIM REES spoke on how he felt the agenda could be improved. He wants names of police officers and complainants on the agenda.

Chair Whittemore stated that they will seek advice of Corporation Counsel.

**APPROVAL OF MINUTES**

Commissioner Ignacio moved to approve the minutes of July 17, 2009, regular and executive sessions. Commissioner Sumja seconded, and it carried unanimously.

**PERSONNEL ORDERS**

Commissioner Kaoiwi moved to accept Personnel Orders Nos. 2009-070 to 2009-080. Commissioner Mended seconded, and it carried unanimously

**COMMUNICATIONS**

- Correspondence 09-16, from Police Chief Harry Kubojiri, mid-year status of police department's goals for 2009. Commissioner Behenna moved to accept. Commissioner Mende seconded. Discussion: Chair Whittemore stated that this will be discussed in executive session. The motion carried unanimously.
- Correspondence 09-17, from Lowell Shafer regarding his child custody concerns. Commissioner Kaoiwi moved to accept. Commissioner Morimoto seconded, and it carried unanimously.

- Correspondence 09-18, from Police Chief Harry Kubojiri regarding playing of loud music while transporting prisoners. Commissioner Kaiwi moved to accept. Commissioner Behenna seconded. Discussion: Commissioner Behenna thanked the Chief for the memo and his prompt action. Chair Whittemore thought it needs to go further. The motion carried unanimously.
- Honolulu Police Commission Minutes of June 3, 2009. Commissioner Kaiwi moved to accept. Commissioner Ignacio seconded, and it carried unanimously.

### **COMMITTEE REPORTS**

- **Budget and Finance** (Kaiwi/Mende): Commissioner Mende reported that they looked at the budget concerning the NACOLE conference. Although it is important, they recommend not attending because of the current budget crisis. Perhaps they could attend next year.

Commissioner Kaiwi stated that he recently attended a meeting that discussed the sale of the Hāmākua lands. If the land is not sold this year, the county will be in deep trouble. They can expect it to be worse next year. He suggested not using the investigator's funds for travel because next year will be even tighter. Hawai'i County is scheduled to host the annual State of Hawai'i Police Commissioners' conference, and some of the money already allocated can be used for the conference. If the budget gets very tight, they may have to cancel the conference.

Commissioner Sumja agreed that they should cancel this year's attendance to the NACOLE conference, but that they should not delete this budget item.

Commissioner Ignacio moved to defer attendance to the NACOLE conference to next year. Commissioner Kaiwi seconded, and it carried unanimously.

Chair Whittemore stated that they would like to host a conference that is relevant to civilian oversight and is of value to everyone. He will seek input from the other commissions on topics of interest. He will also be looking at venue proposals.

- **Office Management and Staffing** (Whittemore): No report.
- **Rules and Policies** (Behenna/Sumja): Commissioner Sumja reported that they met in Honoka'a and again with Corporation Counsel. It's not a matter of "If it's not broken, don't fix it," but to make it better. They want the commission to have a mission statement.

Commissioner Behenna reported that they are on schedule. They met with Corporation Counsel Ashida and identified areas for research. They will meet with him again. They expect to provide each member a draft of the changes prior to the next meeting. They have strong feelings for either or both a mission statement and vision

statement. Many of the changes are essentially housekeeping. They question whether a meeting once a month was enough. They would like to spend a half to one hour at the next meeting to discuss this further.

Corporation Counsel Ashida stated that they could do half of the complaints at one meeting so commissioners wouldn't have to drive so late in the day. Follow-ups to meetings could be done in a few weeks. Some of the proposed changes are housekeeping, consistent with the Charter. It provides guidance for incoming members. He believes the commission is going in the right direction, and the committee is to be commended.

Commissioner Kaiwi stated that he was the one who said, "If it's not broken, don't fix it." If the committee had given the rest of the commission their input, his response would have been different.

Commissioner Sumja stated that they had nothing to present.

- **Contractual Services** (vacant): No report.
- **Public Relations/Information** (Politano Steckel/Ignacio): Commissioner Politano Steckel stated that they should get together to work on the fallen officers' monument. Chair Whittemore stated that he talked with Commissioner Ignacio about what they could do to support the police department.
- **Complaints Review** (Kaiwi/Morimoto): Chair Whittemore stated that this committee is up for a change, and he will appoint new members. Commissioner Morimoto stated that every commissioner should meet with Internal Affairs to get a better understanding of what they do. Chair Whittemore asked Captain O'Connor to give the other commissioners an orientation to Internal Affairs.

## **CHIEF'S REPORT**

Including:

- **Crime:** Assistant Chief Tavares summarized the written report. Commissioner Behenna stated that he would like to see the population number as it relates to the crime statistics. Commissioner Ignacio stated that when you do an analysis, there is close correlation to the poverty areas, from homelessness to other aspects.
- **Traffic:** Major Sam Thomas summarized the written report. The statistics are pretty much the same.
- **Personnel:** Assistant Chief Kanehailua reported that they have one sworn vacancy. Captain Paul Kealoha was promoted to Administrative Major. They will be filling vacancies for captain and lieutenant. A dispatch class will be started to fill the three vacancies. Eight school crossing guards are going through the recruitment process.

The position works 10 hours a week, and is paid \$10.95 an hour. They do not have full benefits, and the position has a high turnover rate.

- **Finance:** Assistant Chief Kanehailua reported that they are at their target expenditure level. They are going through hard economic times and are fully staffed. The budget process starts next month. They are scrutinizing everything down to the penny.

In response to Commissioner Sumja's inquiry about the new communication system that Chief Mahuna spoke about last year, Chief Kubojiri reported that the new system is for the entire county, not just police. They have different proposals from different vendors on how to piece meal the entire situation. It has to be in place by January 2013. It is easier for the Federal Government to give them the funds in small chunks rather than the entire \$89 million. County Administration is looking at all sources for funding, including stimulus money. The original price tag has been reduced.

- **Commendations:** Chief reported receiving ten commendations in the past month.
- **Other Departmental Activities:** Major Thomas reported on the Mobile Data Terminals, MDTs. They are going through training and training the trainers. Laptops will allow officers to type reports in their cars and hit the send button. Their supervisor will be able to review it in his car on a laptop or at the station. They will be able to do many things such as submit reports, send out APBs, check status reports, run license plates, check for warrants, run serial numbers for firearms, and access the records management system. The MDTs are for patrol officers. Due to budget constraints, they will be leasing about 100 computers. Plain clothes officers have all been given Blackberries. They received most of the monies from Homeland Defense. Initially, their plan was to lease all laptops, but with the budget constraints, they need to hold on to some of the monies. They envision this to be a three-year process.

Recess was called at 10:28 a.m. The meeting reconvened at 10:40 a.m.

### **UNFINISHED BUSINESS**

Correspondence 09-14, invitation to the National Association of Civilian Oversight of Law Enforcement Conference in Austin, Texas, October 31-November 3, 2009. (Action taken under Budget and Finance.)

### **INVESTIGATION OF COMPLAINTS**

#### **STATEMENTS ON COMPLAINTS**

AMY MARKHAM (Complaint HPC 09-25) stated that she does not have anything else to add to her written complaint. Most of the people she spoke to were willing to make a statement.

MEGAN ISAAC-MAGDALENE (Complaint HPC 09-25) stated that the members of the community were shocked. Read what was in the paper. There was a chase that put the neighborhood at risk. It needs to be very carefully investigated.

JASPER MOORE (Complaint HPC 09-25) stated that there is concern that there are discrepancies to what witnesses said and what the newspaper said. They don't have the police report. They only have emotional issues. They are here to help, not to be adversarial. They want to know the truth because they don't know.

JAMES MOYNIHAN (Complaint HPC 09-09) stated that he didn't have new information. It was the evening of January 16<sup>th</sup>, it was a clear night. A taxi driver hit them from the rear. He didn't hit his breaks. He was not given a field sobriety test and not given a citation. The police report was missing significant information. All he wanted was an accurate police report. The report is rife with inaccurate information. To date, the violator hasn't gotten a ticket.

LORNA BUFIL (Complaint HPC 09-29) stated that she has a letter from Attorney Eric Seitz and bills. She wants payment from the Police Commission. Chair Whittemore told her that is not a role of the commission. Corporation Counsel Ashida told her to download the claim form from the Hawai'i County website. Ms. Bufil further stated that she initially told Officer Pule that her son was recently diagnosed with epilepsy and bipolar disorder and that the medication has side effects. The officer did not want to hear what she had to say. Her son is 17 years old. The officer told her to wait outside. Her son is a minor. The sergeant told her the officer was not supposed to do that.

OFFICER TOD BELLO (Complaint HPC 09-30) stated that it started with his brother asking about fishing spots. He spoke to Officer Fukuda who got him permission to go there. There were two people there who said they had permission to be there. He flashed his badge to show them that he was a police officer, and that he didn't want any trouble. He went back and spoke to Officer Fukuda who told him that nobody was supposed to be there. Nick, the property manager, went down there to tell the party that they were not supposed to be there. All the times he went there, he was off work. He went there with Officer Fukuda because Nick said they were trespassing. That was the only time he went in his official capacity but did not say anything. He showed his badge the first time to show that he didn't want trouble and to calm the situation down. They shook hands. The other party said he had permission to be there, but Nick said no one was supposed to be there. He accompanied Officer Fukuda for the trespass complaint. A patrol officer served the trespass notice.

DETECTIVE PAUL FUKUDA stated that he knows Detective Bello's family. Bello approached him about a fishing spot, and he went to check it out. There was an elderly female there about a week ago. He mentioned to Nick, the manager, that someone was there. Nick told him that those people were not supposed to be there. They served a trespass notice, and the people said they would be gone in a couple of hours. Officer Bello went down when they served the trespass notice so that he could show them the area where the people were.

NICK MCDANIELS (Complaint HPC 09-30) stated that he is the manager of the property in question. He gave Tod Bello and Paul Fukuda permission to use the property for fishing. They told him somebody was else was on the property. He checked with his partner and

then called Officer Fukuda for assistance. Neither he nor his partner gave the party permission to be there. Normally there is a key lock there, but it was missing. The other party claimed there was a combination lock. He did not speak to the people who were trespassing. He went down when they were served a trespass notice.

JOHN "SLUGGY" SILVA (Complaint HPC 09-30) stated that he works on the property. People usually check with him if they are going to be there. He puts out no trespassing signs and people take them down. He told the boss nobody was supposed to be there. They have a regular lock. Somebody replaced it with a combination lock, so he took it off. The combination lock didn't belong to the company. The boss is concerned about liability. People go there without permission. If somebody gets hurt, they could get sued.

RAYLYN IOPA (Complaint HPC 09-38) stated that the school called that her son was Tased twice by the police. She wasn't there. She just wants to know what happened. There was a fight earlier that morning with her younger son. Her son was on modified school, and was leaving and some one said there was a fight. When Officer Tingle got there, the fight was over. The officer sent a survey to the students asking if they thought her son deserved the Taser. She wants to know why he was Tased in the back. A teacher told her he was walking away when he was Tased, but the Acting Principal told them not to make a statement.

DANIEL IOPA (Complaint HPC 09-38) stated that on the day of the incident, he was leaving the campus when he got a call from another student that there was a fight. He went there. He was Tased when he was walking away and again when he was on the ground. He didn't hear anything to stop. There were all kinds of ruckus. He got near the fight but was stopped by Mrs. Edeta. She saw him raging. He was near the fight but not in the fight. Chad Hao told him to calm down. He was still angry and did not calm down. He didn't hear Officer Tingle tell him to calm down. There was all kinds of riots going on. He doesn't know why he was Tased. He had already calmed down.

OFFICER ROBERT PULE (Complaint HPC 09-29) stated that he was called to a terroristic call complaint from Ms. Bufil's former employer. The person told the receptionist that she was going to die. The person named her daughter and husband. HMSA Healthpass got Ms. Bufil's number from Hawaiian Tel. HMSA told him that Ms. Bufil left the company with bad relations. He called the phone number, it was Mrs. Bufil. He explained the reason for the call. She came down to the station by herself. He asked to look at her phone, but the phone number was erased. She told him it was her son that made the call, and he's bipolar. She said she would get him. He thought she was putting the blame on her son. All he did was greet the boy and ask for an advice of rights form when he heard a loud sound, and he fell. He didn't even get to interview the son. He felt that she was blaming her son, so he had to separate the son and mom. He went up to the window for an advice of rights form, and the boy fell down. The HMSA employee told him that she suspected Bufil or her boyfriend made the call. Hawaiian Tel told him the call came from Bufil's phone. It was his case, but after she made the complaint, he was taken off the case. He spoke to the investigating officer and was told that the boy confessed to making the call. He wanted to separate the boy and the mother to ask if his mom was making him take the

blame. He felt it was the mother who made the call because the person said he was going to kill her husband and daughter and named both of them. The person was whispering, so the employee couldn't tell if it was male or female.

PAUL SULLA (Complaint HPC 09-22) stated that his complaint involves a traffic stop. He was riding in a car. His son was driving, and he was speeding. The officer said he smelled something. He did a sobriety test. The officer asked to search him. He had rolling paper and a speck of green stuff. He had showed him his marijuana card earlier which had expired. He tried to explain that he was a patient and used marijuana. The voters passed the initiative. They are not even talking about a joint; it was a speck. He ignored his marijuana card. As a police officer he should have known that that spec would not hold up as evidence. He was put in jail for 2-3 hours. The papers carried it prominently. He was just a passenger in an automobile. He can't understand how this officer could do this. He wants to hear from the officer, and he should be reprimanded.

DEVAKI KLARE (Complaint HPC 09-22) distributed and then read a code of ethics for police officers. Stated that the police are going after people and harassing them. They have attitude, especially with people who have the herb.

Commissioner Behenna asked Ms. Klare to be specific about the code of ethics that the officer did not follow. Ms. Klare responded that the officer arrested Paul and his son, and the unnecessary force and violence.

REVEREND KEN SLAUGHTER (Complaint HPC 09-22) stated that he is the pastor of the First Hawaiian Church of the Holy Smoke and was there on behalf of Mr. Sulla. The police are not being properly trained. Part of the problem is because of Lincoln Ashida. The people voted on it, and it became law. When these things came down, they asked Ashida to clarify, and they came up with all kinds of ambiguous things. They now have the right to have 24 marijuana plants and 24 oz. of marijuana. That's more than 1 1/2 lbs. All these people are in cahoots because they want to seize people's land and cars. When you get this kind of authoritative people pulling this kind of crap, when you don't clarify the law properly, the police are going to get sued; the county is going to get sued.

STEVEN BARNES (Complaint HPC 09-27) stated that he believes the officer knew the intersection was faulty. He had to wait several minutes for the light to change. The intersection box had been broken. He felt the officer was there to wait for anyone to run the light. He tried everything, driving back and forth, to trigger the light change. The officer was waiting at the KTA shopping center for someone to run the light. The officer told him, that he could tell his story but he would not listen. He felt that was disrespectful. The officer didn't give him a chance to explain. The judge dismissed the case. He had to go through all this because the officer didn't want to listen to him.

STEVEN BARNES (Complaint HPC 09-27) stated that he was parked on Banyan Drive in a permissible parking area. The officer ordered him to leave or he would write him a citation. This same officer did this to him months prior.

STEVEN BARNES (Complaint HPC 09-34) stated that the officer at the DUI check happened to be the same officer who did this to him before on another DUI check. The officer blazed his flashlight in his eyes. The officer yelled at him. That was not professional. This is the same officer that ran him out twice for parking on Banyan Drive. There is a pattern here. All his friends say it's because of his color. He hasn't had any racial slurs. His main complaint is disrespect and behavior which should be addressed.

Lunch recess was called at 12:40 p.m. The meeting reconvened at 1:00 p.m.

**EXECUTIVE SESSION:** Commissioner Sumja moved 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 would be involved and to consult with Corporation Counsel on questions and issues that pertain 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 Mende seconded, and it carried unanimously. Executive session convened at 1:01 p.m.

Commissioner Kaiwi left the meeting at 3:50 p.m.

Commissioner Morimoto moved to return to open session. Commissioner Sumja seconded, and it carried unanimously. Open session reconvened at 4:22 p.m.

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

Corporation Counsel Ashida stated that he will prepare a "finding of fact" for each complaint.

### **INVESTIGATION AND DELIBERATION OF COMPLAINTS**

- **HPC 09-09:** Complainant alleged that the officer's accident report was incomplete and obscured the facts. Commissioner Morimoto moved that there was insufficient evidence to prove the allegations. Commissioner Ignacio seconded, and it carried unanimously.
- **HPC 09-13:** Complainant alleged that his speeding citation was incompletely filled out and not accurate. Commissioner Sumja moved to refer the complaint to the Chief for investigation by Internal Affairs. Commissioner Ignacio seconded, and it carried unanimously.
- **HPC 09-22:** Complainant alleged that during a traffic stop, an officer's behavior was abusive and discriminatory harassment, and that he should be made aware of the Peaceful Sky initiative. Commissioner Ignacio moved that there was insufficient evidence to prove the allegations. Commissioner Behenna seconded, and it carried unanimously.
- **HPC 09-24:** Complainant was involved in a traffic stop. He alleged that he was held at gunpoint, handcuffed, and made to lay face on the road while being interrogated. The officers were later informed that they had the wrong guy, and he was released.

Commissioner Sumja moved to write a letter to the Chief to review the case and give the commission his impression and findings. Commissioner Ignacio seconded, and it carried unanimously.

- **HPC 09-25:** Complainant alleged that officers pursued a vehicle at excessive speeds and in doing so contributed to the death of the driver. Commissioner Ignacio moved that there was insufficient evidence to prove the allegations. Commissioner Morimoto seconded, and it carried unanimously.
- **HPC 09-26:** Complainant alleged that an officer was wrong when he told him he was in a no parking area. He also alleged that the officer yelled at him and was irrational. Commissioner Behenna moved that there was insufficient evidence to prove the allegations. Commissioner Ignacio seconded, and it carried unanimously.
- **HPC 09-27:** Complainant alleged that he drove through a red light because it was faulty, and that the officer did not want to listen to his explanation which he felt was disrespectful and unprofessional. Commissioner Behenna moved that there was insufficient evidence to prove the allegations. Commissioner Morimoto seconded, and it carried unanimously.
- **HPC 09-28:** Complainant's son was involved in an altercation. She alleged that an officer abused his position when he used an electronic control device on him. Commissioner Behenna moved to defer for further information. Commissioner Politano Steckel seconded, and it carried unanimously.
- **HPC 09-29:** Complainant alleged that an officer was intimidating and threatening when he interviewed her son, and that this caused her son to have a seizure. Commissioner Ignacio moved that there was insufficient evidence to prove the allegations. Commissioner Morimoto seconded, and it carried unanimously.
- **HPC 09-30:** Complainant alleged that an officer used his position to improperly treat and harass him so that he could use a camp area for himself and his family. Commissioner Sumja moved that there was sufficient evidence to prove the allegations and to refer the complaint to the Chief for his review and disposition. Commissioner Ignacio seconded, and it carried with a nay from Commissioner Mende.
- **HPC 09-32:** Complainant complained about the manner in which an officer spoke to him and that his arrest for a TRO violation was bogus. Commissioner Behenna moved that there was insufficient evidence to prove the allegations. Commissioner Morimoto seconded. Commissioner Mende stated that he was at the scene during the arrest, and saw no wrongdoing by the officers. He recused himself from the vote. The motion carried.

- **HPC 09-34:** Complainant alleged that an officer yelled at him at a DUI check point. Commissioner Behenna moved that there was insufficient evidence to prove the allegations. Commissioner Morimoto seconded, and it carried unanimously.
- **HPC 09-35:** Complainant was stopped for speeding and then arrested for DUI. She alleged that she was not speeding, that the citation had incorrect information, and that the officer would not show her the reading of the breath analyzer. Commissioner Morimoto moved that there was insufficient evidence to prove the allegations. Commissioner Politano Steckel seconded, and it carried unanimously.

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

**ANNOUNCEMENTS**

- Chair Whittemore announced that the next monthly meeting will be on September 18, 2009, at 9:00 a.m., at the Waimea Civic Center Conference Room, 67-5189 Kamāmalu St., Waimea (next to police station.) He also announced that due to the late hour, they will defer the Chief's mid-year evaluation and the review of the rules and regulations to the next meeting.
- With respect to Mr. Rees's statement that the agenda could be improved by naming the complainants and officers, Corporation Counsel Ashida stated that the agenda should continue without the names.
- Collection of files and documents. – Done.

**ADJOURNMENT**

The meeting was adjourned at 5:15 p.m.

SUBMITTED:

*Josie Pelayo*

\_\_\_\_\_  
JOSIE PELAYO, SECRETARY

APPROVED:

*Tom Whittemore*

\_\_\_\_\_  
TOM WHITTEMORE, CHAIR