

**HAWAII COUNTY POLICE COMMISSION  
SPECIAL MEETING MINUTES  
AUGUST 26, 2004  
HAWAII COUNTY COUNCIL ROOM**

Vice Chair Manago introduced Karolyn Lundkvist the new police commissioner from Council District 5.

**CALL TO ORDER**

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

**ROLL CALL**

Present:	Dwight K. Manago, Vice Chair	Also Present:	Lincoln Ashida, Corporation Counsel
	John M. Bertsch, Commissioner		Harry Kubojiri, Deputy Chief
	James A. Frazier, Commissioner		Josie Pelayo, Secretary
	Pudding Lassiter, Commissioner		
	Karolyn Lundkvist, Commissioner		
	Betsy Mitchell, Commissioner		
	Pete Muller, Commissioner	Absent:	Horace S. Hara, Chair

A quorum was present.

**APPROVAL OF AGENDA**

Commissioner Frazier motioned to approve the agenda. Commissioner Muller seconded the motion, and it carried unanimously.

**STATEMENTS ON AGENDA ITEMS:** None.

**UNFINISHED BUSINESS**

**RECOMMENDATIONS FOR IMPROVEMENT TO THE DISCIPLINARY SYSTEM OF THE HAWAII COUNTY POLICE DEPARTMENT:**

Vice Chair Manago stated that he would like to go through each change. He asked Commissioner Bertsch of the rules and policies committee for background information.

Commissioner Bertsch stated that this has been an ongoing process for almost twelve months, and he would like to go over their discussions and progress. He questioned Ms. Pelayo why the title of this matter changed since its onset.

Ms. Pelayo stated that when they first started, it was to work on the commission's investigative process. However, when Commissioner de Silva wrote up the draft, he changed it to "Recommendations for Improvements to the Disciplinary System of the Hawaii County Police Department."

Commissioner Lundkvist stated that it was not necessary to provide background information for her benefit, and that they could proceed with the written recommendations. The rest of the commissioners were in agreement.

Ms. Pelayo stated that, for the record, they were working on Corporation Counsel's recommendations to the investigative process, not the 5<sup>th</sup> draft of the revised rules.

Corporation Counsel Ashida stated that they should get the police department's input.

- 13. All formal public external complaints filed directly with the PD are now normally investigated by the PD, bypassing the PC. This practice should continue.**

Commissioner Frazier motioned to accept the recommendation as written. Commissioner Muller seconded the motion, and it carried unanimously. Deputy Chief Kubojiri stated that the police department accepts the recommendation.

- 13. A copy of all formal public external complaints made directly to the PD should be provided to the PC.**

Deputy Chief Kubojiri stated that they now provide the commission with a monthly report of violations, whether the charges were sustained or not sustained, and whether discipline was meted out. He is concerned about providing the exact discipline meted out.

Vice Chair Manago stated that unless they know what type of discipline was meted out, they wouldn't know that it was just.

Deputy Chief Kubojiri stated that discipline varies depending on the incident. They look at progressive discipline.

Corporation Counsel Ashida stated that under HRS 92F, the police department is authorized to share information that is otherwise confidential if it is a necessary function of the police commission. The commission needs to ask themselves if the information is needed for them to do their job. If the answer were affirmative, then it would be at the discretion of the chief.

Deputy Chief Kubojiri stated that Captain Tavares would be able to answer questions on specific complaints.

Commissioner Frazer felt it was necessary to know the exact discipline.

Deputy Chief Kubojiri stated that they could do what the Honolulu Police Department does, which is to provide external complaints to the commission with dispositions but no names of officers or complainants.

Commissioner Frazier motioned that a copy of all formal public external complaints of police misconduct made directly to the police department should be provided to the police commission after the completion of the police investigation and disposition. Commissioner Lassiter seconded the motion.

The motion died with the following roll call vote:

Aye: Frazier, Lassiter, Mitchell

Nay: Bertsch, Muller, Lundkvist

Commissioner Bertsch suggested that the same motion be made but to exclude "police misconduct." They should be notified of any complaint made to the police department.

Commissioner Lundkvist stated that the deputy chief is not willing to provide names, but the motion doesn't say anything about that.

Commissioner Bertsch motioned to keep the recommendation as it is. Commissioner Muller seconded the motion, and it carried unanimously.

Corporation Counsel Ashida stated that the Hawaii County Police Commission is being provided information by the police department that is far greater than what the Honolulu Police Commission receives. As he understands it, the Honolulu Police Commission receives disposition reports without any reference to names. Here, the commissioners get that information. The Honolulu Police Commission doesn't get that information because of advice of their counsel who believes that it is legally inappropriate for them to get that information. This might open the door for litigation against the department or the commissioners. The commission really needs to focus or settle upon their mission, their purpose, and why they want this information. By law, the police department submits an annual report to the legislature of all misconduct. It's a public document.

Commissioner Muller stated that they should follow their standard operating procedure, what they are supposed to be doing. Right now they're asking for a lot more.

Commissioner Frazier stated that corporation counsel has made good, consistent, recommendations. The modifications are to enhance the productivity and the value of the commission. Just to write it off and say they don't need to go further is inappropriate.

Ms. Pelayo inquired as to whether they wanted the actual copy of each complaint which would probably be similar to police commission complaints, and which often times have many pages.

Commissioner Bertsch motioned to change "copy of the complaint" to "summary of the complaint." Commissioner Muller seconded the motion, and it carried unanimously.

- 13. Where compelling circumstances exist, the PD should continue to investigate and take action on any public complaint, whether or not such complaint was first filed with the PC by a citizen.**

Commissioner Lundkvist motioned to accept as written. Commissioner Mitchell seconded the motion, and it carried unanimously.

- 13. In such case, the PD should provide the PC with a copy of the complaint and state the compelling reasons for such action.**

Commissioner Frazier stated that discussions suggest that the commission is not in favor of this and motioned to delete it. Commissioner Muller seconded the motion, and it carried unanimously.

- 14. For investigations by the PD of complaints that by-pass the PC, the PD should provide a copy of the completed IAU report to the PC.**

Deputy Chief Kubojiri stated that Chief Mahuna does not want to provide hard copies to the commission, but invites the commissioners to review the files in the IA office.

Commissioner Lundkvist stated that with respect to their need to know, she motions to delete this. Commissioner Mitchell seconded the motion.

Discussion:

Corporation Counsel Ashida asked the commissioner why they wanted to see the IA files. He asked what they would do with the information if they saw that an officer had 35 misconducts.

Vice Chair Manago stated that he doesn't need to see any IA reports. If he had a question about an individual, he would prefer bringing it up to the chief in executive session.

Commissioner Frazier stated that this started with the question on whether IA was being thorough or sweeping things under the department. He endorses what the deputy says. He has gone in to IA and reviewed files.

Corporation Counsel Ashida stated that the chief has allowed them to go into IA to review their files. As written, this says that every single IA file is subject to being copied, which is a dangerous proposition.

Deputy Chief Kubojiri stated that they would allow the commission to review the IA files if they had a reason.

Commissioner Frazier stated that they are working for long-term rules that would not change when department personnel changes.

Commissioner Lundkvist stated that they keep hearing about the need to know, but they want to vote on things they don't need to know.

The motion to delete No. 5 carried with the following roll call vote:

Aye: Bertsch, Lassiter, Mitchell, Lundkvist, Muller

Nay: Frazier

**15. The PC should be entitled to obtain the following from the PD subject to adequate procedures consistent with existing laws and collective bargaining agreements relating to the privacy rights of the individuals concerned:**

- a. Copies of all IAU investigative reports of other misconduct of the accused.**
- b. OBITS (sic) ("OBTS") record of the complainant.**
- c. Police reports relating to the incident or incidents associated with the misconduct alleged.**
- d. Other personnel records on a case-by-case basis.**

Ms. Pelayo stated that they currently receive the OBITS and incident reports.

Commissioner Frazier stated that he would like to delete (d).

Corporation Counsel Ashida stated that under labor law, prior misconduct couldn't be used to determine misconduct. It can only be used to determine discipline. He again asked what they would do with the information if they received it.

Commissioner Lassiter motioned to accept No. 6, but to strike a) and d).  
Commissioner Muller seconded the motion.

The motion carried with the following roll call vote:

Aye: Bertsch, Lassiter, Mitchell, Lundkvist, Muller

Nay: Frazier

**16. At its next meeting the PC should then:**

- a. Hear the complainant's testimony and examine all other available evidence.**
- b. Determine whether or not there is a reasonable suspicion of misconduct.**
- c. If the PC determines that a reasonable suspicion of misconduct exists, it may refer the complaint to its investigator for investigation.**

Commissioner Bertsch motioned to accept this. Commissioner Lassiter seconded the motion, and it carried unanimously.

Discussion: Commissioner Muller pointed out that this is exactly what they do now.

17. **At all meetings relating to police misconduct, a suitable police official should be available for consultation in open or executive session on matters of police training, procedure, custom, etc. Such official would be allowed into executive session only where inquiries might reveal matters the discussion of which in open session is prohibited by law. Such official would only answer specific questions relating to proper police procedure and standards, and such official would not be allowed to hear or participate in any PC deliberations on misconduct.**

Commissioner Muller motioned to accept this as is. Commissioner Bertsch seconded the motion, and it carried unanimously.

18. **When the PC investigator completes the investigation, the PC shall consider all evidence at its next meeting and decide whether or not there has been misconduct by the accused. If misconduct is found, the PC may submit findings of fact and conclusions along with recommendations, if necessary.**

Commissioner Frazier motioned to accept this.

Commissioner Bertsch stated that this is legal terminology that Paul de Silva put in. He does not have a clear understanding of it, and asked what implications this would have.

Corporation Counsel Ashida stated that there would be none. He would do the findings of fact for them, but there would be no legal consequence or importance because the commission does not have an appeal process. Normally, findings are submitted in court for the appellate court to review the findings of the lower court. There is no review process for the police commission.

Commissioner Bertsch stated that they are reinventing something that doesn't need to be reinvented, and issuing findings of fact doesn't do anything.

Commissioner Muller seconded the motion, and it carried unanimously.

Commissioner Bertsch stated that with this, they would now need to identify factual reasons why they sustained a complaint so that corporation counsel can generate findings of fact and pass it on to the chief.

Vice Chair Manago questioned whether this was their intent.

Ms. Pelayo explained that they usually respond to the officer and the complainant the following week. She asked if they would now have to wait for Corporation Counsel's written response, without letting the complainant know what happened.

Commissioner Bertsch stated that the language says, "may." They "may" ask Corporation Counsel to submit findings of fact.

Vice Chair Manago clarified that if there were no requests for findings of fact, it would be business as usual.

- 19. If the IAU completes an investigation on the PC's submission, it should send its report to the chief with a copy to the PC for review, comment, supplementation, or amended findings and conclusions, if any.**

Commissioner Bertsch stated that Paul de Silva wanted to look at this at the conclusion of the IA report so that he could provide IA with further direction or to make sure they did a fair investigation prior to the chief making a decision. He believes this is way out of the commission's purview. If they find wrongdoing, they should just pass it on to the chief and let him make the decision.

Corporation Counsel Ashida stated that their mission is not to dictate or try to control certain outcome within the department. They need to stay away from that. The commission's only power, which is immense and powerful, is the power to remove the chief for cause.

Commissioner Frazier stated that they agreed that No. 5 is out, than No. 10 should be too.

Commissioner Muller motioned to delete No. 10. Commissioner Lundkvist seconded the motion, and it carried unanimously.

- 20. If the chief of police refers the case to the administrative review board, a PC non-participating observer designated by the chairman of the police commission should be allowed to attend and audit the meeting subject to reasonable regulations adequately protecting the integrity of the process and the privacy of the accused.**

Corporation Counsel Ashida requested that the commission defer discussion or decision on this. This is the basis of a current claim filed by SHOPO against the mayor and police chief as a result of what they considered to be inappropriate actions taken by this commission. He recently received a settlement demand from SHOPO that he would like to have agendized for the next meeting.

Commissioner Lassiter motioned to defer this. Commissioner Muller seconded the motion, and it carried unanimously.

**21. The following recommendations apply to the ARB:**

- 13. The complainant should be allowed to testify before the ARB.**
- 14. The burden of proof at the ARB should be more clearly specified as that of a preponderance of the evidence.**
- 15. A majority decision of the board should be sufficient to conclude guilt.**
- 16. General Orders should specifically require consideration of the PC's findings and conclusions.**
- 17. Upon completion of its proceedings, the ARB should provide with (sic) PC with a statement identifying members, the witnesses who testified, its decision and recommendations, if any, and a brief statement of its rationale.**

Corporation Counsel Ashida stated that No. 12 is attempting to dictate to the chief how he should run his ARB.

Commissioner Bertsch motioned to delete No. 12. Commissioner Muller seconded the motion.

Discussion: Commissioner Bertsch stated that this gets into the administrative actions of the police department which is not within the commission's purview.

The motion carried unanimously.

**13. The chief of police should then inform the PC of his decision including the discipline imposed, if any.**

Deputy Chief Kubojiri stated that this mirrors what they discussed earlier. Now they have the officer identified and now they want to know the exact discipline.

At Vice Chair Manago's request for an opinion, Corporation Counsel Ashida stated that they need to define what they want. Disposition could be that charges were sustained, although some of them might want to know the punishment.

Commissioner Muller stated that they should only know that something was done.

Ms. Pelayo stated that the reports they receive states only that appropriate discipline was taken.

Corporation Counsel Ashida stated that state law is very picky about confidentiality with respect to personnel matters. SHOPO is strong. They lobbied the legislature

who then created a specific exemption that applies only to police officers. The only time their discipline is made public record is when they have been terminated.

Deputy Chief Kubojiri stated that a suspension is not a public record.

Commissioner Muller stated that he only needs to know that discipline was done, not the specific discipline.

Corporation Counsel Ashida stated that state law says it's not a public record. 92F says that agencies can share information on a need to know basis so long as it is necessary for the requesting agency to perform its function. The commissioners need to answer the question of why they need to know this in order to perform their job.

Commissioner Muller motioned to change No. 13 to read, "The chief of police should then inform the PC of his final disposition. Commissioner Bertsch seconded the motion, and it carried unanimously.

**DRAFT OF REVISED RULES:**

Deputy Chief Kubojiri reported on the chief's written recommendations which he submitted.

Commissioner Bertsch stated that this is the fifth draft, it hasn't been finalized, and is not something to present to the public yet.

Commissioner Frazier stated that he would like to have the rules modified to be consistent with the language in the charter.

Vice Chair Manago asked corporation counsel to look into the section on commissioners reviewing each other for possible inappropriate behavior. He questioned whether this was appropriate and whether this was a matter for the Board of Ethics.

Commissioner Bertsch stated that they have a document from corporation counsel that says they cannot investigate themselves.

Corporation Counsel Ashida stated that the county code of ethics governs their behavior. Investigating the behavior of a commissioner is within the jurisdiction of the Board of Ethics. As an example, if Commissioner Bertsch believes that Vice Chair Manago violated a code of ethics, he would file a complaint with the Board of Ethics because it makes no sense to investigate themselves.

Vice Chair Manago stated that commissioners investigating themselves is on page 7 of the 5th draft of the rules.

Commissioner Bertsch suggested that they throw out, exclude the whole section on standards of conduct because they already have standards of conduct in the county

charter. With these changes, they are re-writing the same rules and making it more specific for police commissioners. If there is a violation, it is a matter for the Board of Ethics.

Commissioner Muller asked that corporation counsel review the changes like he did with the recommendations on their investigative procedures.

Commissioner Frazier asked that corporation counsel incorporate the chief's letter of recommendations into his review. He suggested that the document be exclusive of charter language and standards of conduct.

Commissioner Lundquist motioned that corporation counsel review the 5<sup>th</sup> rough draft of the rules and regulations and to make recommendations. Commissioner Mitchell seconded the motion, and it unanimously carried.

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

**ANNOUNCEMENTS**

Vice Chair Manago announced that the next monthly meeting is scheduled for September 10, 2004, 9:00 a.m., at the Hawaii Naniloa Resort, Palm Lounge, 93 Banyan Drive, Hilo.

**ADJOURNMENT**

The meeting adjourned at 12:20 a.m.

SUBMITTED:

APPROVED:

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JOSIE PELAYO, SECRETARY

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HORACE S. HARA, CHAIR