

**HAWAI'I COUNTY POLICE COMMISSION
MINUTES – REGULAR SESSION
AUGUST 30, 2002
HILO POLICE STATION TRAINING ROOM**

CALL TO ORDER

Chair Okabe called the meeting to order at 10:00 a.m.

ROLL CALL

Present:	Wilfred M. Okabe, Chair	Also Present:	Lawrence Mahuna, Acting Chief
	Horace S. Hara, Vice Chair		Thomas Hickcox, Assistant Chief
	John M. Bertsch, Member		Wendell Paiva, Assistant Chief
	Peter L. Hendricks, Member		Charles Chai, Major
	Daniel C. Kama, Member		Lincoln Ashida, Corporation Counsel
	Phoebe M. Lambeth, Member		Josie Pelayo, Secretary
	Dwight K. Manago, Member		
	Walter Moe, Member		
	Peter P. Muller, Member		

A quorum was present.

APPROVAL OF AGENDA

Commissioner Lambeth moved to approve the agenda. The motion was seconded by Commissioner Manago and unanimously carried.

STATEMENTS ON AGENDA ITEMS (Open to the Public)

Corporation Counsel Lincoln Ashida explained the difference between open and executive sessions, and that a person could make a statement in either session. He advised that anything said in public which may be libelous, slanderous, or defamatory may subject an individual to civil liability.

He further stated that there is a five-minute time limit to public statements, and it is at the discretion of the chair.

DEL PRANKE came before the commission and stated that he wanted to talk about the process of the chief of police selection. The acting chief of police is not a legal position. The county charter puts the police chief and the deputy chief under the purview of the commission. The acting chief becomes the acting chief because of police department general orders. General orders does not supersede the county charter. There is no such position as acting chief. A person cannot become the police chief without being vetted by the police commission.

He told the commissioners to look at, "Applicants must have unquestionable integrity and personal stability." He further stated that the person who's in the acting chief's position is a person who at one time held another police officer prisoner in her own home, condoned theft within his own division, brutalized his own wife, helped in the Mathison cover-up, and

benefited from the cheating scandal under Carvalho. In his estimation, any actions taken by Lawrence Mahuna are illegal.

When his five minutes were up, Corporation Counsel Ashida informed Mr. Pranke that he could submit his additional concerns in writing.

BARBARA ARAUJO came before the commission to speak on behalf of her father, Abraham Makekau, regarding complaint HPC 02-19. They were informed that medical bills for her father's injuries would be taken care of by the police department, but her parents are paying the bills. She asked if there were any questions from the commissioners, to which Commissioner Manago stated he had some questions but would like to ask them in executive session.

Corporation Counsel Ashida stated that it was the commissioners' prerogative to go into executive session. Members of the public may make statements in open session, and the commission will listen. But with respect to specific questions that may deal with matters that are protected under state law, his advice to the commissioners, which ultimately protects our tax dollars, is not to be party to any defamatory action against a police officer.

Ms. Araujo stated that her father did not want to make a statement in open session. She further stated that she was not present during the incident, but took notes. Her father is the lessee of the property, but the search warrant was given to her brother who was handcuffed, put in a car, and transported to jail. No one, except the officers going into the house, told her father that he had to stay out of the house. When he saw the officers going into the house with dirty shoes, he went forth. No one stopped him. He yelled at the officers to take off their shoes, no one responded. She believes that is when Marshall took several steps in and grabbed her father by the wrist, pushed him, twisted his wrist, and pushed him out the doorway. During this time her handicapped mother was in the house with no one to care for her. Ms. Araujo reiterated that she came in after the incident occurred and took notes.

Chair Okabe stated that they would be called back for executive session.

AUDREY MEYERS, another daughter of Abraham Makekau passed around photos of her father's injuries.

ROGER CHRISTIE came before the commission and stated that he was there to criticize policy, not individual people. There are headlines of Hawaii being the worst place in the United States for the abuse of ice and other hard drugs. Headlines that Hawai'i County is the poorest county in the state are social indicators that something very troubling is going on here. This body is tasked with the responsibility of overseeing the police department, which to a great degree is causing some of the troubles here. In his opinion, the prohibition of cannabis is causing extreme damage to everybody in the state whether they're users of marijuana or users of ice or not. He pointed out the federal government study that he gave to the commission. Many people in the community, including himself, think that marijuana eradication has caused the conditions for the ice epidemic on this island. Policies, laws, and police are actually causing more crime and more harm and more damage than they're

solving. He asked that the commission to find out what's going on here. He has copies of 150 affidavits from people on the west side of the island that says that they were harmed by marijuana eradication spray operations

He submitted page 178 of the police budget. Under program objectives, it says that they want to write at least 50,500 citations. They are about 106,000 license drivers on the island. In other words, the police want to write at least one traffic citation for every two citizens on the island. This gives the appearance that they're milking citizens like they're cash cows. He doesn't like the idea that police are out there trolling and maybe having extra incentive for writing traffic tickets.

Commissioner Moe questioned whether the 50,500, was a quota, to which Mr. Christie stated that it sounded like a quota to him. He got the report from page 178 of the county budget.

Mr. Christie quoted a portion from the National Institute of Drug Abuse report, "Robbed of this needed income, many people experienced economic hardship." He believes the people of the Big Island have been robbed of their income and their sustenance for many years under the guise of marijuana eradication, and it's time for that to stop.

STATEMENTS ON AGENDA ITEMS (Executive Session)

Commissioner Lambeth moved 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 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. The motion was seconded by Bertsch, and unanimously carried.

The commission convened into executive session at 10:33 a.m., and reconvened back into regular session at 2:08 p.m.

APPROVAL OF MINUTES

Vice Chair Hara moved to approve the minutes of July 26, 2002, regular and executive sessions. The motion was seconded by Commissioner Manago and unanimously carried.

PERSONNEL ORDERS

Commissioner Manago moved to accept Personnel Orders Nos. 2002-107 to 2002-128. The motion was seconded by Commissioner Lambeth and unanimously carried.

COMMUNICATIONS

Commissioner Manago moved to accept communications as listed. The motion was seconded by Commissioner Lambeth and unanimously carried.

COMMITTEE REPORTS

- Budget and Finance (Manago/Okabe): Chair Okabe reported that seven of them attended the recent Salary Commission meeting. They were asked to prepare a

comparative report of chief and deputy chief salaries for all counties for the salary commission to consider at its meeting on September 20. The meeting is on the same day as the police commission's next meeting, so he wants to reschedule their next meeting to September 13. This would allow them to review and approve the report that would be presented to the salary commission. Corporation Counsel had advised him to appoint a committee of up to four people to work on this report.

Commissioner Moe moved to establish a committee to do the legwork to establish a salary schedule for the chief and deputy chief and to bring it before the commission for discussion and voting. The motion was seconded by Commissioner Manago and unanimously carried.

Chair Okabe appointed Commissioner Manago and himself, both of the Budget and Finance Committee, and Commissioner Hara, to this committee. He asked for a fourth volunteer to the committee, and Commissioner Muller agreed to be on the committee.

Corporation Counsel stated that the extent of the authority of these four people must be defined at this meeting. Their primary focus would be information gathering, and they would need to report back to the full commission.

Chair Okabe stated that the committee would research the salary schedules and tier systems of all counties, make recommendations for the chief and deputy chief, and then present the report to the police commission. If it is approved, they will present it to the salary commission the following week.

The motion carried unanimously.

Corporation Counsel Ashida stated that he wanted to make it clear that this is a subcommittee that comes under the budget and finance committee.

- Office Management and Staffing (Hara/Muller): Vice Chair Hara reported that the commission's office moved to the county building the day before. Ms. Pelayo reported that the phones have not yet been connected. Corporation Counsel Ashida reported that they have an arrangement whereby the public can contact his office for assistance.
- Rules and Policies (Moe/Bertsch): The committee had no report.
- Contractual Services (Kama): The committee had no report.
- Public Relations (Lambeth/Okabe): Commissioner Lambeth reported that Commissioner Muller attended Chief Correa's going-away luncheon and made a presentation on behalf of the commission.

CHIEF'S REPORT

- Crime: Assistant Chief Paiva summarized the written report.
- Traffic: Assistant Chief Hickcox summarized the written report.

- Personnel: Major Chai summarized the written report.
- Finance: Business Manager Maesato read his written report.
- Commendations: Acting Chief Mahuna reported receiving six commendations.

UNFINISHED BUSINESS: None

NEW BUSINESS

- Chief of Police Selection Process: Review and approval of timeline, job description and vacancy notice, application form, HRS 78-1 (b) requiring a one-year residency for appointed department heads, the Attorney General and Corporation Counsel's opinions on HRS 78-1, and Hawai'i County Charter Section 7-2.3 and 7-2.4 outlining the requirements of the chief of police and his duties.

Chair Okabe informed that written information of this selection process was available to anyone who wanted a copy. He asked the members to review and approve the timeline.

Commissioner Moe moved that the commission postpone the timeline until the issue of salary compensation had been properly addressed and finalized. There was no second, and the motion died.

Commissioner Lambeth moved to approve the timeline. The motion was seconded by Commissioner Manago.

Discussion: Commissioner Lambeth suggested that they move the application deadline to October 7 instead of September 30 in order to have at least ten days from the date of the last advertisement to the application deadline.

Commissioner Moe stated that the salary commissioner would be meeting on September 20, and at that time they would know what the chief's salary would be. It would be a sham to put incorrect information in the newspaper. The present salary rate precludes a whole layer of officers from this department from participating. They should wait until after they hear from the salary commission.

Chair Okabe stated that at this point they are looking at the timeline, and that's the motion on the floor. As far as the salary commission is concerned, there is no guarantee that the salary commission would accept their proposal. He would like to proceed with the timeline. Being that there were no other changes, he stated that they would change the application deadline to October 7.

Vice Chair Hara asked that they delete the testimonies scheduled for December 6. He would like to have one testimony each in East and West Hawai'i. When he attended the fire commission hearings, the finalists had a chance to make a presentation to the public on their goals, objectives, and philosophies. He would like to recommend that they do that for East and West Hawai'i during the testimony period. This would give the public an opportunity to meet the candidates as well as to listen to their goals and objectives.

The finalists would start the evening with their presentation, and then they would listen to public testimony.

Corporation Counsel Ashida stated that if it is an agenda meeting, the public will have a right to give testimony, but they will not set aside that day specifically for testimony.

Chair Okabe asked that they move September's monthly meeting to September 13.

There were no further suggestions or discussion, and the motion carried with a nay vote from Commissioner Moe.

Commissioner Lambeth moved to accept the job description. The motion was seconded by Commissioner Manago and unanimously carried.

- Commissioner Manago's request for reconsideration of Complaint HPC 01-23 and his request for more clarification.

Commissioner Manago stated that he requested a reconsideration because they did not follow their standard procedure in sustaining all of the charges. They should have voted on each rule for each officer. Four individuals were investigated. They sustained all four on one vote. Normally they would decide on each officer and each rule.

Commissioner Manago moved to reconsider the complaint. The motion was seconded by Commissioner Bertsch.

Discussion: Commission Bertsch questioned whether they would reinvestigate the complaint or just correct procedural errors. Commissioner Manago stated that they needed to go through the charge for each individual officer, not reinvestigate the complaint.

The motion carried unanimously.

- Commissioner Manago's request for reconsideration of Complaint HPC 02-18 and his request for additional information from the officer.

Commissioner Manago stated that they did not get a statement from the officer. They should have found out from the officer what actually happened. They need to be impartial and render a decision based on all the facts. He doesn't believe that they had all the facts. Normally, when they have questions, they send it to the investigator.

Chair Okabe pointed out that the officer was notified of the complaint and was asked to come before the commission, but he did not. The complaint was sustained and referred to the chief. The commission does not have to refer a complaint to the investigator. They may make a decision by listening and reviewing what is presented to them at the meeting. They did not receive correspondence from the officer until after the meeting.

Commissioner Manago stated that they did not specify the rule that was sustained.

Commissioner Manago moved to reconsider Complaint HPC 02-18. The motion was seconded by Commissioner Lambeth and unanimously carried.

STATEMENTS ON AGENDA ITEMS (Executive Session)

Commissioner Manago moved 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 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. The motion was seconded by Commissioner Muller, and unanimously carried.

The commission convened into executive session at 2:55 p.m. and reconvened back into regular session at 3:28 p.m.

ACTION ON EXECUTIVE SESSION MATTERS

- Corresp., 54 request for legal counsel by Officer Fetutuunai Amuimuia in Civil No. 02-1-0258. Commissioner Lambeth moved that the officer acted within the scope of his duties and to approve legal counsel. The motion was seconded by Commissioner Muller and unanimously carried.
- Investigation and Deliberation of Complaints
Complaint HPC 02-15: Complainant alleged that an officer illegally parked his vehicle while issuing him a citation. Commissioner Lambeth moved to exonerate the officer. The motion was seconded by Vice Chair Hara and unanimously carried.

Complaint HPC 02-19: Complainant alleged that while vice officers were executing a search warrant on his home, a detective grabbed his wrist and pushed him back. The officer did not allow him to go in the house and make breakfast for his handicapped wife because the officer said it was secured and had to be searched. Commissioner Manago moved to exonerate the officer. The motion was seconded by Commissioner Lambeth and unanimously carried.

Complaint HPC 02-20: Complainant alleged that an officer did not render aid to victims in a car accident. Commissioner Manago moved to exonerate the officer. The motion was seconded by Commissioner Muller and unanimously carried.

Complaint HPC 02-21: Complainant alleged that while responding to an incident of a confrontation with his former employer, an officer told him that he was on drugs, that he should get help, and that the officer would not take his complaint and said it was not harassment. Commissioner Manago moved to exonerate the officer. The motion was seconded by Commissioner Lambeth and unanimously carried.

Complaint HPC 02-27: Complainant alleged that an officer sneaked up her stairs without calling out "hello". Commissioner Lambeth moved to exonerate the officer. The motion was seconded by Commissioner Manago and unanimously carried.

Complaint HPC 02-29: Complainant alleged that while citing a vehicle on the Kawaihae Road, an officer made the driver stop in a position that created a traffic hazard. Complainant also received a citation, and she alleged that the officer cited her for speeding in a 35 mph zone when she was actually in a 45 mph zone. Commissioner Muller moved to exonerate the officer. The motion was seconded by Commissioner Manago and unanimously carried.

Complaint HPC 02-32: Complainant alleged that while being arrested, an officer choked him, and he fell unconscious. When he woke up the officer's knee was on his head. The officer threatened to throw him down if he looked at anything. When he turned his head, the officer grabbed him and slammed him on the ground. The officer also used swear words and was hostile. Commissioner Lambeth moved to refer the complaint to the investigator. The motion was seconded by Commissioner Moe and unanimously carried.

Complaint HPC 02-33: Complainant stated that while being arrested, he resisted by keeping his arms apart so as not to be handcuffed. He alleged that he was sprayed with pepper spray and forced to the ground by five officers, and an officer choked him and wouldn't stop until his wife told him to stop. Commissioner Lambeth moved to exonerate the officer. The motion was seconded by Commissioner Manago and unanimously carried.

Complaint HPC 01-42: Akal Investigations investigated the complaint. Complainant alleged that while he was with a friend in downtown Hilo at about 2:30 a.m., an officer used profanity and threatened to beat him up. Commissioner Lambeth moved to not sustain the charges of Standard of Conduct and Performance of Duty. The motion was seconded by Commissioner Manago and unanimously carried.

ANNOUNCEMENTS

The next monthly meeting is scheduled for September 13, 2002, in Keauhou.

ADJOURNMENT

The meeting was adjourned at 3:40 p.m.

SUBMITTED:

APPROVED:

JOSIE PELAYO, SECRETARY

WILFRED M. OKABE, CHAIR