

**HAWAI'I COUNTY POLICE COMMISSION
SPECIAL MEETING MINUTES
REGULAR SESSION
SEPTEMBER 10, 2004
HAWAII NANILOA RESORT**

CALL TO ORDER

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

ROLL CALL

Present:	Horace S. Hara, Chair	Also Present:	Lawrence K. Mahuna, Police Chief
	Dwight K. Manago, Vice Chair		James Day, Major
	John M. Bertsch, Commissioner		Paul Ferreira, Captain
	James A. Frazier, Commissioner		Henry Tavares, Captain
	Pudding Lassiter, Commissioner		Kay Nishibayashi, Accountant
	Karolyn Lundkvist, Commissioner		Lincoln Ashida, Corporation Counsel
	Betsy Mitchell, Commissioner		Josie Pelayo, Secretary
	Peter M. Muller, Commissioner		

A quorum was present.

APPROVAL OF AGENDA

Commissioner Mitchell motioned to approve the agenda. Vice Chair Manago seconded the motion, and it carried unanimously.

STATEMENTS ON AGENDA ITEMS - Open to the public

JANENE CARACAUS, READ HER CORRESPONDENCE 04-59B. She stated that she passed on the wrong side of the road to avoid an accident. She stated that she was discussing Mr. Muller's behavior, and refused to answer any questions regarding her driving.

REVEREND MILLION, COMPLAINT HPC 04-34: Stated that he pulled into the express lane at 6:01 a.m. An officer pulled him over stating that it was 5:45 a.m., and the lane was not yet open. The officer was red-faced, and on chemical, not alcohol. The officer tried to initiate a fight and doctored the citation. His ministry investigates municipal and corporate corruption. Since talking to Captain Tavares and Sergeant Yamamoto, he has not had any problems. He gave notice to the commission that pursuant to state and federal law, all police commission meetings will now be recorded via laser satellite from three miles away.

AUDREY THEISEN LEE, COMPLAINT HPC 04-32: Her husband ran her over on Stainback Highway. He didn't want to take her to the hospital because they had no medical insurance. It was a freak accident, and she fell out of the car. The officer didn't ask why she fell out of the car. She wanted her husband charged with abuse of a household member, but he was not. She complained to the mayor and the prosecutor.

Vice Chair Manago stated that according to documents, she did not want her husband prosecuted. The prosecutor responded to her on two occasions. She sent a letter to one of the officers thanking him for his work.

Corporation Counsel Ashida stated that there are agencies that can assist her, and he asked to speak to her outside of the meeting room.

DEL PRANKE stated that with reference to 04-35, he's heard a lot about police officers not taking people's complaint. Even if the complaint doesn't go anywhere, they should still take the complaint.

He thanked the commission for the meeting which was 100% better than previous meetings he's attended. He appreciates the job they have done and that things have improved a lot.

With regards to police commission badges, he knows Commissioner Muller is an honorable person. He won't get into the he said, she said, but he has been pushing this for almost ten years. The police commissioner badges have no authority, and it doesn't mean anything. Maybe they should put the badge on a plaque for when they retire.

Regarding the police radio that some commissioners have, the charter says that they should not become involved in the internal operations of the police department. It's possible that they could hear something on the radio that could color their ability to deal with a complaint when it comes before them. It's not necessary for them to have a radio.

His main reason for being here is for Mrs. Keliikoa, Complaint 04-25. He wants to give background on Officer Sivankeo. When Wayne Carvalho lied about him trespassing on his neighbor's property, Officer Sivankeo took a complaint from Officer Toledo. This was a third person complaint of what Wayne Carvalho told Officer Toledo. Mrs. Keliikoa's case involved a reserve officer, and the public's right was misused because of special consideration of other officers.

CHARLES HANSON, COMPLAINT HPC 04-35: He made a complaint that someone lied on his written statement in order to petition for a restraining order. The police have a policy that they won't take this type of complaint. He doesn't have a complaint against the officers. His complaint is against the policy of the police department.

Corporation Counsel Ashida stated that the chief says it's not policy. The bottom line is that if he wants to make a criminal complaint, he can do so. The chief heard what he had to say, and the chief has a monthly commanders' meeting where he can relay this information. There are statutes of limitations, so the chief may be able to arrange to have a sergeant follow-up.

GREGORY PLUTA, COMPLAINT 04-05: Stated that the cops are not doing their jobs. His son was walking down the road and got killed. When cops go on their run, they should look up. His son is gone because this cop was not looking.

BRIAN DE LIMA, regarding Complaint HPC 04-32, Mrs. Lee's case. Officers are not informed about the order of temporary relief. In the past he has had to call up the sergeant or officer on duty, and ask them to follow-up and administer that order.

Regarding Correspondence 04-59, he considers Pete Muller a friend, and they live in the same district. Mr. Muller is very concerned about the community he lives in, and when he sees wrong, he tries to correct it. The complainant doesn't deny that she passed on the right hand side. That is an illegal maneuver. It is reckless driving punishable by 30 days in jail and a fine of up to \$1,000 as a petty misdemeanor. She should have thanked Commissioner Muller for pointing out to her the dangerousness of her actions and took it to heed. Instead, she has been very defensive and has accused Mr. Muller unfairly. The identification card and badge is given to commissioners as identification that they are police commissioners. Mr. Muller used it to identify himself. He approached the vehicle when it was at a stop sign, and he pointed out to her what she did wrong. She contends that he yelled at her. Anyone who knows Pete Muller knows he wouldn't yell. Mr. Muller, at the time, felt that it was appropriate to confront her about her driving. That person should actually be thanking Mr. Muller for bringing her driving to her attention. Him impersonating a police officer is total hogwash. If he were a police officer or saying he was a police officer, he would not be telling her, "I'm going to report you."

CORRINE KELIIOA, COMPLAINT HPC 04-25, stated that she was charged with abuse of her daughter. She has the right to discipline her daughter. Her husband is an ex-reserve police officer. During the incident, he came down. He wasn't a witness, but the officers questioned him. Officer Waipa wouldn't let her finish filling out the form. It took her days to fill out the form.

COMMISSIONER PETER MULLER, CORRESPONDENCE 04-59, stated that his precise words to Ms. Caracaus were said in a calm manner, "Do you know that passing on the shoulder is dangerous and illegal. Please slow down." He then told her that he was going to report her. He showed her his civilian identification card that is contained in a folder that includes his commissioner badge. In the future, he will take down the license plate number of unsafe drivers and report them to the police department.

APPROVAL OF MINUTES

Vice Chair Manago motioned to approve the minutes of August 13, 2004, regular and executive sessions with corrections. Commissioner Frazier seconded the motion and it carried unanimously.

PERSONNEL ORDERS

Vice Chair Manago motioned to accept Personnel Orders Nos. 2004-094 to 2004-104. Commissioner Muller seconded the motion, and it carried unanimously.

COMMUNICATIONS

Commissioner Frazier asked to add Correspondence 04-52A, 04-53A, and 04-54A, Corporation Counsel's responses. Vice Chair Manago motioned to accept the communications. Commissioner Muller seconded the motion, and it carried unanimously.

COMMITTEE REPORT

- **Budget and Finance (Hara/Manago):** Vice Chair Manago reported that the department is now working on the 2005 budget.

- **Office Management and Staffing (Muller/Mitchell):** The committee had no report.
- **Rules and Policies (Bertsch):** Commissioner Bertsch reported that they held a special meeting to discuss recommendations to the investigative process. The recommendations were sent to the chief for his comments. At that time they asked corporation counsel to review the revised rules and make recommendations.
- **Contractual Services (Frazier):** The committee had no report.
- **Public Relations (Hara/Lassiter):** The committee had no report.

CHIEF'S REPORT

Including:

- **Crime:** Major Day summarized the written report.
- **Traffic:** Major Day summarized the written report. As suggested by Commissioner Frazier at the last meeting, they have included DUI arrest by age group. They continue to have traffic fatalities, and are looking into ways to help prevent these accidents.

Major Day reported on their biggest drug bust. A van was brought in from California and the drugs were found hidden in the floor. A few days earlier they got a house that was an ice lab. Two weeks earlier they hit five house and recovered drugs, paraphernalia, and money.

Commissioner Frazier suggested getting information to the media, West Hawaii, that passing on the right side of the road is illegal. This is a bad problem on the Queen K Highway.

- **Personnel:** Captain Ferreira reported having 54 sworn vacancies, but with the 17 recruits, it's actually 37. They have 11 civilian vacancies. They will have open recruitment on September 25. He stated that the written exam and criminal history is the biggest reasons for failure.

Commissioner Lassiter stated that reading and writing in school is a problem. They should work with the schools because a lot of children look up to police officers.

Vice Chair Manago stated that to be a fireman you have to be 18 years old, but to be a police officer you have to be 21 years old. In that period of three years, they lose a lot of people. The chief has reported that they are looking into the cadet program.

Sage Million stated that people have said that they don't have a chance at becoming a police officer because they have not lived here a year and are not Hawaiian.

- **Finance:** Accountant Kay Nishibayashi summarized the written financial report. She explained that janitorial and air conditioning is higher because the cost was encumbered.
- **Commendations:** Chief Mahuna reported receiving four commendations.

- **Other Departmental Activities:**

Chief Mahuna reported that recruitment has always been a difficult process. The one-year residency requirement has been null and void for a few years, and they are taking police officers from other jurisdictions. In fact, they have a 15-year veteran from Wisconsin going through training. The statement that they do not take people not from Hawaii is not correct. He has talked to at least five people in the past few weeks that want to come over.

They want to provide a mentorship program for young adults 17-21 years of age. This seems to be the age group when young adults seem to get involved in activities that would exclude them from the recruitment process. Their civilian staff is just as taxed as their sworn staff, and the cadets could help with this.

The police department is proactive in trying to prevent traffic accidents such as using PSAs, speed boards, and officers working extra hours.

Commissioner Bertsch stated that they are faced with the same situation that happened with Commissioner Muller. He regularly sees people driving recklessly at a high rate of speed. They could tell people to call 911 to report reckless drivers.

Commissioner Lundkvist stated that she was raised in New York City, and applauds Commissioner Muller. Maybe they could turn things around and praise people for their good driving record.

Chief Mahuna stated that a person could pursue a reckless driving case, if he or she knows the individual. With regards to cameras on signal lights, the problem would be with resolution. If you get a blur going 90 mph, it would be difficult to identify the driver.

In response to Commissioner Frazier's inquiry into CIP projects and the possibility of getting independent money and then leasing, Chief Mahuna stated that they have not explored this

- **Commanders' Meeting Minutes:** No discussion.

Recess was called at 11:05 a.m. The meeting reconvened at 11:22 a.m.

UNFINISHED BUSINESS

- **SHOPO prohibitive practices complaint.** SHOPO believes that it is ill advised and premature for the police commission to adopt new rules and procedures. Corporation Counsel Ashida requested an executive session to consult with his clients, the commission.

- **Inquiry into the alleged attendance of two Hawaii County Police Commissioners attending a proceeding of the Administrative Review Board.** Corporation Counsel Ashida stated that this relates to the SHOPO complaint, and he would like to carry it on the agenda along with the SHOPO matter. Commissioner Bertsch stated that this was an inquiry into the attendance of the commissioners. Attendance has been acknowledged.

NEW BUSINESS

- **Correspondence 04-49**, from Lisa J. Sims-Hulsey requesting that the commission re-open her case. Decision was rendered on December 19, 2003. Ms Pelayo informed that Ms. Sims-Hulsey called to request that this be deferred to the next meeting in Kona. Commissioner Bertsch motioned to defer this to the next meeting in Kona. Commissioner Muller seconded the motion, and it carried with a nay vote from Commissioner Frazier.
- **Correspondence 04-52**, request for legal counsel from Officer Paul Bugado in Civil No. 04-00392 DAE. Commissioner Bertsch motioned to provide legal counsel. Commissioner Muller seconded the motion, and it carried unanimously.
- **Correspondence 04-53**, request for legal counsel from Officer Bryan Ellis in Civil No. 04-1-0106K. Vice Chair Manago requested an executive session in order to get Corporation Counsel's advice.
- **Correspondence 04-54**, request for legal counsel from Officer Wayne Mitsunaga in Civil No. 02-1-0149K. Commissioner Bertsch motioned to provide legal counsel. Commissioner Muller seconded the motion, and it carried unanimously.
- **Correspondence 04-58**, from Paul M. de Silva requesting an inquiry as to whether or not the location of the new police station in Captain Cook affords unwarranted advantages to Police Commissioner Dwight Manago and the Manago Hotel through the improper use of his office.

Corporation Counsel Ashida stated that he looked through the commission's rules and the county charter and didn't find anything about dispensing discipline on themselves. The only appropriate remedy is an Ethics Board case. Vice Chair Manago contacted him and asked about having this go to the Ethics Board. There is no mechanism for discipline. The mayor is the appointing authority for the commission. He could recommend removal with concurrence of the county council. Mr. Manago could ask for an opinion from the Ethics Board and send a copy to the mayor. He doesn't believe it would be a wise thing for the commission to investigate its own members because that is wrought with the appearance of impropriety and inherent conflict.

Commissioner Lassiter stated that they should not be investigating themselves. They need to work to make things better. In Mr. de Silva's letter, there's a lot of finger pointing- he did, they did, he did. That is not what they should be doing as a commission. They need to work together and support each other, and if they can't do that they should not be there.

Commissioner Bertsch stated that in Paul de Silva's letter, he said, "An effort to divert this matter to the Board of Ethics before submission to the mayor would be an unnecessary and suspicious diversion." Commissioner Bertsch stated that if they didn't give it to the Board of Ethics that would be a suspicious diversion in itself because they would be usurping the Board of Ethics' authority in performing their duty which is explicitly to look at something like this.

Corporation Counsel Ashida suggested that they refer this matter to both the Board of Ethics and the mayor.

Commissioner Bertsch asked what would be the suspicious diversion if they referred it to the Board of Ethics. He wants to do the right thing.

Seeing that Del Pranke was shaking his head, Corporation Counsel Ashida asked for his input. Del Pranke stated that the Board of Ethics rules covers this. Mr. Manago could ask for an advisory opinion, the commission as a third party could ask for an opinion, and so could Mr. de Silva. He told the commissioners that they could personally go out and ask for anything they want in their own district. Just because they're police commissioners doesn't mean they gave up their civil rights.

Vice Chair Manago stated that he has thought hard about this. He has always believed that he has gone out to better the community and the police department, and his family has been dragged through this. He is willing to step down as a commissioner, tender his resignation if he cannot gain their vote of confidence. If the commissioners truly believe that in presenting the things that he did, he did it for selfish purposes and not for the county and not for the people in the community, then he would step down as a commissioner today. He asked them to vote nay if they believe he has done this for a selfish purpose and aye if they believe he acted for proper purposes. If the nay outweighs, then he'll step down as a commissioner.

Del Pranke stated that they don't have the authority to ask for an inquiry, and he should not step down.

Vice Chair Manago stated that he wanted a vote of confidence because if they cannot trust him, if they do not believe that his work is honorable, if they don't think that they can work with him, then he shouldn't be a commissioner. He should step down and tender his resignation.

Corporation Counsel Ashida asked that they defer this to the next meeting in order for him to refer it to the Board of Ethics and the mayor and to contact Mr. de Silva to see what he would like to see happen. He doesn't believe it's appropriate for the commission to do something about its own members.

Commissioner Frazier stated that they have spent a lot of time looking at rules, and it was agreed that they don't have a rule to do this.

Chris Loos of the Hawaii Tribune Herald stated that she read the complaint and it seems clear that de Silva wants it referred to the mayor's office.

Corporation Counsel Ashida stated that he will confirm that, and suggested that they carry it on the agenda as unfinished business so they wouldn't lose track of it.

Commissioner Mitchell motioned to defer this matter to the next meeting. Commissioner Lassiter seconded the motion. Discussion: Commissioner Lassiter stated that if they can't support each other, then they don't belong on the commission. The motion carried with Vice Chair Manago abstaining.

- **Correspondence 04-59**, from Janene Caracaus complaining that Police Commissioner Peter Muller showed her his badge and yelled at her when she passed a vehicle on the right shoulder of the roadway.
- Correspondence 04-59A, 59B, 59C, 59D.

Corporation Counsel Ashida stated that in Ms. Caracaus's letter she stated that Lt. Medeiros refused to take her report. He spoke to Lt. Medeiros, and he understands that not to be true. She was informed that she has the right to pursue a criminal complaint, and that is not any business of the commission. This is similar to a previous correspondence involving Commissioner Manago, the mayor's office is already aware of this complaint. If there's any subsequent action, it will come from the mayor's office. He doesn't know if they have the legal authority to do anything or to censure one another.

Commissioner Lundkvist motioned to file this correspondence. Vice Chair Manago seconded the motion. Discussion: In response to Commissioner Frazier's inquiry as to how they would respond to Ms. Caracaus, Commissioner Bertsch stated that they have already responded to her in writing.

- **Correspondence 04-60**, from Corporation Counsel Ashida regarding police commission badges. (Attorney-client communication.) Del Pranke stated that this is an attorney-client privileged communication. He asked that the commission waive its privilege so that the public could see the document. Corporation Counsel stated that it's a decision of the commission and the chief. It does impact third parties and they do need to think about it further. They need to respond within ten days.
- **Correspondence 04-61**, from John Texeira requesting the commission's assistance in expediting the process of his car accident and obtaining the other person's insurance information. Ms. Pelayo stated that she spoke to Mr. Texeira. He is an elderly man who referred this matter to his daughter. The daughter stated that she doesn't want to file an official complaint. They just want help and want this treated as a correspondence. Commissioner Frazier motioned to refer this to the chief with his response at the next meeting. Commissioner Lassiter seconded the motion, and it carried unanimously.

STATEMENTS ON AGENDA ITEMS (EXECUTIVE SESSION) - Closed to the public.

Vice Chair Manago motioned 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 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 pursuant to HRS 92-5 (2) and Hawai'i County Charter Section 13-20 (b). Commissioner Muller seconded the motion, and it carried unanimously.

The commission convened into executive session at 11:55 a.m. Regular session reconvened at 2:50 p.m.

ACTION ON EXECUTIVE SESSION MATTERS

Investigation and Deliberation of Complaints

HPC 03-36: Complainant alleged that an officer violated the law when he towed her pickup truck and that he was unprofessional and arrogant. Vice Chair Manago motioned to exonerate the officer on the charges of Performance of Duty, Impartial Attitude, and Conduct Towards the Public. Commissioner Frazier seconded the motion, and it carried unanimously.

HPC 04-08: Complainant alleged that an officer has been stalking him and his family. Commissioner Bertsch motioned to exonerate the officer on the charges of Standard of Conduct, Obedience to Laws, Commission of a Criminal Act, Misuse of Position or Office, and Conduct Towards the Public. Commissioner Frazier seconded the motion, and it carried unanimously.

HPC 04-01: Complainant alleged that officers threatened her and used force. Commissioner Frazier motioned to not sustain the charges of Commission of a Criminal Act, Malicious Use of Physical Force, Mistreatment of Person in Police Custody, Use of Intimidation in Legal Proceeding, Truthfulness, Excessive Use of Physical Force, and Conduct Towards the Public. Vice Chair Manago seconded the motion, and it carried unanimously.

HPC 04-05: Complainant's son was hit and killed by an on-duty police officer. He complained about the manner in which the incident was handled. Commissioner Muller motioned to defer to Corporation Counsel for a written response. Commissioner Frazier seconded the motion, and it carried unanimously.

HPC 04-25: Complainant was arrested for domestic abuse. She complains about the manner in which officers conducted the investigation. Commissioner Muller motioned to exonerate the officers on the charges of Standard of Conduct and Performance of Duty. Vice Chair Manago seconded the motion, and it carried unanimously.

HPC 04-32: Complainant alleged that her husband abused her, and officers did nothing. Vice Chair Manago motioned to exonerate the officer on the charges of Standard of

Conduct and Performance of Duty. Commissioner Muller seconded the motion.
Discussion: Commissioner Lassiter stated that they need to help the complainant, and asked that Corporation Counsel direct her. The motion carried unanimously.

HPC 04-34: Complainant was involved in a traffic stop. He alleged that the officer falsified information and was overbearing. Commissioner Frazier motioned to refer this to the chief because there is an ongoing IA investigation. Commissioner Muller seconded the motion, and it carried unanimously.

HPC 04-35: Complainant alleged that on two occasions officers would not take his complaint that someone deliberately lied when a TRO was put on him. Vice Chair Manago motioned to refer this to the chief because the complaint asked that the policy be looked at. Commissioner Muller seconded the motion, and it carried unanimously.

- **Correspondence 04-56, SHOPO prohibited Practices Complaint.** SHOPO believes that it is ill advised and premature for the police commission to adopt new rules and procedures. Vice Chair Manago motioned to concur with Corporation Counsel's recommendation, and have him contact the chief on this recommendation. Commissioner Frazier seconded the motion, and it carried unanimously.
- **Correspondence 04-60, Police Commission Badges.** Vice Chair Manago motioned that the chair meet with the chief on this issue and report back to the commission. Commissioner Muller seconded the motion, and it carried unanimously.

STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS – None

ANNOUNCEMENTS

- Collection of files and documents - Done
- Chair Hara announced that the next meeting is scheduled for October 15, 2004, at 9:00 a.m., at the Ohana Keauhou Beach Resort, 78-6750 Alii Drive, Kona.

ADJOURNMENT

The meeting adjourned at 3:05 p.m.

SUBMITTED:

APPROVED:

JOSIE PELAYO, SECRETARY

HORACE S. HARA, CHAIR