

**HAWAII COUNTY POLICE COMMISSION
REGULAR SESSION MINUTES
OCTOBER 17, 2003
OHANA KEAUHOU BEACH RESORT**

CALL TO ORDER

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

ROLL CALL

Present:	Horace S. Hara, Chair	Also Present:	Lawrence Mahuna, Police Chief
	Dwight K. Manago, Vice Chair		Charles Chai, Assistant Chief
	John M. Bertsch, Member		Ronald Nakamichi, Major
	Paul M. de Silva, Member		Lincoln Ashida, Corporation Counsel
	Betsy Mitchell, Member		Josie Pelayo, Secretary
	Walter Moe, Member		
	Peter P. Muller, Member		

Absent Phoebe M. Lambeth, Member
 James A. Frazier, Member

APPROVAL OF AGENDA

Commissioner Mitchell motioned to have the Chief's report moved to the top of the agenda in order for Chief Mahuna to attend a press conference in Honolulu and to approve the agenda as amended. Commissioner Moe seconded the motion, and it carried unanimously.

CHIEF'S REPORT

CHIEF MAHUNA reported that fatal accidents have increased dramatically in the past year. Ice and opiates have been the cause of some accidents. They are taking proactive approaches to decrease the number of fatal accidents. They are doing an analysis on where these accidents are happening, doing public service announcements, and placing a speed course in strategic places around the island.

The police department, along with federal agencies, conducted simultaneous sweeps in East and West Hawai'i, dismantling a major ice operation between the Big Island, California, and Mexico. Over 100 agents and officers from other islands participated in the operation.

The SROs should be in the schools by the end of the month.

Chief Mahuna stated that he spoke with Corporation Counsel with regards to information that the commission requested, and he wants to be proactive. The commission has his full support in any type of information that it wants. They just need to get procedures in place that would accommodate the police department and the police commission, and he would be more than happy to provide that information to the commission.

Commissioner de Silva stated that the chief is very courageous and he appreciates it.

STATEMENTS ON AGENDA ITEMS - Open to the public

Corporation Counsel Ashida explained the difference between open and closed sessions, and that in order to speak in closed session, the officer involved must consent to it.

RHONDA ROBISON read her written testimony. She asked the commission to reconsider its decision to exonerate the officers in their complaints HPC 02-36, 3, 38, and 39. She asked for

the status on the suggestion made by Mr. Ashida to have two different staff attorneys to represent the commission and the department.

Corporation Counsel Ashida stated that with regards to the West Hawaii Today's article he said, "If and when there is a conflict." There is a difference between potential and actual conflict of interest. He can provide her with the phone number of the board of ethics and the disciplinary counsel.

NANCY CAPRI came before the commission to speak on her complaint HPC 03-24. She stated that during a seatbelt block, police officers mocked and laughed at her husband in public. She asked for a badge number and was denied it. An officer told her to talk to his lieutenant, and when she did, the lieutenant asked why she didn't look at the shield for the badge number. This was rude. Roadblocks are inconvenient for the members of the community. She wants the officers reprimanded. She was not in the vehicle with her husband. She was in the front car, and came down after her husband called her. There were no other witnesses.

LIEUTENANT ROBERT HICKCOX came before the commission to answer questions regarding his request for legal counsel in CV02-0149K. The commission had no questions.

LIEUTENANT BRADLEY BALLETEROS came before the commission in response to Complaint HPC03-24. He stated that he was a spotter and not in the area where Mr. Capri was stopped. He never talked to her husband. When she came down to speak to him, he was talking to a young woman about her husband who was in jail. Mrs. Capri was upset when she came up to him. Right after he told her to look at the officer's badge number, he realized that he had a vest on, so he gave her the name and badge number of the two officers. He was not rude. He gave her all the information she requested. They did everything by the book. No one was rude. After working an 8-hour shift, they don't want to get into any confrontation. She told him that she was going up the street to warn drivers about their roadblock.

LISA SIMS HURLEY came before the commission and read her written statement regarding her complaint HPC 03-23. During the incident, when her friend was asked to leave Huggo's, she merely stood still and watched. While she was watching, she was attacked and forced to the ground. She does not know who threw her to the ground. Because of her court case, she could not bring the witness there. It is her word against the police officers. She was a police officer and sergeant for 17 years. She asked the commission to defer its decision until her jury trial so that her witness and evidence could be used. Her witness would speak to the commission's investigator if her attorney allowed it.

DAWN TILLMAN came before the commission to speak on her Correspondence 03-89 regarding the enforcement of laws regarding runaways. . It was not directed to an officer. She has no doubt that the officer is a caring individual. Her concern is the police in general regarding runaways. They do not do follow-ups. In Puna, kids and stay at various ranches, work, and buy food and drugs. She received the chief's response.

REVEREND DENNIS SHIELD stated that he viewed the video of the Robisons and the police. The police violated rules and made rules on the spot. If you're suffering from cancer, you have enough on your plate. Officers have to be held in the highest standard.

Vice Chair Manago told Mr. and Ms. Robison that the commission did a complete and thorough investigation. They looked at both sides and all the evidence that was produced. They looked at what was lawful and what was not lawful and made a decision with what they had on hand.

RHONDA ROBISON stated that their concern is that the commissino did not receive all the relevant information. There were two pieces of evidence that the commission's investigator did not get. Because of their lawsuit, they are not willing to make a copy. They commission was not given adequate information. They claim there was more misconduct during their arrest.

REVEREND SHIELD stated that the tape was doctored

NANCYE CAPRI stated that the written complaint was correct, and that she was incorrect when she stated in her public statement that the lieutenant spoke to her husband

KEOLA WELLS stated that between all of them (Complaints HPC 03-36, 37, 38, 39, 40, 41) they filed 24 complaints. She wants to know why they were exonerated on all charges. She wants this in a letter.

EXECUTIVE SESSION STATEMENTS ON AGENDA ITEMS

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 11:20 a.m.

The commission reconvened into open session at 12:30 p.m., at which time lunch recess was called.

The meeting reconvened at 1:30 p.m.

APPROVAL OF MINUTES

Commissioner Moe motioned to approve the minutes of September 12, 2003, regular and executive sessions. Commissioner Mitchell seconded the motion, and it carried unanimously.

PERSONNEL ORDERS

Vice Chair Manago motioned to accept Personnel Orders Nos. 2003-107 to 2003-117. Commissioner Muller seconded the motion, and it carried unanimously.

COMMUNICATIONS

Vice Chair Manago motioned to accept the communications as listed. Commissioner Muller seconded the motion, and it carried unanimously.

COMMITTEE REPORT

- Budget and Finance (Hara/Manago)
Vice Chair Manago stated that the Honolulu Police Department has recently received accreditation, and Kauai is now looking into it. Our police department needs to work on this.

Assistant Chief Chai stated that right now they don't have the personnel to work on it, and it takes nearly three years to come up with the standards to meet accreditation.

Vice Chair Manago stated that they all received the department's 5-year plan, and if they have any suggestions or changes, to contact Captain Ferreira.

- Office Management and Staffing (Muller/Mitchell)
Commissioner Moe gave a brief report on the HSLEOA conference on Maui. It covered the media and how to make it your friend. Conflict management was also covered.

Vice Chair Manago gave a brief report on the NACOLE conference in Los Angeles. It was about transparency and allowing people to see into the police department. The commission needs to get it's own pamphlet out on filing complaints.

Chair Hara stated that they would like to have more commissioners attend the NACOLE conferences. They could consider attending the NACOLE conference rather than the HSLEOA conference.

- Rules and Policies (Moe/Bertsch)
Procedures for processing complaints was continued to the next meeting.
- Contractual Services (de Silva/Frazier)
Ms. Pelayo will check on the status of the investigator's ad.
- Public Relations (Hara/Lambeth): No report.

CHIEF'S REPORT

Chair Hara asked that they just highlight the items of interest since they have the written reports and the chief gave a report earlier.

- Crime and Traffic: Assistant Chief Chai reported on the recent home invasions in Kona. Two individuals are being held on federal charges. They had several robberies that occurred in close time frame. The detectives identified the suspects, but cannot give out more information.

Regarding the Leleiwi Beach complaints from last meeting, Leleiwi and Richardson Parks are now gated. But, the people have now moved to Kealoha Beach Park. Staff have met with the association, and they are considering gating that park, also, and making it a one-way road. They will make a presentation to the mayor.

They had another fatality last night whereby a 13-year old boy, on a bicycle, in Waimea, was struck. They now have 29 fatalities. At this time last year, they had only 19.

Vice Chair Manago inquired into the reason for the rise in traffic fatalities.

Assistant Chief Chai stated that some have involved ice, cannabis, and speeding. There has been a lot is speeding, inattention, and bad driving habits.

Commissioner Moe asked that they report on the status of unresolved homicides at the next meeting.

- Personnel: Major Nakamichi summarized the written report.
- Finance: Major Nakamichi summarized the written report.

UNFINISHED BUSINESS

Correspondence 03-81 from Christine Paul requesting deferral of her letter to Honolulu Police Chief Donohue and copy of letter from Les Kondo of OIP dated August 19, 2003. Commissioner de Silva motioned to file the correspondence with no other action. Vice Chair Manago seconded the motion, and it carried unanimously.

NEW BUSINESS

Administrative Review Board's presentation on its procedures.

Assistant Chief Chai stated that he would be discussing actual cases and would need to have that done in executive session.

Commissioner Mitchell motioned to have the first phase of the presentation done in open session, and the second phase in executive session to go over actual cases of officer misconduct and discipline. Commissioner de Silva seconded the motion, and it carried unanimously.

Assistant Chai read and explained his written handout on misconduct.

In response to questions, he stated that only the police department's investigation is given to the ARB. The police commission's reports are not given to the ARB.

They will review the procedures in giving the commission IA reports. The secretary would have to put in a request for specific reports. He doesn't know of anything that would disallow the chief from giving them information.

The ARB is structured whereby the chair is always the AC of Administration. The rest of the members are the other ACs and two majors. Only in the absence of those, will they use captains.

They do not summon anyone else to the board except the police officer. They also use written reports. The only record that is kept is the notes that the chair keeps, and this is pointed out to the accused officer. They keep the highlights of the discussion and summarize it. It is not verbatim. This is a summary to the chief. The board's decision to sustain, not sustain, etc., has to be unanimous. If the board cannot come to a final decision, it will be noted. The recommended discipline is summarized and recorded.

It is the responsibility of the IA captain and the chief to review the police commission's investigation. The ARB does not see the commission's investigation. To what extent they use it in the IA part, he didn't know.

Decision-making is not reasonable doubt, but probably between reasonable doubt and preponderance of the evidence.

An officer could request that a specific officer not be on the board. There is no procedure if the officer likes a specific board member. A board member could recuse himself.

The commission convened into executive session at 2:32 p.m. to go over actual cases of the ARB and then proceeded with the remainder of the executive session items.

The commission reconvened into open session at 3:05 p.m.

ACTION ON EXECUTIVE SESSION MATTERS

- Correspondence 03-90 and 90.1, request for legal counsel by former Police Officer Leonard Keao in CV 03-1-0082. Vice Chair Manago motioned to approve legal counsel. Commissioner Moe seconded the motion, and it carried unanimously.
- Correspondence 03-91 and 91.1, request for legal counsel by Lieutenant Robert Hickcox in CV 02-0149K. Vice Chair Manago moved to approve legal counsel. Commissioner Moe seconded the motion, and it carried unanimously.
- Correspondence 03-92 and 91.1, request for legal counsel by Chief Lawrence Mahuna and Deputy Chief Harry Kubojiri in CV 03-1-0152K. Vice Chair Manago motioned to approve legal counsel. Commissioner Moe seconded the motion, and it carried unanimously.
- Investigation and Deliberation of Complaints.
Complaint HPC 03-23: Complainant alleged that officers arrested her without probable cause, use force, and that the police report was false. Vice Chair Manago motioned to accept the complaint for further investigation. He would like the investigator to interview the other officers and witnesses at the scene. Commissioner Muller seconded the motion, and it carried with Commissioner Moe casting a nay vote.

Complaint HPC 03-24: Complainant alleged that during a seatbelt roadblock, officers responded in a sarcastic and unprofessional manner.

Vice Chair Manago motioned to accept the complaint for further investigation. Commissioner de Silva seconded the motion, and it carried with Commissioner Moe casting a nay vote.

STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS - None

ANNOUNCEMENTS

The next monthly meeting is scheduled for November 21, 2003, at 10:00 a.m., at the Waimea Civic Center.

Commissioner de Silva stated that the commission's rules need amendments. They don't track the charter. He asked that the secretary send a copy of the rules to each commissioner for them to make changes. The changes are to be given to the Rules and Policies Committee, and they will give a report at the Waimea meeting.

ADJOURNMENT

The meeting was adjourned at 3:15 p.m.

SUBMITTED:

APPROVED:

JOSIE PELAYO, SECRETARY

HORACE S. HARA, CHAIR

