

**HAWAI'I COUNTY POLICE COMMISSION
REGULAR SESSION MINUTES
NOVEMBER 19, 2004
WAIMEA CIVIC CENTER**

CALL TO ORDER

Chair Hara called the meeting to order at 9:05 a.m.

ROLL CALL

Present: Horace S. Hara, Chair
Dwight K. Manago, Vice Chair
John M. Bertsch, Member
James A. Frazier, Member
Pudding Lassiter, Member
Karolyn P. Lundkvist, Member
Betsy Mitchell, Member
Peter P. Muller, Member

Also Present: Lawrence K. Mahuna, Police Chief
Elroy Osorio, Jr., Assistant Chief
James Day, Major
John Dawrs, Major
Henry Tavares, Captain
Lincoln Ashida, Corporation Counsel
Josie Pelayo, Secretary

A quorum was present.

APPROVAL OF AGENDA

Vice Chair Manago motioned to approve the agenda with the addition of Correspondence 04-81, Mayor Kim's request for a representative to the fleet implementation-working group. Commissioner Muller seconded the motion, and it carried unanimously.

STATEMENTS ON AGENDA ITEMS - Open to the public

Corporation Counsel Ashida explained the difference between open and closed sessions and the reasons for both.

SHARON SELWYN (Complaint HPC 04-39): Her complaint is that she did not call the police to come to her residence, she called the crisis line, but the police showed up. She felt she was abused and her rights as a citizen were violated. The commission received her complaint, and she is there to answer questions. She suffers from depression, anxiety, and low back problems.

Vice Chair Manago stated that she was given a 24-hour citation to leave her daughter's property and not to have any communication, including telephone calls. After leaving the property, she made a phone call to her daughter. The officer did offer her transportation.

Selwyn stated that there was no abuse in the household. She was emotionally distraught because of problems she had been going through. She was not given an opportunity to gather her belongings. She called the crisis hotline, not the police. She doesn't know who called the police. The medication she had taken might have affected her situation.

Vice Chair Manago stated that according to the police report, her daughter didn't want her to sleep in the car on the property. He asked if it would have been better if she had called an ambulance rather than the crisis line.

Selwyn stated that she had been having problems for the past six months. Officer Morinaka told her that someone had to leave, and pointed out that her daughter had a baby. The officer tackled her from behind just for using her cell phone. She was denied getting warm clothes and her medication.

MICHAEL PESTANA (Complaint 04-37): Stated that he gave a statement in Kona and had nothing else to say.

Vice Chair Manago explained that his complaint was deferred in order for them to get the police report.

SARAH HO (Complaint HPC 04-39): She serves on the jail aversion counsel. She is concerned about how a person in a mental health crisis is handled by police officers. She hopes that officers learn that when someone is distraught, manhandling and handcuffing further harms the individual. She asked that officers direct people to the suicide and crisis line at 1-800-75ENTRY when they suspect mental health problems.

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 would 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.

Executive session convened at 9:35 a.m. Open session reconvened at 11:55 a.m.

APPROVAL OF MINUTES

Vice Chair Manago motioned to approve the minutes of October 15, 2004, regular and executive sessions. Commissioner Lassiter seconded the motion, and it carried unanimously.

PERSONNEL ORDERS

Vice Chair Manago motioned to accept Personnel Orders Nos. 2004-122 to 2004-139. Commissioner Muller seconded the motion, and it carried unanimously.

COMMUNICATIONS

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

COMMITTEE REPORT

- **Budget and Finance** (Hara/Manago): Chair Hara reported that Commissioner Frazier is interested in being on the committee.

- **Office Management and Staffing** (Muller/Mitchell): The committee had no report.
- **Rules and Policies** (Bertsch)
 - Time of meeting 9:00 a.m. vs. 10:00 a.m.: Chair Hara called for a vote to start the meetings at 10:00 a.m. All members voted nay. The meetings will continue as special meetings with a start time of 9:00 a.m.
 - Terminology of dispositions and rule changes: Corporation Counsel Ashida had no report of changes.
- **Contractual Services** (Frazier): Chair Hara reported that the County has extended the investigator's contract for an additional year.
- **Public Relations** (Hara/Lassiter): Commissioner Lassiter will send out a public release of Commissioner Frazier's NACOLE trip.

CHIEF'S REPORT

Including:

- **Crime:** Major Day summarized the written report.
- **Traffic:** Major Dawrs summarized the written report. Officers have been assigned to do traffic enforcement on the Queen K Highway. South Kohala is unable to assist with traffic enforcement due to manpower shortage. They are experiencing problems with commuters driving to Kailua-Kona through the Queen K, Mauka, and South Kona roadways

Commissioner Bertsch stated that the widening of the Queen K highway gives the impression that it's a four-lane highway, and people are passing on the shoulder. He asked if the police department could make public announcements that they would be going after people who drive recklessly. Chief Mahuna stated that it is already being done. Travis Loop of West Hawaii Today stated that he would like to work on something like that.

- **Personnel:** There were no questions or discussions to the written report.

Lunch recess was called at 12:20 p.m. The meeting reconvened at 2:00 p.m.

- **Finance:** There were no questions or discussions on the written report.
- **Commendations:** Chief Mahuna reported receiving 14 commendations since the last meeting.
- **Commanders' Meeting Minutes:** No report.

- **Other Departmental Activities:** Chief Mahuna reported that he and Deputy Chief Kubojiri attended the annual Asia Pacific Homeland Security Summit in Honolulu.
- **Chief's Year-End Report, Goals and Objectives:** Chief Mahuna reported that he submitted his year-end report, but that the Deputy would be adding an addendum to include the SRT. Chair Hara stated that they would be going over the Chief's year-end report in December, and if there isn't enough time, they could complete his evaluation in January.

Commissioner Bertsch asked to see the SRT communications command center.

UNFINISHED BUSINESS - None

NEW BUSINESS

- **Correspondence 04-74A, 74B, 7C, 7D, 7E, 7F, and 7G, Requests for Legal Counsel in CV04 005738PK:** Commissioner Bertsch motioned to approve legal counsel for all the officers except Officer Ah Mow because they need to get additional information from him. Vice Chair Manago seconded the motion. Discussion: Chair Hara stated that they would send Officer Ah Mow a letter stating that they deferred action on his request because they have some questions, and would like to have him attend the next meeting.
- **Commissioner James Frazier's Report on the National Association for Civilian Oversight of Law Enforcement (NACOLE) Conference:** Chair Hara recommended that in the future, agenda items be listed rather than attendees. Commissioner Frazier stated that he listed the attendees to show activity and interest.
- **Selection of Chair and Vice Chair for 2005 at December Meeting:** Vice Chair Manago stated that he would like to know who is interested and available to chair the commission in 2005. The Chair's position is a very, and the commissioners should communicate with and keep the Chair abreast of ongoing activities. Commissioner Frazier stated that he would not be available to hold the position because he sits on a State committee. Commissioner Bertsch stated that he would be available and would have the time to chair the commission.
- **Rescheduling of December Meeting:** Chair Hara stated that Chief Mahuna requested that they reschedule the December meeting because the Salary Commission has its meeting on the same day as the next Police Commission meeting.

Commissioner Muller motioned to move the December meeting to December 10. Commissioner Bertsch seconded the motion. Discussion: Ms. Pelayo stated that it would be at 9:00 a.m. at the Aupuni Center Conference Room. Chair Hara stated that the Charter says that the Salary Commission is to confer with the appointing authority, so the Salary Commission should ask for the Police Commission's input. The motion carried unanimously.

Corporation Counsel Ashida stated that he would have his Deputy, who is the attorney for the Salary Commission, have them send an invitation to the Police Commission.

Commissioner Bertsch motioned to support the Chief at the Salary Commission meeting. Commissioner Lassiter seconded the motion, and it carried unanimously.

Chair Hara asked the commissioners to give input to Vice Chair Manago in time for him to prepare a draft for their review on December 10. Vice Chair Manago stated that he would like to make a proposal similar to what they presented previously.

Commissioner Frazier asked to see national trends and what different municipalities pay.

Chair Hara asked Chief Mahuna to prepare a comparative report with the other islands.

Corporation Counsel Ashida (after a phone call to his Deputy) stated that the Salary Commission's meeting that morning was cancelled due to a lack of quorum. According to Mr. Takase, they will have committees discussing this with boards with appointing authority. It seems like they are not expecting input or plan to act on it at the December meeting.

EXECUTIVE SESSION

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 would 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 Frazier seconded the motion, and it carried unanimously.

Recess was called at 2:50 p.m. Executive session convened at 2:55 p.m. Open session reconvened at 3:07 p.m.

ACTION ON EXECUTIVE SESSION MATTERS

Investigation and Deliberation of Complaints.

- **HPC 04-02**: Complainant alleged that officers improperly investigated her automobile accident and erroneously put her at fault. Legal Eyes investigated the complaint. Vice Chair Manago motioned to exonerate both officers on the charges of Performance of Duty; Obedience to Laws, Written Orders, and Policies; and Impartial Attitude. Commissioner Lassiter seconded the motion, and it carried unanimously.
- **HPC 04-04**: Complainant alleged that he called the Police Department for personal assistance, and no officer came to his residence. Legal Eyes investigated the complaint. Commissioner Frazier motioned to exonerate the Police Department and the

officer on the charge of Performance of Duty. Commissioner Lassiter seconded the motion, and it carried unanimously.

- **HPC 04-30**: Complainant alleged that while Christian preaching outside of Wong Stadium, two officers used unnecessary physical force to remove him. Commissioner Muller motioned to exonerate the officers on the charges of Standard of Conduct; Performance of Duty; Obedience to Laws, Written Orders, and Policies; Commission of a Criminal Act; Malicious Use of Physical Force; Mistreatment of Person in Police Custody; Impartial Attitude; Overbearing Conduct; and Conduct Towards the Public. Commissioner Frazier seconded the motion, and it carried unanimously.
- **HPC 04-33**: Complainant alleged that an officer made accusations about him being a suspect in the theft of a wallet. Vice Chair Manago motioned to refer the complaint to the Chief because the complainant also filed a complaint with IA, and IA has an ongoing investigation. Commissioner Bertsch seconded the motion, and it carried unanimously.
- **HPC 04-37**: Complainant alleged that an officer called him a drug dealer and told him that he would be arrested for fighting. Commissioner Bertsch motioned to not sustain the charges of Standard of Conduct, Performance of Duty, Use of Intimidation in a Legal Proceeding, Impartial Attitude, Overbearing Conduct, and Conduct Towards the Public. Commissioner Muller seconded the motion, and it carried unanimously.
- **HPC 04-39**: Complainant alleged that officers made her leave her daughter's residence following a domestic dispute, and that she had bruises on her arm and a sore left eye from being pushed to the ground. Commissioner Bertsch motioned to exonerate the officer on the charges of Standard of Conduct; Performance of Duty; Obedience to Laws, Written Orders, and Policies; Commission of a Criminal Act; Falsification of Records; Malicious Use of Physical Force; Mistreatment of Persons in Police Custody; Excessive Use of Physical Force; Overbearing Conduct; and Conduct Towards the Public. Vice Chair Manago seconded the motion, and it carried unanimously.
- **HPC 04-40A, 40B**: Complainants alleged that officers falsely arrested them when neighbors complained about a domestic dispute. Commissioner Lassiter motioned to exonerate the officers on the charges of Standard of Conduct; Performance of Duty; Obedience to Laws, Written Orders, and Policies; Commission of a Criminal Act; Falsification of Records; Malicious Use of Physical Force; Mistreatment of Person in Police Custody; Use of Intimidation in Legal Proceeding; Truthfulness; Impartial Attitude; Excessive Use of Physical Force; Overbearing Conduct; and Conduct Towards the Public. Vice Chair Manago seconded the motion, and it carried unanimously.
- **HPC 04-41**: Complainant alleged that officers trespassed on private property and then falsely arrested him on a bench warrant. Commissioner Lassiter motioned to exonerate the officers on the charges of Standard of Conduct; Performance of Duty; Obedience to Laws, Written Orders, and Policies; Commission of a Criminal Act; Falsification of Records; Malicious Use of Physical Force; Mistreatment of Person in Police Custody;

Firearms Display and Discharge; Excessive Use of Physical Force; and Overbearing Conduct. Commissioner Bertsch seconded the motion, and it carried unanimously.

- **HPC 04-42**: Complainant alleged that an officer spoke to him in a sarcastic manner when he talked to him about violating a TRO. Commissioner Muller motioned that the charges of Misuse of Position, Use of Intimidation in Legal Proceeding, Impartial Attitude, and Conduct Towards the Public be unfounded. Commissioner Bertsch seconded the motion, and it carried unanimously.
- **HPC 04-43**: Complainant alleged that a CPS intake document had untrue statements made by an officer. Commissioner Lassiter motioned to not sustain the charge of truthfulness. Commissioner Bertsch 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 monthly meeting would be on December 10, 2004, at 9:00 a.m., in the Aupuni Center Conference Room.

ADJOURNMENT

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

SUBMITTED:

APPROVED:

JOSIE PELAYO, SECRETARY

HORACE S. HARA, CHAIR