

**HAWAI'I COUNTY POLICE COMMISSION
MINUTES – REGULAR SESSION
NOVEMBER 29, 2002
KEAUHOU BEACH RESORT**

CALL TO ORDER

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

ROLL CALL

Present:	Wilfred M. Okabe, Chair	Also Present:	Lincoln Ashida, Corporation Counsel
	Horace S. Hara, Vice Chair		Josie Pelayo, Secretary
	John M. Bertsch, Member		Acting Chief Lawrence Mahuna
	Peter Hendricks, Member		
	Daniel C. Kama, Member		
	Dwight K. Manago, Member		
	Water Moe, Member		
	Peter P. Muller, Member		

Absent: Phoebe M. Lambeth, Member

A quorum was present.

APPROVAL OF AGENDA

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

STATEMENTS ON AGENDA ITEMS (Open to the Public)

Corporation Counsel explained the difference between open and closed sessions. He cautioned the public about making statements that may be slanderous or libelous.

CHRISTOPHER AUKAI came before the commission to speak on his complaint HPC 02-55. Stated that he was driving around the corner from Verna's drive-in with six or seven of his friends when they came to a roadblock. He had to open his door to speak to the officer because his window was broken. They said he was pulled over for loud exhaust. The officer said, "Shut the fuck up," and other bad language. All his friends had the same kind of car, but he was the only one stopped for loud muffler. Officer Ballesteros told the other officer to give him a citation for exhibition of speed. He asked Ballesteros for the name of the person in charge at station, and Ballesteros told him he was in charge and to talk to him. He wanted to go back to station to talk to someone else. He got mad because he was getting tickets for nothing. Ballesteros said, "Fuck the tickets, just put him in jail." When he told the officer that he was 18 years old, the officer said, "Fuckin young punks you think you know everything." He did install an after-market muffler.

LIEUTENANT BRADLEY BALLESTEROS came before the commission and stated that they were working on a roadblock that night. They had three officers, and he was in charge. When Aukai came through, they noticed that his muffler was so loud that it sounded like he was trying to race. As soon as Aukai saw the roadblock reflectors, he slowed down. He had a bad attitude. According to statements, Aukai said he did not swear, he did. He wasn't as

squeaky clean as he claimed to be. Aukai asked him who was in charge at station, but he didn't know who was on duty because they were off-duty. He told Aukai that he was in charge there. He doesn't know what citations were issued. Exhibition of speed could be for a loud muffler. Aukai brought all the attention to himself. According to the complaint, he let a car without headlights go. He was the only one there on the line, so he told the person about the headlights. Sometimes people don't know their lights are out.

Regarding the complaint of his aggressive tone, his tone is set by how the driver speaks to him. If the person is belligerent, he isn't going to be friendly. Aukai was coming around a curve and was driving recklessly. He did threaten to arrest Aukai if he didn't tone down his behavior. It's hard to be work with someone who is argumentative. He did threaten to arrest him if he made a lot of noise. Sometimes people feel that if they get a ticket, they can make loud noises. It doesn't look good if they are standing there and someone peels out.

Commissioner Moe questioned whether it was smart to respond in that tone, and if would have been better to not be influenced by what a person says. He questioned whether there was a standard for mufflers. The sound of a muffler could be broadly subjective. He also questioned whether exhibition of speed is a judgment call.

Ballesteros stated that sometimes you need to use a voice that you mean business. In this case Aukai was belligerent. They don't have the equipment to measure noise level. The rule of thumb is anything other than factory. He doesn't think anyone there would have thought it was not loud. When Aukai was coming around the corner, he was really punching it. You don't need equipment to know that. Aukai has the right to go to court and argue with the judge that his muffler was not loud. If the engine is revving coming around a corner, that's exhibition of speed. He didn't know who was on duty because he was off-duty.

Vice Chair Hara questioned if they used profanity at any time.

Ballesteros stated that sometimes swear words get into his vocabulary.

Commissioner Bertsch questioned how no one could tell him who was on duty and if someone had a dispute, wouldn't they normally defer to someone at the station.

Ballesteros stated that he thought he said Lt. Medeiros was on duty. Aukai's father called the station, and he was belligerent also. He told the father to come done to the station to discuss the matter.

CHRISTOPHER AUKAI stated that his dad called the station because he was upset that he had three tickets and wanted to know what was going on. They wouldn't tell his dad who was in charge. They asked his dad if he had a bad record.

HOWARD MENDES came before the commission to speak on his complaint HPC 02-54. He doesn't want Officer John Rodrigues to be dismissed permanently, but feels that the officer should be disciplined for intimidating his 17-year old daughter. At the time, their daughter Louise was living in Hilo, and they were not able to be present with her. Officer Rodrigues

was absolutely wrong. He acted in an intimidating manner in uniform. No one from the school contacted him about having the officer speak to his daughter.

Commissioner Manago stated that he would like to question Mr. Mendes in executive session because the case involves a minor.

EXECUTIVE SESSION

Commissioner Bertsch 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 commission convened into executive session at 10:55 a.m., and reconvened back into regular session at 1:30 p.m. at which time lunch recess was called. The commission reconvened into regular session at 2:33 p.m.

APPROVAL OF MINUTES

Commissioner Manago moved to approve the minutes of October 25, 2002. The motion was seconded by Vice Chair Hara and unanimously carried.

PERSONNEL ORDERS

Commissioner Manago moved to accept Personnel Orders 2002-152 to 2002-167. The motion was seconded by Vice Chair Hara and unanimously carried.

Commissioner Bertsch inquired into why Whitney Jenkins and Rodney Aurello resigned. Acting Chief Mahuna reported that Aurello would be retiring to work for the TSA and Jenkins will be moving to the mainland.

COMMUNICATIONS

Commissioner Manago moved to accept the communications as listed. The motion was seconded by Vice Chair Hara and unanimously carried.

COMMITTEE REPORTS

- Budget and Finance (Manago/Okabe). Commissioner Manago reported that any additional requests for personnel would have to go to the Chief. The Chief then makes the request to the Mayor. If the Mayor approves it, it has to go to the County Council for approval of funding.

Acting Chief Mahuna reported that they should have the 5-year plan completed by the end of the year. The Mayor is looking at completing a lot of their CIP projects. He is aware that by delaying a lot of the CIP projects, the costs will go up.

- Office Management and Staff (Hara/Muller): The committee had no report.
- Rules and Policies (Moe/Bertsch): The committee had no report.

- Contractual Services (Kama): The committee had no report.
- Public Relations (Lambeth/Okabe): The committee had no report.

Acting Chief Mahuna reported that they have two police commission referred complaints pending.

CHIEF'S REPORT

- Crime: Acting Chief Mahuna summarized the written report.
- Traffic: Acting Chief Mahuna summarized the written report.
- Personnel: Acting Chief Mahuna reported that Assistant Chief Hickcox has been ill, and it is now more critical that he promotes a major for the area. They have 24 sworn and 14 civilian vacancies. Most of the civilian vacancies are for dispatchers. In conjunction with UHH and HCC, they will be having dispatcher training. They met with the Mayor and SHOPO and have come to an agreement that police officers are not to be guards for the jail. It is much cheaper to hire private security guards to do this. The police department will conduct training for the security guards.
- Finance: Acting Chief Mahuna summarized the written report. The department's budget was submitted to the county budget office.
- Commendations: Acting Chief Mahuna reported receiving 14 commendations since the last meeting.

UNFINISHED BUSINESS - None

NEW BUSINESS

- Methods of voting for the Chief of Police
Corporation Counsel Ashida advised that if the commissioners had specific questions about the legality of certain methods of voting, that they discuss it in executive session.

EXECUTIVE SESSION

Commissioner Manago moved to meet in executive session 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 Vice Chair Hara and unanimously carried.

The commission convened into executive session at 3:10 p.m. and reconvened back into regular session at 3:30 p.m.

- Methods of voting for Chief of Police
Commissioner Bertsch moved that each commissioner be supplied with one personalized ballot with the names of the applicants. They are to vote for one person. The secretary

will read the vote, and each commissioner will confirm his vote. The motion was seconded by Commissioner Muller and unanimously carried.

EXECUTIVE SESSION

Commissioner Moe 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 Kama and unanimously carried.

The commission convened into executive session at 3:45 p.m., and reconvened back into regular session at 4:17 p.m.

ACTION ON EXECUTIVE SESSION MATTER

- CORRESPONDENCE 70, request for legal counsel by Officers Verl Nakama, Chad Taniyama, and David Araki in CV 02-00285 LEK. Vice Chair Hara moved to defer this matter to the next monthly meeting in December. The motion was seconded by Commissioner Manago and unanimously carried.

INVESTIGATION AND DELIBERATION OF COMPLAINTS

COMPLAINT HPC 02-47: Complainant filed a report of fraudulent use of credit card. She alleged that she called an officer four times, but he never returned her calls. Commissioner Manago moved to decline further investigation because the complaint was unfounded and not based on facts. The motion was seconded by Vice Chair Hara and unanimously carried.

COMPLAINT HPC 02-48: Complainant alleged that when responding to a call of a domestic disturbance, the officer influenced what she reported and wrote down things that were not true. Commissioner Moe moved to decline further investigation because the complaint was unfounded and not based on facts. The motion was seconded by Commissioner Manago and unanimously carried.

COMPLAINT HPC 02-49: Complainant's daughter was involved in a traffic accident. He alleged that when he went to the scene, an officer responded in an overbearing and egotistical manner, did not show compassion for the injured, and was not impartial. Vice Chair Hara moved to refer the complaint to the Chief for administrative counseling. The motion was seconded by Commissioner Manago and unanimously carried.

COMPLAINT HPC 02-53: Complainant alleged that he was assaulted, but he was the one charged with assault. He also alleged that the officer left him in a hot car, didn't respond when he asked for medical assistance, and refused to take his complaint.

Commissioner Manago moved to decline further investigation because the complaint was received more than 60 days from the date of the incident. The motion was seconded by Vice Chair Hara. Discussion: Commissioner Manago stated although the complainant

requested a deferral until his criminal case was completed, the complaint was received more than 60 days from the date of the incident. The complaint form was mailed to him on 9/10/02, enough time for him to file the complaint. The motion carried unanimously.

COMPLAINT HPC 02-54: Complainant alleged that an officer interrogated his 17-year old daughter at school over a personal matter without his permission. Vice Chair Hara moved to refer the complaint to the Chief for administrative counseling. The motion was seconded by Commissioner Muller and carried unanimously.

COMPLAINT HPC 02-55: Complainant was stopped during a DUI roadblock. He alleged that two officers used profanity many times and threatened to put him in jail if he made any noise when he drove away. He also alleged that the only reason he was treated this way was because he was driving a Honda.

Commissioner Muller moved to decline further investigation because there was no misconduct on the part of the accused officers. The motion was seconded by Commissioner Kama. Discussion: Chair Okabe questioned the officer's reaction being based on how he was spoken to. Vice Chair Hara stated that he voted against the motion because of the officer's standard of conduct. They should vote on the 60-day rule and refer the complaint to the chief. The motion died when the remaining members voted nay.

Commissioner Moe moved to decline further investigation because the complaint was received more than 60 days from the date of the incident. The motion was seconded by Commissioner Muller. Discussion: Commissioner Bertsch stated that he was against the motion. The complaint tried to deliver the complaint on time, but the commission's office had moved. The motion died when aye votes were called by only Kama and Muller and nay votes by the remaining members.

Commissioner Bertsch moved to refer the complaint to the Chief for an administrative review and counseling. The motion was seconded by Vice Chair Hara and carried with a nay vote by Commissioner Muller.

COMPLAINT HPC 02-57: Complainant alleged that during a traffic stop, an officer was impartial, tried to provoke an argument, and brought up prior domestic disputes rather than just issuing the citations. Commissioner Manago moved to decline further investigation and to exonerate the officer because the incident was lawful and proper. The motion was seconded by Commissioner Bertsch and unanimously carried.

COMPLAINT HPC 01-43: Complainant alleged that she called 911 three times, but the police failed to respond. She was subsequently assaulted and alleged that if the police had responded, the situation could have been averted (Akai Security investigated the complaint.)

Commissioner Moe moved to not sustain the charges of Standard of Conduct, Performance of Duty, and Duty to Report all offenses because there was insufficient

evidence to either prove or disprove the allegations. The motion was seconded by Commissioner Kama and unanimously carried.

COMPLAINT HPC 02-09: Complainant alleged that following the recovery of his stolen motor home, three officers failed to follow proper procedures and failed to arrest the alleged suspect. An officer told him to take the TV and VCR which did not belong to him. (Akai Security investigated the complaint.)

For Officer #1, Commissioner Manago moved to exonerate the officer on the charge of Performance of Duty and on the charge of Standard of Conduct, to refer the complaint to the chief for counseling on the matter of the TV and VCR. The motion was seconded by Vice Chair Hara and unanimously carried.

For Officer #2, Commissioner Manago moved to exonerate the officer on the charges of Standard of Conduct and Performance of Duty. The motion was seconded by Vice Chair Hara and unanimously carried.

For Officer #3, Commissioner Manago moved to exonerate the officer on the charges of Standard of Conduct and Performance of Duty. The motion was seconded by Vice Chair Hara and unanimously carried.

ANNOUNCEMENTS

Chair Okabe announced that the commission would meet that evening at 6:00 p.m. in that same location to take testimony from the public on the Chief of Police finalists. They will have a meeting on December 9, 2002, at 10:00 a.m., in the County Council Room in Hilo to select the new Chief of Police. The next monthly meeting will be on December 13, 2002, at 10:00 a.m., at the Hilo Police Station.

ADJOURNMENT

The meeting adjourned at 4:40 p.m.

SUBMITTED:

APPROVED:

JOSIE PELAYO, SECRETARY

HORACE S. HARA, VICE CHAIR