

**HAWAI'I COUNTY POLICE COMMISSION  
REGULAR SESSION MINUTES  
COUNTY COUNCIL ROOM  
DECEMBER 19, 2003**

**CALL TO ORDER**

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

**ROLL CALL**

Present:	Horace S. Hara, Chair	Also Present:	Harry Kubojiri, Deputy Chief
	Dwight K. Manago, Vice Chair		Charles Chai, Assistant Chief
	John M. Bertsch, Member		James Day, Major
	Paul M. de Silva, Member		Lincoln Ashida, Corporation Counsel
	James A. Frazier, Member		Josie Pelayo, Secretary
	Phoebe M. Lambeth, Member		
	Betsy Mitchell, Member		
	Walter Moe, Member		
	Peter P. Muller, Member		

A quorum was present.

**APPROVAL OF AGENDA**

Vice Chair Manago motioned to add Correspondence 03-120, from Akal Investigations stating that in order to speed up their process, they would be e-mailing their reports and invoices to the commission's secretary. Commissioner Frazier seconded the motion, and it carried unanimously.

Commissioner Lambeth motioned to accept the agenda as amended. Commissioner Muller seconded the motion, and it carried unanimously.

**STATEMENTS ON AGENDA ITEMS** - None

**COMMENDATIONS**

Deputy Chief Kubojiri presented certificates of merit to Matt Klienfeldt and Officer Frank Mohica for their heroic acts in helping to save a surfer in distress on the afternoon of October 20, 2003. Also receiving certificates of merit were Wayde Towata and Officers Jose Feliciano and Burt Shimabukuro, but they were unable to attend the meeting.

**STATEMENTS ON AGENDA ITEMS (EXECUTIVE SESSION)** – None

**APPROVAL OF MINUTES**

- **November 21 and December 8, 2003, regular and executive sessions.**  
Commissioner Lambeth stated that she would like to amend page two of the December 8 minutes by omitting, "The commission affirms or not affirms the Chief's decision."  
Vice Chair Manago motioned to accept the minutes as amended. Commissioner Bertsch seconded the motion, and it carried unanimously.

## **PERSONNEL ORDERS**

- **Personnel Orders Nos. 2003-137 to 2003-147.**

Commissioner Lambeth motioned to accept the Personnel Orders as listed.  
Commissioner Frazier seconded the motion, and it carried unanimously.

## **COMMUNICATIONS**

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

- **Correspondence 03-112:** Commissioner Frazier stated that the Chief, his staff, and other police officers spend an inordinate amount of time waiting while the commission is in executive session. He asked for suggestions for better utilization of time.

Vice Chair Manago stated that the meeting format was brought up previously. The commission gave precedence to the public and police officers who came to give statements on complaints, and decided to accommodate them by taking their statements at the beginning of the meeting.

Chair Hara stated that the commission is an oversight body. To have the Chief, his Deputy, and his Assistant Chiefs show up gives credence to the commission. The commission only has meetings once a month, and it is not too much to have the leadership there. It's hard to field questions for a general without his commanders. It would be difficult to reschedule statements because they cannot be sure of the meeting timeline.

Commissioner Bertsch stated that when he first came on the commission, he told the Chief that they did not require his army's presence. However, over time he found that having these individuals present far outweighed the time spent waiting. The agenda varies greatly with regards to time. Sometimes they will finish by 12 o'clock and other times it's 5 o'clock. Their number one client is the public, and he is in favor of keeping agenda as it is now.

Corporation Counsel Ashida stated that he spoke to the Chief, and his preference is to be at the meetings.

- **Correspondence 03-114:** Corporation Counsel Ashida stated that, they needed to decide if they would allow the public to provide statements in executive session.

Commissioner Bertsch stated that there are members of the public who feel that by giving public testimony to the Police Commission, there could be retribution. The theory behind the Police Commission is that it gives an individual the opportunity to speak freely in either open or executive session. They might want to look at it as serving the best interest of the public.

- **Correspondence 03-115:** Commissioner Frazier motioned to have this discussed in executive session as it pertains to a procurement contract. Commissioner Lambeth

seconded the motion, and it carried with a nay vote by Commissioner Moe. Corporation Counsel Ashida stated that the law allows this.

- **Correspondence 03-116:** Chair Hara read the OIP's commendation to the Police Commission on preparing its agenda, "In closing, the OIP would like to note that the agenda provided for our review, and particularly the executive portion, is one of the most complete and detailed we have seen. We commend the Commission and its staff for its agenda drafting."
- **Correspondence 03-120:** Commissioner Frazier stated that Akal is addressing the issue, and e-mailing the reports and invoices is a good suggestion.

### COMMITTEE REPORT

- **Budget and Finance** (Hara/Manago) – The committee had no report
- **Office Management and Staffing** (Muller/Mitchell) – The committee had no report
- **Rules and Policies** (Moe/Bertsch) – The committee had no report.
- **Contractual Services** (de Silva/Frazier)  
Correspondence 03-115, from Purchasing Agent Bill Gray informing of proposals received for RFP No. 2097 to furnish investigative services for the Hawai'i County Police Commission (*confidential report*). Discussed in executive session.
- **Public Relations** (Hara/Lambeth) – The committee had no report.

### CHIEF'S REPORT

Including:

- **Crime:** Assistant Chief Chai stated that since last year, arrests on ice houses have tripled. They are looking to receiving monies for additional task force positions next year.

They recently got a break on last year's homicide on Saddle Road, and detectives have submitted good evidence to the lab.

- **Traffic:** Assistant Chief Chai reported that they now have 33 traffic fatalities for the year. Speed boards have been set up in West and East Hawai'i for the purpose of informing the public about speeding.

Commissioner Frazier expressed concern that the CPOs who are primarily managing the speed boards are being taken away from their community policing activities. Major Day stated that the sergeants are assisting them.

- **Personnel:** Deputy Chief Kubojiri reported that Reserve Chaplain Henry Kahalehili recently passed away. He also reported that the following officers would be retiring at the end of the year: Major David Kawauchi, Captain Julian Shiroma, Lieutenant Edwin Tanaka, Lieutenant Henry Hickman, Lieutenant Glen Nojiri, and Officer Warren Shaw.

Commissioner de Silva inquired whether changes were made as a result of past problems regarding promotions.

Deputy Chief Kubojiri reported that Chief Mahuna has implemented a merit-based promotion which is determined by a board that looks at testing, past performance, discipline, etc. Since Chief Mahuna has taken office, he has gone with the advice of the board. The board is made up of commanders in the area.

Vice Chair Manago inquired into whether there was a feedback system for officers who were bypassed for promotions. Deputy Kubojiri stated that as part of the process, they are told that they could make an appointment with the Chief's office to discuss the promotion.

- **Finance:** Commissioner Bertsch stated that they are expending a tremendous amount of overtime. Salaries and wages are at 30% and overtime is at 80%. Deputy Chief Kubojiri stated that there are a lot of different factors that come into play. The larger districts have more responsibilities, such as the cellblock. Holiday pay is overtime. Next year they should see a reduction because of positions being filled. However, they cannot fill positions of persons on extended sick leave.

Major Day stated that sick leave, holidays, and weather adds onto overtime. If they err, they will err on the side of too many. The smaller districts don't have that much happening and their need for overtime is not that great. All they need is one person calling in sick, and they will have overtime. They have a sergeant from Kona doing duty in Kohala, and his pay comes out of Kona.

Vice Chair Manago stated that part of the problem is that they have 33 vacancies. The true number should be 53 because the officers are still in recruit class. The only way to fill the shortage of bodies is with overtime.

Deputy Chief Kubojiri stated that because of the many ice search warrants, they are holding officers over. Officers work four days, have one day off, and spend at least one day in court.

- **Commendations:** Presented at beginning of meeting.
- **Commanders' meeting minutes:** Commissioner Frazier encouraged the other commissioners to attend the commanders meetings which he found to be very informative.
- **Other departmental activities:** Chair Hara stated that because of recent complaints on the use of OC spray, they would have a presentation on its use.

Officer Joseph Kealoha came before the commission and stated that he trains recruits on the use of OC spray. Officers are trained to draw the OC spray with their weaker arm so that they could use their stronger arm for their gun. It is recommended that

they use it from a distance of 2-5 ft. from the suspect or suspects. An exception to this distance goes according to the level of threat and continuum or escalation of force. Both the manufacturer and the Chief determined the distance for using OC spray.

Commissioner de Silva stated that he understands using OC spray very closely if it is life threatening, but General Orders doesn't say that. The General Orders on OC spray says that the commanders shall assure that it will be strictly enforced. If it's going to be on a continuum, the General Orders should say that. It would help them in analyzing misconduct if they knew what the officers were supposed to do. General Orders does not say anything about continuum of force.

Deputy Chief Kubojiri stated that they would look at the wording of the General Orders. They do not want any wrongful use of OC spray. OC spray is a tool that they provide to the officers on the street to get control of an individual without causing injury.

Officer Kealoha stated that even at point blank, OC spray is non-lethal. Prior to spraying, they yell, "OC spray," to warn other officers, not the suspect. Before spraying, they do not ask the suspect if he has asthma. It would be dangerous to use OC spray on children under five and the elderly.

### **UNFINISHED BUSINESS**

- **Follow-up to discussions at special meeting on December 8 on procedures for investigating complaints.**

Commissioner de Silva stated that he would like a flow-chart with written procedures in narrative form so that everyone could examine it. They could look at it at next month's meeting, fine-tune it at the next meeting, and at the following meeting formally adopt it.

Commissioner Bertsch stated that as the rules and policy committee, he will prepare a flow-chart with a narrative of each procedure.

Commissioner de Silva asked if before new procedures are set, the department would allow them to refer their cases to them for investigation and have IA report back to them with the complete investigation.

Deputy Chief Kubojiri stated that he couldn't say yes. If the commission refers it to IA, it takes IA out from under the purview of the Chief and puts it under the commission.

Commissioner Bertsch stated that he understood that IA would be investigating all cases referred to the Chief. They are trying to streamline the situation and have them look at it immediately. The commission's investigator could follow-up with an investigation if they felt there was insufficient information.

Chair Hara stated that with this meeting's complaints, they would do as in the past and referrals would go to the commission's investigator.

Commissioner Lambeth motion to defer this matter to the next meeting. Vice Chair Manago seconded the motion, and it carried unanimously.

### **NEW BUSINESS**

- **Annual evaluation of Chief of Police Lawrence Mahuna.**

Chair Hara stated that at the beginning of the year Chief Mahuna provided them with a list of his goals and objectives. In July they received the Chief's status report, and they did an informal evaluation. On December 8, they reviewed the Chief's status report for the year. They then completed a matrix of each commissioner's ratings, and Chief Mahuna was given an above average. Chair Hara summarized that that Chief Mahuna has identified and accomplished many of his goals and objectives. However, he needs to set approximate benchmarks for himself. He utilizes his staff well with his participative management style and leads by example. Chief Mahuna has been willing to review General Orders and other departmental policies and has been receptive to suggestions from the commission and the public. He is visible to departmental personnel and at community meetings.

Commissioner Frazier motioned to accept the Chief's evaluation. Commissioner Muller seconded the motion, and it carried unanimously.

- **Selection of Chair and Vice Chair of the Police Commission for 2004.**

Vice Chair Manago nominated Horace Hara for chair. Commissioner Moe seconded the motion. Commission de Silva spoke in favor of the motion, stating the Chair Hara has been extremely patient and runs the commission very well. The motion for Horace Hara as Chair carried unanimously.

Commissioner Frazier nominated Dwight Manago for Vice Chair. Commissioner Muller seconded the motion. Vice Chair Manago stated that he is honored to be vice chair, but because he will be on the commission for only one more year, he feels that a commissioner who will be there the following year would be a better candidate. Chair Hara stated that it was very helpful to have a chair and vice chair on two sides of the island. The motion for Dwight Manago as Vice Chair carried.

- **Correspondence 03-112**, from Corporation Counsel Ashida suggesting that the commission's meeting agenda be broken into two parts in order to allow the Chief and his subordinates to return to their duties earlier.

Commissioner Lambeth motioned to close the issue. Vice Chair Manago seconded the motion, and it carried unanimously.

- **Correspondence 03-114**, copy of letter from Corporation Counsel Ashida to Councilman Leningrad Elarionoff regarding his concerns of statements made to the commission by complainants and the accused.

Chair Hara stated that Corporation Counsel would consult with OIP and report back to them. Commissioner Lambeth motioned to defer this matter until Corporation Counsel

consults with OIP. Vice Chair Manago seconded the motion, and it carried unanimously.

- **Correspondence 03-118**, from the Salary Commission informing of its proposed tiered compensation plan and requesting comments from the Police Commission.

Chair Hara reported that the commission had requested that the Salary Commission increase the salary for the Chief of Police and Deputy Chief, and eventually they did. The Salary Commission is now proposing four different salary tiers for department heads, and would like the commission and police department's response. He asked the Chief and his staff time to review the proposals and give their response at the next meeting. Commissioner Lambeth motioned to defer this matter to the next meeting. Commissioner de Silva seconded the motion, and it carried unanimously.

Deputy Chief Kubojiri stated that they would present a report at the next meeting. Vice Chair Manago asked that they also compare it with Honolulu's tiered system.

- **Discussion on starting the commission's meetings at 9:00 a.m. rather than 10:00 a.m.**

Commissioner Muller motioned that the commission's meetings start at 9:00 a.m. rather than 10:00 a.m. Commissioner de Silva seconded the motion. Commissioner Bertsch stated that the rules and policies committee looked at this and made the recommendation. The motion carried unanimously.

Chair Hara stated that they needed to change the rule on the time of the meeting.

Corporation Counsel Ashida stated that they would have to have a public hearing on this before the rule could be changed. If they start at 9:00 a.m., they could call it a special meeting.

Lunch recess was called 11:50 a.m. The meeting reconvened at 2:00 p.m.

#### **INVESTIGATION AND DELIBERATION OF COMPLAINTS (EXECUTIVE SESSION)**

Commissioner Lambeth 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 2:04 p.m. and reconvened back into regular session at 3:13 p.m.

**ACTION ON EXECUTIVE SESSION MATTERS**

- **Correspondence 03-115:** Proposals received for RFP No. 2097 to furnish investigative services for the Hawaii County Police Commission. Vice Chair Manago stated that they had selected applicants #3, #4, and #6 for interviews. Letters will be sent out informing them that interviews will be conducted at the February meeting in Waimea. Chair Hara requested that Vice Chair Manago assist Commissioner Frazier in the process.
- **Complaint HPC 03-23:** Complainant alleged that she was falsely arrested and that four named officers used malicious and excessive force. Commissioner Bertsch motioned to not sustain the charges of Standard of Conduct, Performance of Duty, Obedience to Laws, Commission of any Criminal Act, Falsification of Records, Malicious Use of Physical Force, 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.
- **Complaint HPC 03-28:** Complainant alleged that he was mistreated during his arrest and that the officer falsified records. Vice Chair Manago motioned to not sustain the charges of Standard of Conduct, Performance of Duty, Commission of a Criminal Act, Falsification of Records, Malicious Use of Physical Force, and Mistreatment of Person in Police Custody. Commissioner Frazier seconded the motion, and it carried unanimously.

**STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS** – None

**ANNOUNCEMENTS**

Chair Hara announced that the next meeting is scheduled for January 16, 2004, at **9:00 a.m.** at the Ohana Keauhou Beach Resort.

Chair Hara also announced that this was supposed to be the last meeting for Commissioners Lambeth and Moe, but he requested that they stay on for an additional 90 days, and they both agreed.

**ADJOURNMENT**

The meeting was adjourned at 3:30 p.m.

SUBMITTED:

APPROVED:

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JOSIE PELAYO, SECRETARY

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HORACE S. HARA, CHAIR