

**HAWAII COUNTY POLICE COMMISSION
REGULAR SESSION MINUTES
DEPARTMENT OF LIQUOR CONTROL
HILO LAGOON CENTRE
FEBRUARY 20, 2009**

INVOCATION

Commissioner Kaiwi gave an invocation.

CALL TO ORDER

Chair Whittemore called the meeting to order at 9:02 a.m.

ROLL CALL (A quorum was present.)

Present:	Tom Whittemore, Chair	Also Present:	Harry S. Kubojiri, Police Chief
	Louis Kaiwi, Vice Chair		Paul Ferreira, Deputy Chief
	Richard J. Behenna, Commissioner		Derek Pacheco, Assistant Chief
	Pudding Lassiter, Commissioner		Henry Tavares, Assistant Chief
	Melvin S. Morimoto, Commissioner		Marshall Kanehailua, Major
	Anita Politano Steckel, Commissioner		James O'Connor, Captain
	Michael B. Sumja, Commissioner		Lincoln S. Ashida, Corporation Counsel
			Josie Pelayo, Secretary

Absent: Karolyn P. Lundkvist, Commissioner

Chair Whittemore welcomed students and teacher from Nawahi School who were there to observe the meeting.

APPROVAL OF AGENDA

Vice Chair Kaiwi moved to accept the agenda. Commissioner Morimoto seconded the motion, and it carried unanimously.

STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS – None.

APPROVAL OF MINUTES

Vice Chair Kaiwi moved to approve the minutes of January 16, 2009, regular and executive sessions. Commissioner Sumja seconded the motion, and it carried unanimously.

PERSONNEL ORDERS

Vice Chair Kaiwi moved to accept Personnel Orders Nos. 2009-004 to 2009-016. Commissioner Sumja seconded the motion. Discussion: In response to an inquiry by Commissioner Behenna, Chief Kubojiri stated that the employee makes the determination to take paid or unpaid leave for military leave. The motion carried unanimously.

COMMUNICATIONS

- Vice Chair Kaiwi moved to accept the communications for filing. Commissioner Lassiter seconded the motion. Discussion: Chair Whittemore stated that some commissioners have suggested cancelling participation in the upcoming conferences

due to budget constraints. They will go over the Chief's goals in executive session in the afternoon. The motion carried unanimously.

COMMITTEE REPORTS

- Budget and Finance (Whittemore/Kaoiwi) – No report.
- Office Management and Staffing (Whittemore) – No report.
- Rules and Policies (Behenna/Sumja) – No report.
- Contractual Services (vacant) – No report.
- Public Relations/Information (Lassiter/Behenna) – Commissioner Lassiter stated that the recent recruit graduation was very nicely done, whereby the family presented the shield to the officer.

Chair Whittemore stated that at the last meeting, there was discussion on expanding the Public Relations Committee. He will hold off appointing committee members until the new commissioners come on board.

Chair Whittemore spoke on his proposed Complaint Review Committee. The intent is that there would be two commissioners who would rotate on a quarterly basis. Captain O'Connor, of I.A., would be the point person with whom they would review actions taken on complaints forwarded to them. They want to be informed and to see what is really going on. Many times when I.A. gets back to them, they don't remember the case. He will appoint the members on an east-west basis for a four-month period. Commissioner Sumja moved to establish the Complaint Review Committee. Vice Chair Kaoiwi seconded the motion, and it carried unanimously. Chair Whittemore appointed Kaoiwi and Morimoto to the Complaint Review Committee.

Commissioner Politano Steckel informed that the Chief appointed an officer to work on the Fallen Officers' Monument.

NEW BUSINESS

Discussion on issues covered at 2008 National Association for Civilian Oversight of Law Enforcement Conference. Commissioner Behenna reported that he and Commissioner Sumja attended the NACOLE Conference in Cincinnati. It was a great experience, particularly for new members of the commission. There were different types of civilian oversight. Their intent is to raise some issues that seemed to be themes relevant to them. They looked at how different civilian oversight bodies collected and presented information, organized data, etc. He passed around samples for review. Many of the annual reports had a lot of statistical information and addressed different issues. They talked about the need for transparency.

Commissioner Sumja stated that many people were surprised that they hire the Police Chief because many of them do not. They know other things such as what punishment is meted out. They talked about getting younger people on the commission. There were

people from all over the world. They were tied up from 8:00 a.m. to 9:00 p.m. Next year it will be in Houston. He encouraged other commissioners to attend.

Commissioner Behenna stated that people were shocked that they had the ability to hire and fire the Chief. They discussed school policing. He passed around the San Jose Police Department's guide of police practices and resources for students and gave Chief Kubojiri a CD. Not knowing the discipline was outside the norm. Some organizations had elaborate case processes and some were informal. An example is policy recommendation being in the annual report. NACOLE has a recommended training program. They talked about recruiting commissioners and how the composition of an oversight board can affect how it operates and how it is perceived by the committee. If meetings are scheduled during the work week, it tends to affect working people and students. There was discussion about the police being a part of the community and the commission. There was discussion about reviewing the civilian oversight process, whether it should be internal, done by outside evaluators, themselves, or none at all. There was discussion on the role of mediation. It could eliminate a lot of stress, paperwork, and hurt feelings. He strongly supports having new people attend the conference.

Commissioner Lassiter told Commissioners Behenna and Sumja that they did an excellent job of reporting and bringing back information. The big police stations, such as San Jose, have paid auditors, but they have 5,000 to 6,000 officers versus here on the Big Island with only about 500. She felt that our officers are doing a great job.

Chair Whittemore stated that mediation was brought up for issues in the Kona Marketplace where they brought together all those who were involved. He likes the idea of involving younger people. A big challenge is this big island where they have to commute and, they move meetings around the island so people can conveniently attend.

CHIEF'S REPORTS

Including:

- **Crime:** AC Tavares summarized the written report. He stated that burglaries in the Puna area are occurring during the day when people are working. They are combating it by visibility, awareness, and getting information to the various community watches. Vice Chair Kaiwi stated that he talked with contractors in the HPP area, and there seems to be a ring that is hitting the construction sites. AC Tavares stated that the problem exists with many unoccupied homes. There is always a market for such items. People will pay \$100 for a refrigerator. They do not have officers working specifically on this, but they do have informants. They do find items on Craig's List, pawnshops, etc.
- **Traffic:** AC Pacheco stated that he did not have much to report. Traffic fatalities and DUIs are down, probably due to weather and officers being out on training. They are looking to get funding from the county to combat aggressive driving. The downward trend in the numbers correlate with the higher number of traffic citations. They do not keep records of accidents involving the use of cell phones. A lot of times during DUI

stops, other infractions are found. Officers in TEU do not rotate. Commissioner Kaiwi thanked the department for traffic enforcement in the Railroad Avenue area which has curbed speeding. In response to Commissioner Politano Steckel's concern about speeding in the Wainaku area, he will ask the CPOs to put out a speed board.

- **Personnel:** Major Kanehailua reported that they have nine sworn and eight civilian vacancies. A cadet class was started on February 5. Six cadets will be transferring over to Police Officer I. They will interview for the Accountant IV position today. They have an even number of east and west side recruits. Chief Kubojiri reported that since the last meeting, Ernest Matsumoto was promoted to Detective in CIS.
- **Finance:** Deputy Chief Ferreira reported that they will have a budget hearing on March 31 with the County Finance Committee. CIPs that have been identified as ready to go are the Pahoia station, the South Kona station, and the evidence station. Chair Whittemore asked to go over all the CIPs at the next meeting when they all have a copy of the report.
- **Commendations:** Chief Kubojiri reported receiving nine commendations since the last meeting.
- **Other Departmental Activities:** Chief Kubojiri thanked Commissioners Behenna and Sumja for the NACOLE report. After a quick overview of the San Jose Police Department's report, he found that much of it is covered in CALEA, so it's in the process for them.

Regarding the TEU, they are specialized, and the officers have been temporarily allocated to PO III. Their normal run is five years, and they can ask for an extension. Specialized positions have extensive training. After five years, they rotate back to patrol to pass on the experience. Specialized positions such as TEU, vice, and canine handlers run for five years.

The Department of Transportation is trying to get a state-wide ban on the use of electronic devices such as cell phones. They have attached age to it, and that is problematic because it would be tough to enforce. The police department supports safe driving.

Chief Kubojiri further reported that they will be starting a bicycle patrol soon. They have approximately 18 bicycles in inventory which were initially used by community policing officers years ago. The bicycles are now being restored to working condition. He wants to start using them in all the districts that will have an impact. They trained eight officers in East Hawai'i with funds from the Pahoia Weed and Seed program. West Hawai'i charges twice the amount to restore the bicycles, so they are looking at bringing the bikes into Hilo. Chair Whittemore suggested that they have Kona triathletes assist with training and that they look around for pricing.

INVESTIGATION OF COMPLAINTS: STATEMENTS ON COMPLAINTS

OFFICER JAMES WAIAMAU (Complaint HPC 09-06) stated that that morning he was proceeding to work in Kona when he was struck by another vehicle. His vehicle was left on the oncoming lane, so he took it off the road. He contacted the owner of the property, out of courtesy, not that he had done that to her property. He told her that officers were contacted and would be coming. Shortly thereafter Officer Castillo came to the scene. After looking at the scene, the officer made an assessment. The complainant claims that accidents there only happen on one side of the road. He believes it happens on both sides of the road. The only information he conveyed to her was that a vehicle had struck her fence. His vehicle never struck the fence. There was white paint on his vehicle from the other vehicle. He was in the middle of the road. It was raining. He moved his vehicle to the side because he didn't want to create a hazardous situation. Officer Castillo was at the scene the whole time and officially did the report. The site was inventoried. He doesn't know if the other vehicle left debris. He was shaken up. His car was never by the fence. He believes the other vehicle struck the fence. In response to Chair Whittemore's inquiry into whether there could have been a more thorough investigation, Officer Waiamau stated that he couldn't say what was done because he was not the investigating officer.

EVA KERR (Complaint HPC 09-06) stated that her allegation is that the report is fraudulent, and there is collusion on the part of all three officers – the officer who was involved, the investigating officer, and the acting sergeant. Mr. Waiamau's accident was number five. Every accident that occurred on her fence line occurred at exactly the same spot, cars going up Kaumana. She is challenging the White Cherokee. The responding officer never once asked her questions. She showed parts left behind from Officer Waiamau's car and part of the fence.

RICHARD CONRADT, KERR'S SON (Complaint HPC 09-06) showed a photo of the accident scene. He stated that Officers Castillo and Waiamau said the accident occurred where there was no evidence. They are not there for money, but because the investigation was not done properly. Their name was not on the report. Officer Tolentino took their name but it was not on the report. All accidents that occurred had to be towed away. Officer Waiamau's car had to be towed away. The white Cherokee drove away. They just want this to be investigated properly. He believes Officer Waiamau gave an untrue statement. They put out a report that the area is hazardous. Since then the county has corrected the roadway. The county has acknowledged that this roadway is a problem.

OFFICER DARRYL CASTILLO (Complaint HPC 09-06) stated that the accident happened in May 2008. Sometime late last year, the police RMS system went down, and they lost master names, and names were not linked up. Office Waiamau was going up Saddle Road. He said he was heading west when a white Cherokee struck his vehicle, and he spun out. Officer Waiamau moved his vehicle to the other side, the north side. There was debris. He did not determine where the debris came from; he didn't have the time to do it. He helped officer Waiamau transfer his firearms, clothing, etc. to his car. He had minimal conversation with Kerr or Conradt. He did not tell her that the county would pay for her broken fence. The complainants spoke to Sergeants Tolentino and Gali. All the evidence correlated with Officer Waiamau's statement. He wondered why the name was not on the

report. They did have a crash of their RMS. She is attacking his honesty. He is an owner-builder. It would cost \$20 for a length of lumber to fix her fence. He thinks she tried to get the county to pay for it but was denied. She wants the county to build a guardrail. When he got to the scene, Officer Waiamau had already moved his vehicle to the right side. There were other officers there, and he only observed the damage from far, about 20-30 ft. section. He did not take photos. He saw white paint on Officer Waiamau's car. Because the accident involved a police officer, it is considered a major accident. The protocol is for the Sergeant to come out. It is not required that they take photographs of every accident. His first concern would be if there were any injuries. After getting there, he was concerned about hazard on the roadway. He had minimal contact with the complainants. Sergeant Tolentino talked to them. There were no witnesses except for Officer Waiamau.

NINA MILLAR (Complaint HPC 09-03) stated that she is coming forward so that respect is given in future cases. She was not obstructing. A woman was assaulted by a boyfriend. She was in the home retrieving her things. The officers had been there previously for another assault. She was in shock that it was happening to her a second time. She had not realized she had refused service from the EMTs. She was told that she was arrested for being the aggressor. This involved a large man who has a history of violence. The report reads as though the aggressor was getting assistance from the police. She is a nurse. She could tell that she could not answer questions or think clearly. She was not present during the incident. She was put off by Ms. Sharpe being put in handcuffs and taken away. She thought she was leaving with the EMTs. There were no witnesses to the abuse.

LAURA SHARPE (Complaint HPC 09-03) stated that on 11/3, her daughter called 911 because she saw him abuse her. Officer Nagata came at that time. They were interrogated separately. During this incident, 11/16, Mr. Fillmore had been drinking. He was listening to phone messages, got upset, and threw a bottle at her. She had been packing and trying to get out of the home. It escalated and Mr. Fillmore hit her very hard across her face and beat her repeatedly on her head. She called her friend who is a nurse, and she told her to call the police. She thought she signed a form to go to the hospital. Officer Nagata told her friend that she signed a form not to go to the hospital. It was the EMT's form refusing medical attention. She thought it was for medical attention. When the EMT gave her the form, she didn't hear that she was refusing treatment.

Chair Whittemore stated that there were photos of Mr. Fillmore's injuries, but none of hers.

OFFICER NAGATA (Complaint HPC 09-03) stated that the first incident was on November 13 when her daughter called. If they see injury they can make an arrest. Her daughter did not see the incident with the knife. In this incident, she said she was hit. They went to talk to the gentleman. He had scratches, so he asked what happened. He accused her of cheating. He removed himself from the scene and went into another room and locked the door. She burst in with the binoculars. He said he got injured, probably when he pushed her away. They determine who the aggressor is by what is said and who has injuries. The man removed himself from the scene, and she pursued him. He only saw redness on her cheek. The man had more visible injuries, scratches on his stomach and arm. He asked

her if she wanted to go to the hospital. She said, "No." He told her that based on his observations, she would be arrested. At that point she said she wanted to go to the hospital. When her friends came, he allowed them to get her belongings. He explained the situation to her friend. He is not sure what the EMTs did. The only injury he observed was redness to her cheek which she pointed out. The man had scratches to his wrist and stomach. They both refused EMT treatment. He could not tell who had defensive wounds. What the man said made sense. He pushed her away in order to get away. When it escalated he removed himself. They determine who the aggressor is and who has the more serious injuries. He did not explain the form because the EMTs gave it to her. The medics always explain what the form is for. He just witnessed the form. From his viewpoint, the form was explained to her. He did not refuse her treatment. He was going to take her to hospital, but she wanted him to take the handcuffs off, which he was not going to do. Officers are allowed to use the radio while on duty, and it wasn't that loud.

ANDRES FOJAS (Complaint HPC 09-05) stated that the complainant was cited for speeding through a construction zone. As he walked away, she told him he was profiling Honda's. Her citations were for speeding. She was found guilty for one citation. The other was dismissed because he was on training on Maui and could not go to court. In his training on radar, it was recommended that they do not show the radar due to safety reasons. He has not had any other contacts with her. They drive unmarked vehicles.

STATEMENTS ON COMPLAINTS (open to the public)

EXECUTIVE SESSION (closed to the public)

Vice Chair Kaiwi 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 would be involved and to consult with Corporation Counsel on questions and issues that pertain to the commission's powers, duties, privileges, immunities, and liabilities pursuant to HRS 92-5 (2) and Hawaii County Charter Section 13-20 (b). Commissioner Sumja seconded the motion, and it carried unanimously. Executive session convened at 12:40 p.m.

Regular session reconvened at 3:21 p.m.

ACTION ON EXECUTIVE SESSION MATTERS

Complaint HPC 08-33: Complainant alleged that an officer disclosed her confidential medical records without her authorization. Commissioner Behenna moved that there was insufficient evidence to prove the complainant's allegation. Commissioner Sumja seconded the motion, and it carried unanimously.

Complaint HPC 09-03: Complaint alleged that an officer should have arrested her boyfriend instead of her for domestic abuse. Commissioner Sumja moved to defer the complaint to the next meeting in order to ask the officer additional questions. Commissioner Morimoto seconded the motion, and it carried unanimously.

Complaint HPC 09-05: Complainant alleged that an officer harassed her by giving her traffic citations. Commissioner Behenna moved that there was insufficient evidence to prove the complainant's allegations. Vice Chair Kaiwi seconded the motion, and it carried unanimously.

Complaint HPC 09-06: Complainant alleged that the officers' report of a traffic accident was inaccurate and misleading. Commissioner Behenna moved that there was insufficient evidence against Officer Waiamau and to refer the complaint against Officer Castillo and Sergeant Tolentino to the Chief for an Internal Affairs investigation into procedural and operational concerns. Vice Chair Kaiwi seconded the motion, and it carried unanimously.

EXECUTIVE SESSION (closed to the public)

New Business: The commission will work with Chief Harry Kubojiri on his goals for 2009.

Commissioner Sumja moved to meet in executive session to discuss personnel matters and to consult with Corporation Counsel on questions and issues that pertain to the commission's powers, duties, privileges, immunities, and liabilities pursuant to HRS 92-5 (2) and Hawaii County Charter Section 13-20 (b). Commissioner Politano Steckel seconded the motion, and it carried unanimously.

Executive session convened at 3:40 p.m.

Regular session reconvened at 5:05 p.m.

STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS: None.

ANNOUNCEMENTS

- Ms. Pelayo announced that the next monthly meeting would be on March 20, 2009, at 9:00 a.m., at the Department of Liquor Control Conference Room, 75-5722 Hanama Place, Suite 1107, Kailua-Kona.
- Collection of files and documents. – Done.

ADJOURNMENT

The meeting was adjourned at 5:10 p.m.

SUBMITTED:

Josie Pelayo

APPROVED:

Tom Whittemore