

HONOLULU POLICE COMMISSION  
City and County of Honolulu  
State of Hawaii  
Minutes of the Regular Meeting  
August 15, 2018

CALL TO ORDER                      Chair Sheehan called the meeting to order at 2:04 p.m. on Wednesday, August 15, 2018, in Conference Room A at the Honolulu Police Department Alapai Headquarters

PRESENT                                Loretta A. Sheehan, Chair  
    Steven H. Levinson, Vice-Chair  
    Shannon L. Alivado, Member  
    Karen Chang, Member  
    Jerry Gibson, Member  
    Richard T. Grimm, Member  
  
    James K. S. Yuen, Executive Officer  
    Denise W. Wong, Deputy Corporation Counsel  
    Erin Marie Yamashita, Secretary

ALSO PRESENT                        Susan Ballard, Chief of Police  
    Jonathon B. Grems, Deputy Chief of Police  
    John D. McCarthy, Deputy Chief of Police

ASCERTAINMENT OF QUORUM                      Counsel Wong ascertained that a quorum was present

CHIEF OF POLICE REPORT

Chief Ballard reminded commissioners of the retirees' banquet at the Ala Moana Hotel. She informed commissioners there are approximately 400 attendees and commended those who organized the dinner. Commissioner Chang invited commissioners to attend as her guests.

Commissioner Gibson asked how many employees retire from HPD each year. Chief Ballard said there are usually around 60 to 70 retirees a year.

Accreditation

Chief Ballard reported that HPD has received its re-accreditation. During a trip to Michigan in July, she met with the CALEA representatives and completed the accreditation. She also explained the re-accreditation process has changed and now the agency, in this case HPD, will have to show that HPD is operating within the standards annually. The new system is an online system and HPD will be notified if anything is lacking. The site visit will be conducted on the fourth year.

Japan Visit

Chief Ballard reported she accompanied Mayor Caldwell on a trip to Japan to meet with the Honolulu Festival Board and Japan Airlines. The purpose of the trip was to go to Hokkaido and work with them to bring their fireworks show back for the Honolulu Festival. They also attended the Kanto Lantern Festival in Akita and met with the Mayor of Akita as well as the chamber of commerce who did commit their return to the Honolulu Festival. Chief Ballard was also able to meet with the Akita Chief of Police.

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### Questions and Comments by Commissioners

Chair Sheehan mentioned she read an article in the *Honolulu Star-Advertiser* on its role in working with the City to deal with the homeless issues, and commended Chief Ballard and HPD.

Vice-Chair Levinson added that, in his view, HPD resources are being used in the right way, and he thinks the unit Captain Mike Lambert is heading has fantastic potential. He hopes the operation develops to its maximum potential.

Vice-Chair Levinson requested a status update on the Law Enforcement Standards Board. Chief Ballard said they have not been contacted; however, a letter was sent to the Attorney General informing them HPD is ready to participate.

### APPROVAL OF MINUTES

Commissioner Grimm made a motion to approve the July 18, 2018, meeting minutes.

Commissioner Chang seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.

### PUBLIC TESTIMONY

None.

### NEW BUSINESS

#### Report on Actions Taken at the Executive Session of June 20, 2018

Commissioner Alivado reported that commissioners approved the May 16, 2018, executive session minutes and took action on three cases involving three complainants and seven officers.

Complaint 18-023 involved one complainant and five officers. One officer was exonerated of the excessive use of force charge. Four officers were exonerated of the malicious use of force charge.

Complaint 18-024 involved one complainant and one officer. The officer was exonerated of the conduct unbecoming an officer charge.

Complaint 18-029 involved one complainant and one officer. The complaint of conduct unbecoming an officer was not sustained.

Commissioner Alivado then made a motion to accept the report. Vice-Chair Levinson seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.

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### Commissioner Individual Reports on Commission Business

Commissioner Alivado reported she and Executive Officer Yuen attended the 190<sup>th</sup> Recruit Class family night. Deputy Chiefs Grems and McCarthy were also in attendance. Commissioner Alivado suggested the commissioners continue participating in the event, as it gives the new recruits a chance to be familiar with who they will respond to at different junctions in their careers. What was most beneficial was seeing the existing recruits interact with the incoming recruits and that their presence eased the new recruits.

Vice-Chair Levinson reported that he and Commissioner Alivado attended the HPD Recognition Ceremony. This event acknowledged the promotions of approximately 60 officers. He said the atmosphere in the room had a lot of enthusiasm and good feeling.

Chair Sheehan announced the Mayor has nominated Ms. Carrie Okinaga to the Honolulu Police Commission. Commissioner Alivado reported she was at the City Council meeting this morning and expressed her personal support for Ms. Okinaga, and that her appointment was referred to committee. Chair Sheehan informed those in attendance that she thinks Ms. Okinaga will be a great addition to the Commission and will be meeting with her on Friday. She also encouraged other commissioners to reach out to her if they wish.

### Consideration of Requests for Legal Counsel

#### Sergeant Cyrus Hanuna, USDC Civil No. CV17-00581 JMS-KJM

Commissioner Gibson made a motion to approve the request for legal counsel from Sergeant Cyrus Hanuna for USDC Civil No. CV17-00581 JMS-KJM. Chair Sheehan seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried. A letter will be sent to the requesting officer informing her of the Commission's decision.

#### Officer Richard Y. S. Song, USDC Civil No. CV17-00581 JMS-KJM

Commissioner Gibson made a motion to approve the request for legal counsel from Sergeant Cyrus Hanuna for USDC Civil No. CV17-00581 JMS-KJM. Vice-Chair Levinson seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried. A letter will be sent to the requesting officer informing her of the Commission's decision.

#### Officer Minh-Hung Nguelyn, Civil No. 17-1-1802-11 (KKH)

Chair Sheehan explained Judge Hiraoka has ruled the Commission should have provided Officer Minh-Hung "Bobby" Nguyen with legal counsel under HRS 52D-8. The consideration was included on the agenda because the Commission is the only authority to grant/provide legal counsel to an officer. Chair Sheehan then explained that Vice-Chair Levinson advice is the Commission should wait for the written judgement.

Officer Minh-Hung Nguyen, Civil No. 17-1-1802-11 (KKH) (Continued)

Vice-Chair Levinson then read from Judge Hiraoka's Order on Appeal filed on July 13, 2018, noting the decision by the Commission was reversed. The Order also instructed Officer Nguyen's counsel to prepare a judgement that complies with the appropriate rule of civil procedure and the controlling Hawaii Supreme Court case law on the subject of final judgements. He then added it is his (Vice-Chair Levinson's) view that it is the judgement that formally orders the Commission to take action. If commissioners were to grant legal counsel prior to the judgement being filed, even though it is premature, he does not think anyone would complain but there would be a technical issue.

There was discussion if the Commission would have to prepare findings of fact, conclusions of law, and decision and order; however, because the Commission is being directed to grant the request, it may not be necessary. Chair Sheehan then asked Counsel Wong to reach out to Officer Nguyen's attorney and check on the status of the written judgement.

(Recess from 2:38 – 2: 48 p.m.)

PUBLIC HEARING FOR THE REVISION OF HONOLULU POLICE COMMISSION  
RULE 10 AND RULE 11

Chair Sheehan explained the Commission has proposed an amendment to the Rules of the Honolulu Police Commission and has undertaken rulemaking pursuant to HRS Section 91-3.

The purpose of the proposed amendment is to (i) revise Rule 10 to conform to with the changes related to the discipline or termination of the Chief of Police as set forth in Section 6-1603 of the Revised Charter of the City and County of Honolulu as amended on November 8, 2016, (ii) to clarify Rule 11 with respect to Hawaii Revised Statutes Sections 52D-8 and 52D-9; and (iii) to provide that the hearings conducted under Rule 11 will generally be open to the public.

Chair Sheehan said Commission was prepared to accept and consider any public testimony and take action as appropriate. There was no written testimony or anyone in attendance to provide oral testimony.

Chair Sheehan then made a motion to accept the amendments to HPC Rules 10 and 11. Vice-Chair Levinson seconded the motion.

Discussion: Commissioner Grimm asked that the reference to the Chief as "him" be corrected to "her" since we have a female Chief of Police. It was explained to Commissioner Grimm that the bracketed sections were for deletion and that the draft was correct.

Commissioner Grimm then asked to discuss Rule 11 and expressed his concern for Section E and the usage of the words "required" and "authorized." He wanted to know how commissioners would prove authorization because there have been cases in which an officer is at a location and other officers show up and charges against one of the officers are made. Commissioner Grimm wanted to know how commissioners would know the officers have been authorized or how they would get authorized to be at a location at the particular time.

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### PUBLIC HEARING FOR THE REVISION OF HONOLULU POLICE COMMISSION RULE 10 AND RULE 11 (Continued)

Vice-Chair Levinson explained that “required” or “authorized” work-related activity is work-related activity that police officers are supposed to do. He further explained that the terms “incident to” in the proposed Rule 11 are very important, because claims in lawsuits, complaints, or indictments allege unlawful conduct even though the conduct may have been undertaken in the performance of duty as a police officer. What the rule says the officer has to show is that what the officer is being sued for is related to work the police officer is supposed to be doing.

Commissioner Grimm appreciated the explanation but said he was still concerned with “authorized.” Chair Sheehan then said it is the burden of the police officer requesting counsel to show he/she was authorized under his/her role as a police officer to do the activity.

Vice-Chair Levinson asked Commissioner Grimm if his concern was about an officer who would happen upon scene to which Commissioner Grimm acknowledged that was his concern. Vice-Chair Levinson explained the authorization does not have to be specific to an officer on a specific occasion and that the idea is, is what he/she is being sued for the kind of things police officer are required or authorized to do. Commissioner Grimm then provided an example of an officer being authorized by his captain in which charges were brought against the officer and he was disciplined.

Vice-Chair Levinson provided an example of an allegation that an officer effected an unlawful arrest and the analysis by the Department of the Corporation Counsel has been the same as the Commission’s—that making arrests is the kind of activity police officers are authorized to do. Whether the arrest was allegedly unlawful does not matter when making a determination of whether the officer is entitled to legal counsel.

Vote: Unanimous.

Chair Sheehan then informed those in attendance that the amended rules will be forwarded to Corporation Counsel for approval of form and legality and then to the Mayor for signature. Once signed, the rules will be filed with the City Clerk and will become effective 10 days after filing.

### EXECUTIVE OFFICER’S REPORT

Executive Officer Yuen reported there have been 44 complaints registered this year. There are six pending investigations, 15 cases referred to PSO, and one complaint withdrawn. During the same time last year, there were 54 complaints registered.

Due to the vacancies of two investigator positions, we are in the process of hiring an 89-day contract investigator. Background checks are currently underway and it is hopeful the investigator will start work on September 1, 2018.

A review of applications is complete for the two vacant investigator positions. There was a total of 30 applicants and 17 persons qualified for the interview and 13 were rejected.

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### EXECUTIVE OFFICER'S REPORT (Continued)

Chair Sheehan had suggestion for an agenda item or an item for next year's commissioners' conference which was the discussion of the availability of HPC investigators to other commissioners if requested. Chair Sheehan suggested policies and procedures be in place for if necessary.

Vice-Chair Levinson said his understanding was there are less complaints on the neighbor island and it is difficult to justify hiring full-time investigators. Chair Sheehan said that is why she felt it was interesting because the neighbor-island commissions, like Honolulu, are responsible to evaluate their chief of police annually. This may also be a good discussion item for the commissioners' conference and mentioned the 2016 lawsuit on Kauai involving the police commission and the Mayor of Kauai.

EO Yuen reminded commissioners of the upcoming HPD events:

- August 22, 2018 at 10:30 a.m., HPD awards ceremony at the Mission Memorial Auditorium
- August 30, 2018, at 6 p.m. Citizens Police Academy (CPA) graduation. Commissioner Alivado is one of the students in this CPA.

EO Yuen informed commissioners that the two dates being considered for next year's commissioners conference are April 11 and 12 or the 25 and 26, 2019. Commissioners decided on April 25 and 26, 2019.

### EXECUTIVE SESSION

At 3:07 p.m., Chair Sheehan made a motion to enter into executive session to review agenda items pursuant to HRS 92-5(a), subsections (2), (4), (5), (6) and (8): to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved; to consult with its attorneys on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities; to investigate proceedings regarding criminal misconduct; to consider sensitive matters related to public safety or security; to deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to state or federal law, or a court order.

Commissioner Chang seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.

### RETURN TO OPEN SESSION

The Commission returned to the open session at 3:29 p.m.

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HRS 52D-8 Adjudication

Contested Case Hearing for Officer Fetia Solomon, FC-DA

The contested case hearing began at 3:29 p.m. and ended at 3:47 p.m. Refer to transcript for further details.

Chair Sheehan made a motion to deny Officer Solomon's request for legal counsel. Vice-Chair Levinson seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.

Contested Case Hearing for Officer Ronald J. Lombardi, Civil No. 18-00100 ACK-KSC

The contested case hearing began at 3:55 p.m. and ended at 4:56 p.m. Due to a possible conflict, Chair Sheehan recused herself from the contested case hearing. Refer to transcript for further details.

Discussion and decision making was recessed until the September 19, 2018, meeting.

ANNOUNCEMENTS

Chair Sheehan announced the next meeting Honolulu Police Commission will be on September 19, 2018 at 2:00 p.m. Due to an anticipated lack of quorum the September 5, 2018 meeting is canceled.

ADJOURNMENT

At 5:30 p.m. Commissioner Gibson made a motion to adjourn the meeting. Vice-Chair Levinson seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.