

HONOLULU POLICE COMMISSION
City and County of Honolulu
State of Hawaii
Minutes of the Regular Meeting
January 23, 2019

CALL TO ORDER Chair Sheehan called the meeting to order at 2:05 p.m. on Wednesday, January 23, 2019, 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 Grimm, Member
 Carrie K. S. Okinaga, Member

 James K. S. Yuen, Executive Officer
 Duane W. H. Pang, Deputy Corporation Counsel
 Denise W. Wong, Deputy Corporation Counsel
 Erin Marie Yamashita, Secretary

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

ASCERTAINMENT OF QUORUM Counsel Wong ascertained that a quorum was present

APPROVAL OF MINUTES

Commissioner Okinaga made a motion to approve the December 19, 2018, meeting minutes. Commissioner Alivado seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.

PUBLIC TESTIMONY

Mr. Robert Burgos

Chair Sheehan thanked Mr. Burgos for attending the meeting, and she clarified that he wanted to discuss a complaint he made seeking discipline against police officers. Mr. Burgos confirmed that he was in attendance to discuss his complaint and discipline against police officers. Chair Sheehan then explained that discussion may need to take place in executive session because discussion may include discipline of a police officer. Mr. Burgos then asked if the media would be in attendance during executive session to which Chair Sheehan replied the media would not be present during an executive session.

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Mr. Robert Burgos (Continued)

Mr. Burgos then said that he would like the media to remain and hear what he had to say.

After consulting with counsel, Chair Sheehan explained to Mr. Burgos that because his complaint has already been resolved and there is no reconsideration allowed by Honolulu Police Commission (HPC) Rules, he could proceed with his public testimony.

Mr. Burgos then provided a synopsis of a domestic violence incident he was involved in on September 14, 2018, which caused the police to be called. Mr. Burgos acknowledged that prior to police arriving, he was throwing items off the balcony because his girlfriend said something to him that he did not like, and he wanted her to leave. When police arrived, Mr. Burgos was sitting on the bed and two officers were speaking with him and told him he needed to go to the hospital. Mr. Burgos then explained to commissioners that Officer Cunningham entered and Officer Griffin said he (Mr. Burgos) had to come with officers, reached out and grabbed his left arm. Officer Juarez then grabbed his right arm and the officers pulled him off the bed.

Immediately after the other officers pulled him off of the bed, Officer Cunningham began to strike him on the back of the head even after he had fallen to his knees. Mr. Burgos felt that Officer Juarez must have thought something was wrong because he released his (Burgos') arm so he could block the strikes to his head.

Mr. Burgos expressed that he does not know how commissioners could not understand that there was not enough evidence to show brutality and that he was not arrested. He did not use profanity, spit, or attack the officers, he remained on the bed saying that he wanted his girlfriend to leave and did not do anything to warrant being hit eight to nine times on the back of the head. Mr. Burgos also explained that a few months prior to the incident he had neck surgery, and he could have been paralyzed if a strike landed in the right spot.

Chair Sheehan then asked Mr. Burgos if he was agreeable to discuss the incident because he has a privacy interest. Mr. Burgos responded that he would like to know how commissioners felt it was justified for officers to strike him.

Chair Sheehan explained that the evidence presented to commissioners indicated officers were responding to a report of domestic violence; that when officers arrived, a female was locked in a bathroom; he (Mr. Burgos) was in his underwear in his bedroom; there was a broken wine bottle and wine on the floor, and that Mr. Burgos was non-compliant. Chair Sheehan further explained, that officers conferred with a police psychologist, who recommended Mr. Burgos receive an evaluation, so officers took Mr. Burgos into custody.

In making their decision, which is based upon the evidence available to commissioners, the commissioners found Mr. Burgos to be non-compliant and he provided inconsistent testimony as far as the number of times that he was struck. Chair Sheehan agreed that he was hit in the head and that Mr. Burgos felt he suffered an indignity; however, police officers have the authority to stabilize and control situations and to keep public safe.

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Mr. Robert Burgos (Continued)

Mr. Burgos continually denied being uncooperative and said that officers are being untruthful, and he did not deserve to be struck in the head by the officers. He also stated that while he was a soldier he did not treat prisoners as bad as he was treated. Mr. Burgos agreed that the police had been summoned to his residence on previous occasions, and that he was taking medication at the time.

Chair Sheehan explained the decision by the Commission several times to which Mr. Burgos continued to argue with Chair Sheehan.

Vice-Chair Levinson then commented that at the end of the day what commissioners have to determine is whether the evidence provided to commissioners is sufficient to sustain the complaint or not. The testimonies from all involved were considered, and commissioners made their decision based upon the complete record.

Chair Sheehan informed Mr. Burgos that the Commission's rules do not allow for reconsideration after a decision has been made. She then thanked Mr. Burgos for attending the meeting and excused him.

NEW BUSINESS

Report on Actions Taken at the Executive Session of December 5, 2018

Commissioner Gibson reported that at the Executive Session of December 5, 2018, commissioners approved the November 17, 2018, executive session minutes.

Commissioner Gibson then made a motion to accept the report. Commissioner Grimm seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.

CHIEF OF POLICE REPORT

Chief Ballard thanked Commissioner Grimm for his service and appreciated him serving on the Commission.

Chief Ballard reported the second week of the critical incident team training is complete. Officers who have volunteered for the team are a diverse group which includes male, female, veteran and newer officers. The next step will be the train-the-trainer program in which an eight-hour mental health aid training will be provided to all officers. This will give officers additional tools and skills to work with persons who may suffer some type of mental illness.

Chief Ballard informed commissioners that Bronson Gouveia was located and arrested on a \$1 million warrant for attempted murder. He will be prosecuted in both state and federal courts. She also said the Attorney General will be taking the cases involving the Kingdom of Atooi for the incident at the Office of Hawaiian Affairs.

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CHIEF OF POLICE REPORT (Continued)

Commissioners were informed by Chief Ballard the Hawaii Labor Relations Board (HLRB) has issued its findings with regard to the prohibited practice complaint SHOPO filed with the HLRB for the transfer of personnel from the Peer Support Unit.

Chief Ballard reminded commissioners the Our Care, Our Choice law went into effect January 1, 2019. This is the law known as the death with dignity law and provides a resident of Hawaii who has a medically confirmed terminal illness, has less than six months to live, and has the capacity to determine their own medical care to do so. HPD has been in contact with the Medical Examiner's Office and has shared concerns by HPD as officers will be required to respond to cases.

Questions and Comments from Commissioners

Chair Sheehan asked why the prosecution of the Kingdom of Atooi would be handled by the Attorney General (AG) and not the Department of the Prosecuting Attorney. Deputy Chief McCarthy explained the AG will be bringing additional charges against the suspects for other incidents.

Chair Sheehan asked if there was any indication if SHOPO would appeal the HLRB decision. Chief Ballard said she has not heard anything, but it is still early.

Commissioner Gibson asked Chief Ballard if the incident at OHA was an unexpected event. Chief Ballard said the Kingdom of Atooi had gone to OHA, then came to HPD's Alapai Headquarters and demanded to see her (Chief Ballard). When she would not meet with them, they said they were going to return to HPD on Friday, but never showed up at HPD. The Kingdom of Atooi did indicate to OHA that they would return to their office and they did.

Commissioner Alivado asked if HPD was assisting with the homeless point in time count. Chief Ballard said that if anyone would be assisting, it would be Captain Lambert's team.

Commissioner Chang requested Chief Ballard provide commissioners with an overview of training available to recruits and current officers. Chief Ballard informed commissioners that last year HPD focused on reaching out to external partners and re-develop relationships. This year (2019) the focus will be internal on officers. An ad-hoc committee will formed in order to assist officers with training and other officer needs.

NEW BUSINESS (Continued)

Commissioner Individual Reports on Commission Business

Chair Sheehan requested this item be removed from the agenda as she was reminded of the Sunshine Law's requirements for an agenda while observing the Civil Beat Law Center oral argument at the Hawaii Supreme Court.

Consideration of Request for Legal Counsel from Louis M. Kealoha

Vice-Chair Levinson explained what the Commission would be considering today related to the current request for legal counsel at City expense is for two criminal indictments filed against Chief Kealoha, a first superseding indictment was filed on March 22, 2018, and a second superseding indictment on May 24, 2018.

The first superseding indictment relates to the mailbox matter and the charges associated. The second superseding indictment relates to the allegations of bank fraud, aggravated identity theft, obstruction of official proceedings and criminal forfeiture, most of which were in the original indictment.

Because the indictments are new indictments with no request for legal counsel submitted, Executive Officer Yuen advised Chief Kealoha's counsel that it would be appropriate for Chief Kealoha to re-submit requests for legal counsel for the first and second superseding indictments, which Chief Kealoha did.

The requests were forwarded to the Department of the Corporation Counsel (COR) as required by statute. COR issued a memo to the HPC recommending that the request from Chief Kealoha be scheduled for a contested case hearing, which will be coordinated by HPC staff. COR also provided the HPC with a memo providing an analysis of the facts and making a recommendation, which will become an exhibit and part of the record if there is a contested case hearing.

UNFINISHED BUSINESS

Discussion on Creation of Rules or Policies for the Discipline of the Chief of Police

This agenda item was deferred.

Election of Chair and Vice-Chair for 2019

Election of Chair

Chair Sheehan opened the floor for nominations of the position of Chair and asked if any commissioners were interested in the position.

Commissioner Gibson asked Chair Sheehan if she would be willing to serve as chair for 2019. Chair Sheehan said although serving as chair is a significant amount of work she finds the work challenging and worthwhile, and would be willing to serve as chair again and acknowledged work by her fellow commissioners.

Commissioner Grimm nominated Chair Sheehan to continue to serve as Chair for 2019. Commissioner Levinson seconded the motion.

Vote: By a unanimous vote, the motion carried.

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Election of Vice Chair

Chair Sheehan then opened the floor for nominations of the position of Vice-Chair and nominated Commissioner Levinson to continue to serve as Vice-Chair for 2019. Chair Sheehan said he has been an enormous resource for commissioners and is very devoted to the Commission.

Commissioner Grimm seconded the motion.

Discussion: Commissioner Chang said she was interested to know if any other commissioner would be interested in the position. Commissioners Gibson, Chang, and Okinaga said they were not interested at this time. Commissioner Alivado said she would be interested as she brings the perspective of a layperson to the group. She added, Vice-Chair Levinson provides a legal perspective; however, someone more closely connected to the community would bring something different to the position and she is interested if commissioners would consider her for the position of vice-chair. Commissioner Grimm said he has learned from Commissioner Levinson and appreciates the legal experience he brings to the Commission.

Commissioner Grimm also said he thinks the Commission needs Vice-Chair Levinson to remain in the position of vice-chair because he brings the legal perspective the Commission needs. He has great experience in the judicial system, which is important for commissioners to have.

Commissioner Levinson said he was interested in continuing to serve as vice-chair, but thinks Commissioner Alivado would be a fine vice-chair, for the reasons she stated. He also said there is utility in his continuing as vice-chair because he and Chair Sheehan have been actively working together for a full year. He explained that prior to his being selected as the vice-chair, the role of the vice-chair was minimal.

Because the other commissioners have indicated they are not interested in serving as the vice-chair, Commissioner Levinson suggested the vote be conducted at one time and those in favor of either commissioner cast their vote when appropriate.

Commissioner Okinaga said she values everyone's service to the Commission and said Commissioner Alivado's statement is appealing notwithstanding Commissioner Levinson's expert wisdom. The Commission is not a legal commission, it is a lay commission and members are supposed to represent the views of the public, at large, not necessarily the legal opinions of the City or the Police Department or the Commission. Commissioner Okinaga said she finds the lay perspective valuable and knows Commissioner Levinson will provide input and guidance no matter what position he serves on the Commission.

Chair Sheehan said she agrees with all of the comments and that Commissioner Alivado would bring a new vision to the position of vice-chair; however, the Commission is not out of the woods yet with legal issues, and there have been tremendous differences of opinions with COR in the past. It is her opinion that commissioners have received some very good advice and some very bad advice from COR, and that is where Vice-Chair Levinson's scholarship has been valuable to her.

Election of Vice Chair (Continued)

Chair Sheehan said that the current commission has turned things around and provided an example of the 2016 practice of conducting as much as possible in secret, behind closed, which frustrated the public. She credits Vice-Chair Levinson with leading the charge and analyzing the First Amendment and figuring out how the Commission could best follow the law. She stated that she has followed his guidance, relies on him and would like to continue him to serve as vice-chair.

Commissioner Okinaga shared that she feels it is important for commissioners to rely on the advice of COR, the commission's attorney because of statutory or constitutional weight. Chair Sheehan said she relies on Vice-Chair Levinson's guidance when working with COR or when it is necessary to ask COR questions. Vice-Chair Levinson added that it is part of a mandate to commissioners to rely on the advice provided by COR, and under some circumstances there is a statutorily imposed or charter created attorney-client relationship. Under other circumstances, however, there is no attorney-client relationship between the Commission and COR. In any event, even when there is an attorney-client relationship, a client is not obligated to blindly follow the advice given, especially when in the client's view, the advice is mistaken. Vice-Chair Levinson is in agreement with Chair Sheehan that over the course of the last two years commissioners have been on the receiving end of some breathtakingly bad advice, and if commissioners had followed the advice they would be in a lot of trouble. Vice-Chair Levinson added that with his 17 years as a member of the body that makes judicially created law in Hawaii, he has a pretty good sense of how the Hawaii Supreme Court will or will not respond to particular issues, which is valuable to the Commission.

Commissioner Gibson appreciates the conversation and that he, too, appreciates Vice-Chair Levinson's contributions. He also said the police force is a community police force that deals with people from all walks of life, and him being in the community and seeing Commissioner Alivado and what she does and gives to the community is also important. He added that there is a dilemma in what the Commission needs—more valuable legal advice or more activity in the community.

Chair Sheehan then said what is on the floor for a vote is the nomination of Vice-Chair Levinson to which she seconds and will call for the vote. If the vote fails commissioners can consider the nomination of Commissioner Alivado. Counsel Pang added that a counter nomination is allowable.

Chair Sheehan asked if there was any more discussion, to which there was none. She then asked for those in favor of Vice-Chair Levinson to continue as the vice-chair to raise their hands and say aye.

Vote: Commissioners Grimm, Sheehan, and Levinson voted in favor of Vice-Chair Levinson to continue as the vice-chair.

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Election of Vice Chair (Continued)

Chair Sheehan then asked commissioners that were in favor of Commissioner Alivado to become the vice-chair to raise their hands and say aye.

Vote: Commissioners Chang, Gibson, Okinaga and Alivado voted in favor of Commissioner Alivado to serve as the vice-chair.

Chair Sheehan announced the counter motion carried, Commissioner Alivado will serve as the vice-chair for 2019.

Executive Officer's Report

EO Yuen reported as of January 22, 2019, the Commission has received six complaints. There are 23 pending investigations, which includes 18 from 2018, one complaint received was referred to the HPD's Professional Standards Office, and one complaint was withdrawn. Investigator Chris Searle started work on January 16, 2019.

Chair Sheehan thanked EO Yuen for the thoroughness of the report, and that it was because of his attention to detail that she was able to have the conversation with Mr. Burgos.

EXECUTIVE SESSION

At 2:55 p.m., Commissioner Alivado 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.

Vice-Chair Levinson 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 5:08 p.m.

ANNOUNCEMENTS

Chair Sheehan announced the next meeting Honolulu Police Commission will be on February 6, 2019.

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ADJOURNMENT

At 5:08 p.m. Vice-Chair Levinson made a motion to adjourn the meeting. Commissioner Gibson seconded the motion. By a unanimous vote, the motion carried.