

**Approved as amended**

**COUNTY OF KAUAI  
MINUTES OF  
REGULAR OPEN SESSION TELECONFERENCE MEETING**

Board/Commission	<b>Kauai Police Commission</b>	Meeting Date	<b>April 22, 2021</b>
Location	Teleconference Teams Meeting	Start of Meeting: 9:01 a.m.	10:40 a.m.
Present	Chair Catherine Adams.; Vice Chair Gerald Bahouth; Commissioners: Mary K. Hertog, Leina`ala Jardin, Kevin Mince, Roy Morita and Dean Pigao. Also present: Board & Commissions Office Staff: Support Clerk Mercedes Omo; Administrator Ellen Ching; Office of the County Attorney: Deputy County Attorneys Chris Donahoe and Andrew Michaels. Kauai Police Department: Assistant Police Chief Bryson Ponce;		
Excused			
Absent			

SUBJECT	DISCUSSION	ACTION
<b>Call To Order</b>		Chair Adams called the regular teleconference monthly Police Commission April 22, 2021 meeting to order at 9:01 a.m.
<b>Roll Call</b>		A roll call was done to establish quorum was made with all seven (7) commissioners' present to conduct business.
<b>Announcements</b>	Next regular scheduled teleconference meeting: 9:00 a.m., Thursday, May 27, 2021. Executive Session to follow.	
<b>Public Testimony</b>	None.	
<b>Chief's Reports</b>	a) Administrative & Technical Reports b) Investigative Bureau Reports c) Patrol Bureau Reports	

SUBJECT	DISCUSSION	ACTION
	<p>d) New updates on KPD’s recruitment efforts            e) Promotions            f) Pertinent Announcements and or updates</p> <p>Chief Raybuck was on a Leads Training Conference on the mainland so Assistant Chief Bryson Ponce would be providing the Chief’s Reports. In addition to the Reports Assistant Chief Ponce highlighted the following events:</p> <ul style="list-style-type: none"> <li>• The week of April 11 is National Public Safety Telecommunicators Week, so Assistant Chief Ponce gave recognition to all of the hardworking dispatchers in the Kauai Police Department. These hardworking individuals serve as a vital link between the community and fire, medical, and law enforcement agencies. Acting as a critical lifeline to other first responders, these unsung heroes are always there to answer the call.</li> <li>• In honor of National Prevent Child Abuse Prevention Month, The Kauai Police Department teamed up with the Children’s Justice Center, Life Choices, representatives from the Kauai Girl Scouts and the Department’s own SART Team for the Annual Pinwheels Event on April 20, 2021.</li> <li>• On April 21, 2021 in lieu of Administrative Professionals Day, so the Department honored all of their hardworking clerical administrative front office staff.</li> <li>• Saturday, April 24, 2021 is National Take-Back Drug Day from 10 a.m. – 2 p.m. KPD will be accepting all unwanted or unused prescription medications at their Līhu‘e Headquarters. The public may drop-off their unused prescription medication via drive thru. The event is in conjunction with the DEA Drug Enforcement Agency.</li> </ul>	

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	<ul style="list-style-type: none"> <li>• At the request of Commissioner Morita, Assistant Chief Ponce presented a report dated April 15, 2021 written by Chief Raybuck on the Department’s commissioned promotion status. Promotional testing for sergeant and lieutenant were initiated and the candidates have been notified with the date and time in the first week in May for the oral interview phase of the promotion process. The report gave a written narrative on the promotions for sergeant/detective, captain and deputy chief positions.</li> </ul> <p>Ms. Hertog asked if the two (2) captain positions in the patrol bureau was something new, and if that is case, is one of the positon’s a senior captain by rank to which Assistant Chief Ponce replied that it is something new and to his understanding it is still in the planning phase. With patrol being the largest bureau and the abundance of personnel in the patrol bureau it could potentially be an administrative captain and an operations captain under the assistant chief in patrol.</p> <ul style="list-style-type: none"> <li>• At the request of Commissioner Hertog, Assistant Chief Ponce presented a report titled KPD CARES Funding Expenditures dated April 15, 2021 from Chief Raybuck. The report reflects a list KPD’s purchases made and overtime and fringe benefits for the period of March, 1 2020 to January 15, 2021 and the actual amounts. CARES Act Funding that was allotted to KPD was \$2,860,059.24.</li> </ul> <p>With nothing further to report, Chair Adams opened the floor for any comments or questions.</p> <p>Mr. Morita wanted to know if the Department is looking at bringing back the Officer of the Month recognition. Assistant Chief Ponce replied that the matter was brought up in their executive meetings and all the bureau commanders</p>	

SUBJECT	DISCUSSION	ACTION
	<p>were notified. With no further questions, Chair Adams moved to item KPC 2021-7.</p>	
<p><b>Business</b>  <b>KPC 2021-7</b></p>	<p><u>Discussion and decision-making on proposed amendments to Rule 1 of the Kauai Police Commission Rules on Administrative Practice and Procedure.</u></p> <p>Ms. Hertog noted that at the Police Commission’s previous meeting, the PIG presented its recommendations on Rule 1, and since then she has not received any feedback from the commissioners. She stated that Rule 1 definitions did not change, but what did change was the language before the definitions paragraph that included adding new paragraphs describing the commission’s authority, mission statement, the authority of the mayor and the police commission and the commission’s overview of responsibilities. She noted that because she did not receive any feedback from the commissioners she would go ahead and make a motion to vote to accept Rule 1 as final.</p> <p>Deputy County Attorney Donahoe stated that he was under the impression that the commissioners did receive the redacted copy of Rule 1 highlighting the section the Office of the Attorney would like to see redacted. He noted that in the past, both he and Deputy County Mark Ishmael stated their reasoning as to why that section should not be contained in Rule 1.</p> <p>Ms. Hertog stated that she did not receive a copy of the redacted version and thought the commission was going in with Rule 1 intact since the commission had already voted on it. She noted that she not does agree with redaction and if that is the case she hereby resigns from the permitted interaction group.</p> <p>Deputy County Attorney Donahoe stated that he understands it is the commission’s decision, but as he stated before there is that reasoning as to why, both he and Deputy County Ishmael felt that proposed recommendation put forth by the current PIG relating to the authority of the mayor and the police commission as well as the police commission overview of responsibilities be</p>	

SUBJECT	DISCUSSION	ACTION
	<p>removed from Rule 1.</p> <p>Ms. Hertog stated that because the proposed recommendation was previously approved by him (Mr. Donahoe) she would leave it up to the commissioners to decide whether or not they would like to redact that section or leave Rule 1 as introduced.</p> <p>Chair Adams asked Mr. Donahoe if he could provide the commission with reasoning as to why, both he and Mr. Ishmael did not want the PIG's recommendations be included in Rule 1.</p> <p>Mr. Donahoe explained that several of the statements in the proposed recommendation were redundant. As an example, some of the commission's overview of responsibilities have already been set in Rule 1-1 and then on page two (2) where it states "to accomplish its responsibility the Commission utilizes its powers to inquire into, and require reports regarding the affairs and conditions of the police department and actions by the Chief." Again, the language seems inaccurate and contradictory to both the rules and the mission statement.</p> <p>Also, the paragraph where it states "The commission is charged with the obligation to evaluate and document the chief's performance, require improvement, discipline or dismiss the chief for cause." Which is different from remove, suspend and discipline therefore, their concern was it is restating, misstating or causing confusion with some of the language and it is redundant with other portions of the rules that have already been set forth in other sections of that. That is why it was originally recommended not to include that language.</p>	

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	<p>Chair Adams thanked Mr. Donahoe for clarifying, and then asked Mr. Donahoe what the consequences are for approving the recommendations put forth by the PIG for Rule 1 and moving forward versus taking it out.</p> <p>Mr. Donahoe explained the risk is if there are statements that are stated one-way under the authority of the mayor and police commission or under the overview of responsibilities if it is interpreted one way and interpreted in another way in another portion of the rules it could cause confusion. For example, if the accusation is that he or she violated the rule, but the other interpretation is differ in the other rule that would cause confusion where the person could say he or she did not violate the rule based on this rule.</p> <p>Ms. Hertog stated that she disagrees with Mr. Donahoe. She explained that what the PIG was trying to do was to alleviate some of the confusion for new commissioners in terms of their duties and responsibilities. She noted that she knew Deputy County Attorney Ishmael did not like it from the beginning and she knows that he (Mr. Donahoe) did not like it as well, but they went along with it. Therefore it is up to the commissioners to decide if they want to leave Rule 1 as presented by the PIG or take the advice of the county attorney to remove the proposed language in Rule 1.</p> <p>Mr. Morita asked if the redacted copy was sent before the PIG’s presentation, and then questioned why it is even an issue since the commission had previously approved the two-member working group recommendations for Rule 1.</p> <p>Ms. Hertog stated that previously the commission formed a two-member working group and in that process the commission already approved the working group’s recommendations. In this new process, a decision was made to from a permitted interaction group to review the rules with the same recommendations and present it to the commission. So the question is when the</p>	

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	<p>redacted copy was sent because she did not receive a copy because if she had she would have contacted him and try to work it out with Mr. Donahoe prior to today's meeting.</p> <p>Ms. Ching clarified that in this new process the new PIG is tasked to present its recommendations to the body which occurred at the commission's last meeting. The purpose of today's meeting is for the commission to deliberate on those recommendations to either adopt the recommendations, amend it or decide not to accept the PIG's recommendations. She also knows that some of the commissioners feel strongly about adopting the rules, but as a reminder to the commission the County Attorney has the final say because if they do not approve it as to form and legality the rules will not be adopted.</p> <p>Mr. Mince stated that Mr. Donahoe does a great job double talking. The commission has been working on the rules for a year and he (Mr. Donahoe) had ample time to provide input over the course of last year. It is true that Deputy County Attorney Ishmael did not like some of the stuff the two-member working came up with, particularly the mayor and the responsibility of the commission. The whole idea of putting that prep in was to provide in plain language for ordinary citizens who come onto the police commission to know what the commission's authority and limitations are. He agrees that those things are restated in the actual administrative rules but most people do not go pass one or two sections before they stop reading the rules. He stated that he is really uncomfortable with the fact that Mr. Donahoe said that he submitted objections but none of the commissioners has seen it, and then it comes time to vote those objections are presented to the commission. It does not give the commission a chance to digest it nor to formulate alternatives therefore he will be voting yes to the rules that the commission has already seen several times before.</p>	

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	<p>Mr. Donahoe stated that he does not believe he was double talks because according to his notes of 3 June and 4 June both he and Deputy County Ishmael did voice their concerns and objections for Rule 1. In addition, a suggestion was made that if new in-coming commissioners wanted a pamphlet or initial guidance outside of the rules to be given to them that included this could alleviate some of the concerns without having it directly inserted into the rules. He then reiterated that their position as far as Rule 1 is concern was made clear, but it is up to the commission.</p> <p>Ms. Hertog disagreed that it is not up to the commission because according to Ms. Ching it is ultimately the county attorney’s call and if they do not agree with it the rules will not get adopted.</p> <p>Mr. Donahoe clarified that it would be against their advice to which Chair Adams believes that no one would go against considering the risk.</p> <p>Ms. Hertog stated that at this point she would like to resign from the permitted interaction group and would turn everything over to Commissioners Morita and Pigao. She thanked everyone and said that she tired her best and that the commission would need to select new a member because if it is going to affect Rule 1 it is going to trickle down to every single rule the commission had already agreed upon. Chair Adams thanked Commissioner Hertog, and then called for more discussion or comments.</p> <p>Mr. Mince stated that before she resigns can the commissioners to vote on the work that had already been done to see if majority of the commissioners and if the commissioners agree, then thank you very much County Attorney for your opinion, but we are the police commission and this is what we think is best going forward. Chair Adams called for the motion and a second.</p>	<p><u>Motion</u>          Mr. Mince moved to accept the recommendations Rule 1 as previously submitted with no modifications.          Mr. Morita seconded.</p> <p>A roll call ensued with Commissioners Hertog, Jardin, Mince, Morita and Pigao voting yes to accept the PIG’s recommendations on Rule 1.          Chair Adams and Vice Chair Bahouth voted not to accept the PIG’s recommendations on Rule 1.          The motion carried by a vote of 5:2.</p>



SUBJECT	DISCUSSION	ACTION
	<p><u>Discussion</u>            Ms. Ching stated that she is very sad that it has come to this. She is obliged to remind the commissioners that if they do not accept the advice of the County Attorney that it will present liability issues on the commission and on each individual commissioner. She called upon Mr. Donahoe to shed more light on the liability issue.</p> <p>Mr. Donahoe stated that he has advised the commission about potential liability issues, and then he reiterated that it is against the county attorney's advice to accept Rule 1 as is with those additional sections. With that being said, Chair Adams called for a roll call vote.</p>	
<p><b>KPC 2021-8</b></p>	<p><u>Presentation by the Permitted Interaction Group on amending the Kauai Police Commission Rules on Administrative Practice and Procedure for Rule 2.</u></p> <p>A copy of the PIG's presentation for Rule 2 was distributed to the commissioners prior to the meeting. Ms. Hertog reported that Rule 2 was approved last year and the additions/changes are written in blue. The PIG added new language on the minimum qualifications for the police chief which was introduced to the Charter Review Commission as an amendment and was voted on last year and it passed. Also, Rule 2.7 a second change was added to define Special Committees. Originally, the rule defined a PIG and a Working Group as a special committee, but based on the advice of the county attorney the commission can no longer have a two-person working group, the recommendation by the PIG is to delete that language and go with a permitted interaction group. The last recommendation addresses the time line for commissioners to put items on the agenda for the commission's monthly meetings.</p>	

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	<p>Mr. Morita stated that although the motion passed to accept Rule 1 as submitted it's still clear to him that the County Attorney is not going to sign off on the rules. The fact that it's been so long road for Ms. Hertog and Mr. Mince who worked so hard on the rules, he would like to resign from the PIG.</p> <p>For clarification, Staff asked Ms. Hertog if she still wanted to remain as a member of the PIG to which Ms. Hertog replied that she would remain on the PIG as long as they can work through this because there still is a lot more work that needs to be done, unless Mr. Donahoe tells her between now and the next commission meeting that he found something controversial about Rule 2 where, both she and Mr. Donahoe can work offline to discuss it.</p> <p>Mr. Donahoe stated that based on the new language he does not see anything controversial about PIG's recommendations on Rule 2. The only question he is has is page two (2) which talks about the timeline of no later than 12 noon (4) business days before the agenda is filed. Is it 12 noon of the fourth business day prior? Ms. Hertog stated that she would revisit the language and come up with clarifying language between now and the next commission meeting.</p> <p>Staff noted for clarification that with Mr. Morita's resignation, the PIG is now a two-member working group. Ms. Hertog asked Mr. Donahoe because the commission voted to pass Rule 1 would he as the county attorney sign off on that because if not it does not make any sense to redo the rules.</p> <p>Vice Chair Bahouth pointed out that even with Rule 1 being out and Rule 2 being accepted by the county attorney why wouldn't she take that and move on. Ms. Hertog stated that there is a lot more rules coming up which probably will have some heated discussions on too. Vice Chair Bahouth stated that in his mind because the PIG has worked on hard on the rules to get to where it is now, why not keep pushing forward instead of throwing in the towel. Ms. Hertog</p>	

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	<p>stated that bottom line of the county attorney is going to accept one rule and not the other it doesn't do them any good to continue on. The point they are trying to make is the county attorney does not agree with the police commission's vote to accept Rule 1 as amended which means they are not going to sign off on the rules in its entirety. Vice Chair Bahouth questioned whether the county attorney would be willing to sign off on the rules despite of not approving some of the rules. Ms. Hertog stated that is a question for the county attorney and that there are other rules that needs to be looked at particularly the rule on legal representation that rule needs to be clarified for future commissions.</p> <p>Mr. Donahoe stated that was the purpose of taking one rule at a time; not all or nothing, but he would double check with his supervisor but his understanding was to take one rule at a time for approval or not approval. Ms. Hertog agreed and stated that because the commission voted to accept Rule 1 as amended the county attorney still holds the trump card to either approve or disapprove all of the rules once it is done to which Mr. Donahoe replied that is correct and stated again that he would speak to the county attorney about it to make sure everyone is going down the right road, but we can talk off line on that. Ms. Hertog thanked Mr. Donahoe for allowing that and stated that she would redraw her resignation for the time being.</p> <p>Mr. Morita stated that based on the conversation he would hold off on his resignation as well and hopefully the issue gets resolved, but like she said he cannot see redoing the rules if it is not going to happen.</p> <p>With no further discussion, Chair Adams moved on to item KPC 2021-9.</p>	
<p><b>KPC 2021-9</b></p>	<p><u>Discussion on the status of the CARES Act Funds allocated to the Kauai Police Department.</u></p> <p>Chair Adams noted that the report was submitted by Chief Raybuck and Assistant Chief Ponce made the report. She asked if the commissioners had</p>	

SUBJECT	DISCUSSION	ACTION
	<p>more questions about the report. Hearing none. Chair Adams moved on to item KPC 2021-10.</p>	
<p><b>KPC 2021-10</b></p>	<p><u>Decision-making on providing legal representation provided by the county to Chief of Police Todd Raybuck, Officer Derek Kelley and Officer Russell Himongala relating to Civil Action No. 21-00011-JMS-RT, that was filed by Megeso-William-Alan: Denis a.k.a: William Denis in the United States Court for District of Hawai‘i alleging deprivation of Rights under the First, Ninth and Fourteen Amendments of the United States Constitution.</u></p> <p>*Note - The decision on providing legal representation for the three officers named in the law suit was deferred until after the commission consults with Deputy County Attorney Andrew Michaels about the case in executive session.</p>	
<p><b>Executive Session</b></p>	<p><u>Pursuant to Hawai‘i Revised Statutes §92-4, §92-5 (a) (2) and (4). The purpose of this Executive Session is for the Commission to review and discuss charges brought against an officer in the Kaua‘i Police Department, where consideration of matters affecting privacy will be involved, provided that if the individual requests an open meeting, an open meeting shall be held; and to consult with its attorney on issues pertaining to the Commission’s powers, duties, privileges, immunities, and or liabilities as they may relate to the following agenda items:</u></p>	<p>At 9:37 a.m. Mr. Donahoe began to cite the following Hawai‘i Revised Statutes to take the meeting into executive session.</p>
<p><b>ES KPC 2021-001</b></p>	<p><u>Monthly update by Scott Williamson, Lieutenant, Office of Professional Standards on the status of the Department’s disposition on formal notarized complaints that were filed with the Kaua‘i Police Department and with the Kauai Police Commission and referred to the Office of the Chief for further review.</u></p>	
<p><b>ES KPC 2021-002</b></p>	<p><u>Monthly update by Todd G. Raybuck, Chief of Police, Kaua‘i Police Department or his designated representative on any significant adverse incidents/events involving personnel in the Kaua‘i Police Department that could potentially impact the County, the Police Commission and the Kaua‘i Police</u></p>	

SUBJECT	DISCUSSION	ACTION
	<u>Department.</u>	
<b>ES KPC 2021-003</b>	<u>Pursuant to Hawai‘i Revised Statutes §92-4, §92-5 (a) (4), §92-9 (a) (1-4) and (b), the purpose of this Executive Session is for the Commission to approve or amend the regular Executive Session minutes of August 27, 2020, September 8, 2020, September 22, 2020 and to consult with its attorney on issues pertaining to the Commission’s powers, privileges, immunities, and or liabilities as they may relate to this item. (Deferred on March 25, 2021)</u>	
<b>ES KPC 2021-004</b>	<u>Pursuant to Hawai‘i Revised Statutes §§ 92-4(a)(1), (2), (4), and (5), the Office of the County Attorney requests an Executive Session with the Police Commission to provide the Commission with an update on the case of William Denis vs. David Ige, Derek Kawakami, et al.; Civil Action No. 21-00011 and to make a recommendation to the Police Commission as to “whether an act, for which the police officer is being sued, was done in the performance of the police officer’s duty, so as to entitle the police officer to be represented by counsel provided by the county” pursuant to Hawai‘i Revised Statute § 52D-9 with respect to Chief of Police Todd Raybuck, Officer Derek Kelley and Officer Russell Himongala.</u>	
<b>ES KPC 2021-005</b>	<u>Communication dated March 5, 2021 from Maui Police Commission Chair Frank R. Rego Jr. to Kauai Police Commission Chair Catherine Adams. The Maui Police Commission is requesting assistance from the Kauai Police Commission to conduct an investigation as to whether the Maui Police Department or any of its officers engaged in any misconduct during an incident and the arrests of the individuals. (Deferred on March 25, 2021)</u>	
<b>ES KPC 2021-006</b>	<u>Pursuant to HRS 92-4, 92-5 (a) (2) and (4), the purpose of this executive session is for the Commission to discuss charges brought against officers in the Kauai Police Department, where consideration of matters affecting privacy will be involved and to consult with its attorney on issues pertaining to the</u>	

SUBJECT	DISCUSSION	ACTION
	<p><u>Commission’s powers, duties, privileges, immunities, and or liabilities as they may relate to this agenda item.</u></p>	
<p><b>ES KPC 2020-021</b></p>	<p><u>Update on an investigation alleging that a supervisor in the Kaua‘i Police Department violated Title 7, Chapter 76-1 and the County of Kaua‘i Policy against Discrimination, Harassment, and Retaliation.</u></p> <p>Chair Adams called for a motion to enter into executive session.</p>	<p>Mr. Pigao moved. Mr. Morita seconded. Hearing no objections. A roll call ensued with all seven (7) commissioners present voting unanimously in favor of the motion. At 9:43 a.m. the commission entered into executive session.</p>
<p><b>Return to Open Session to ratify the actions taken in executive session</b></p>	<p>The commission returned to open session at 10:34 a.m. Chair Adams called for a motion to ratify the actions taken in executive session, and then moved on to the next order of business item KPC 2021-10.</p>	<p>Vice Chair Bahouth moved. Ms. Hertog seconded. Hearing no objections. A roll call ensued with all seven (7) commissioners present voting unanimously in favor of the motion.</p>
<p><b>Continuation on Item KPC 2021-10</b></p>	<p><u>Decision-making on providing legal representation provided by the county to Chief of Police Todd Raybuck, Officer Derek Kelley and Officer Russell Himongala relating to Civil Action No. 21-00011-JMS-RT, that was filed by Megeso-William-Alan: Denis a.k.a: William Denis in the United States Court for District of Hawai‘i alleging deprivation of Rights under the First, Ninth and Fourteen Amendments of the United States Constitution.</u></p> <p>After reviewing footage obtained by the body worn camera and consulting with Deputy County Attorney Andrew Michaels on legalities, the commission determined that the three (3) officers named in the lawsuit acted within the colors of law and granted them legal representation by the county.</p> <p>Chair Adams called for a motion, second, and then a roll call vote.</p>	<p>Vice Chair Bahouth moved that the County of Kauai provide legal representation to Chief of Police Todd Raybuck, Officer Derek Kelley and Officer Russell Himongala in Civil Action Case No. 21-00011-JMS-RT. Mr. Pigao seconded. Hearing no objections. A roll call ensued with all seven (7) commissioners present voting unanimously in favor of the motion.</p>

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<b>Adjournment</b>	With no further business to conduct, Chair Adams called for a motion, second and a roll call to adjourn the meeting.	Ms. Hertog moved. Ms. Jardin seconded. Hearing no objections. A roll call ensued with all seven (7) commissioners present voting unanimously in favor of the motion. At 10:40 a.m. the meeting adjourned.

Submitted by: \_\_\_\_\_  
Mercedes Omo, Staff Support Clerk

Reviewed and Approved by: \_\_\_\_\_  
Gerald Bahouth, Vice Chair

- ( ) Approved as circulated on
- (x) Approved as amended on May 28, 2021. See minutes of May 28, 2021 meeting.