HONOLULU POLICE COMMISSION  
City and County of Honolulu  
State of Hawaii  
Minutes of the Regular Meeting  
May 16, 2018

CALL TO ORDER  
Chair Sheehan called the meeting to order at 2:01 p.m. on Wednesday, May 16, 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  
Max J. Sword, Member (Exited at 3:56 p.m.)  
George P. Ashak, Acting Executive Officer  
Denise W. Wong, Deputy Corporation Counsel  
Erin Marie Yamashita, Secretary

EXCUSED  
Richard T. Grimm, Member

ALSO PRESENT  
Susan Ballard, 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 reported everything is going well for Police Week that began May 13, 2018, and thanked commissioners for their support and attending events.

APPROVAL OF MINUTES  
Commissioner Sword made a motion to approve the April 18, 2018, meeting minutes. Commissioner Levinson seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.

PUBLIC TESTIMONY  
Commissioners accepted the e-mail testimony from Chris Cramer sent on May 2, 2018.
MINUTES OF THE REGULAR MEETING  
May 16, 2018  
Page 2

NEW BUSINESS  
Report on Actions Taken at the Executive Session of April 4, 2018  
Commissioner Chang reported commissioners approved the April 4, 2018, executive session minutes and took action on four cases involving five officers.

Complaint number 18-003 involved one complainant and one officer. The complaint of discourtesy-harsh remarks was not sustained.

Complaint number 18-005 involved one complainant and one officer. The complaint of conduct unbecoming an officer was not sustained.

Complaint number 18-009 involved one complainant and two offices. The complaint of overbearing conduct against each officer was not sustained.

Complaint number 18-012 involved one complainant and one officer. The complaints of partiality and conduct unbecoming an officer were not sustained.

Vice-Chair Levinson seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.

Commissioner Individual Reports on Commission Business  
Discussion on Letter from Mayor Caldwell Concerning Police Commission Rule 11  
Chair Sheehan asked commissioners if everyone had a chance to review the May 4, 2018 letter from Mayor Caldwell, to which commissioners in attendance indicated they did read the letter. She then explained the term in HRS 52D-8, "for acts done in the performance of the officer’s duty as a police officer" is broader in case law than "course and scope of employment."

After reading Mayor Caldwell’s May 4, 2018 letter, Vice-Chair Levinson provided a personal response to Mayor Caldwell dated May 8, 2018. Both letters will be attached to the minutes.

Commissioner Levinson provided a review of the process that took place to amend Rule 11, said the rules have been with the Mayor for several months, and the May 8, 2018 letter was his personal response.

Seeing that the process is still at a standstill, Chair Sheehan proposed to change Rule 11 and provide a commentary and examples of what would be considered performance of an officer’s duties or go to the Legislature and request an amendment to HRS 52D-8. Her suggestion was for the commissioners to request the assistance of the Department of the Corporation Counsel (COR) and draft a bill changing the language to be consistent with the version of Rule 11 with proposed amendments by the HPC, and term, "acts done in the performance of an officer’s duty."
MINUTES OF THE REGULAR MEETING
May 16, 2018
Page 3

Discussion on Letter from Mayor Caldwell Concerning Police Commission Rule 11 (Continued)
Commissioner Levinson then informed commissioners that a letter from Mayor Caldwell was just delivered to commissioners (during the meeting), and suggested commissioners take a moment to read the letter and consider the proposal from Mayor Caldwell to Rule 11. After reading the letter, Vice-Chair Levinson felt the Mayor is in agreement with him and that the term, “course and scope of employment” is out.

Chair Sheehan pointed out that Mayor Caldwell had two requests. The first request was for commissioners to add examples (goal posts) of what “acts done in the performance of an officer’s duty” would be. The second request is for commissioners to consider information in addition to the complaint, such as the HPD’s organization structure, position description, and police reports. Chair Sheehan read the examples from Mayor Caldwell’s May 16, 2018 letter, which will be attached to the minutes.

Commissioner Gibson shared there could be two ways, when it is required and when it is not required and that it should be in two different sections. Chair Sheehan said she understood Commissioner Gibson and that in terms of goal posts, there would be two sections explaining when something would be covered in one section but not in another.

Commissioner Alivado requested clarification that Mayor Caldwell is requesting his suggestion be set as criteria and in addition to Rule 11 commissioners would also have to look at the criteria in decision making. Vice-Chair Levinson said he believes the Mayor wants language drafted into the amends Rule 11 that would set the goal posts. Commissioner Alivado asked if that would exceed statutory language. Vice-Chair Levinson said that the problem with the term “course and scope of employment” is that it is a subset and limits the scope of the statute, which has been deemed unlawful by the courts. He provided an example of HRS 52D-8 as a large circle, one which has a broader scope and that “course and scope of employment” is a circle within HRS 52D-8 that narrows the scope, similar to a venn diagram.

Vice-Chair Levinson shared some of his discussions with COR and explained it will not be easy for commissioners to find descriptors that do not appear in a statute and in the absence of any assistance from the Intermediate Court of Appeals or the Supreme Court in not limiting the scope of the statute will be difficult.

Commissioner Sword shared that it seems no matter what commissioners do, there will be no complying as Commissioner Levinson is saying. Chair Sheehan stated that the Mayor’s list looks good to her, and the task is how to define performance of duty not only for current commissioners but for future commissioners, and that is why the Mayor has come up with a list that could easily be incorporated into the proposed Rule 11 without having terms such as “course and scope.”

Vice-Chair Levinson interjected and said the “course and scope” applies (mostly) to workers compensation and retirement benefits. He further stated that for agency purposes, vicarious liability on the part of the employer, the term “within the scope of employment” is relevant. Chair Sheehan then explained an employer can be held responsible for the acts of an employee if the employee is doing something within “scope of employment” (doing something to serve the employment).
Discussion on Letter from Mayor Caldwell Concerning Police Commission Rule 11 (Cont’d.)

She explained that under the current law, HRS 52D-8, a police officer gets a free lawyer if he or she is sued or indicted for acts done in the performance of duty. What Mayor Caldwell is seeking are definitions/examples of what the acts would be.

Commissioner Sword said that he sees the Mayor’s suggestions more like guidelines and not necessarily rules.

Chair Sheehan asked Vice-Chair Levinson if he would consider working with COR again to incorporate the Mayor’s suggestions into Rule 11. Vice-Chair Levinson then said the Commission has complied with the statute by going through the rule making process pursuant to Chapter 91, and as required, the proposed Rule 11 was forwarded to the Mayor. He then explained the rules are not effective without approval by the Mayor and it is unclear if the May 16, 2018 letter from Mayor Caldwell served as a rejection. If the letter is not a rejection, does the statute authorize for negotiation with the Mayor over the wording of a rule that has already gone through the statutory process.

Chair Sheehan said her feeling is that a new rule should be proposed and sent to the Mayor because there is no specific term stating a rejection, and Vice-Chair Levinson is correct and commissioners should repeat the process. Commissioner Sword said he thinks the Mayor needs to reject the proposed Rule 11 and commissioners begin from scratch. Commissioner Gibson said the Mayor does seem to imply he is rejecting the proposed Rule 11 to which Vice-Chair Levinson stated his letter does not clearly state the rejection, but rather seems to want to negotiate.

Vice-Chair Levinson then said that he has a concern with the first goal post suggestion by the Mayor—that on its face does not extend to any unlawful act as it appears to preclude any unlawful act, so that commissioners would be permitted to reject a request for legal representation if the acts an officer is accused of are illegal, which is not what the legislature intended. He then referred to the memorandum provided to commissioners from COR.

Chair Sheehan said she appreciated the discussion and asked Vice-Chair Levinson if he would be able to productively work with COR given previous encounters. Vice-Chair Levinson said he would hope there would be no problems and that public access to contested case hearings has been resolved. Chair Sheehan then said her opinion was that if an officer was doing something officers do—writing a ticket, making an arrest, pulling someone over for speeding, conducting an investigation, using the computer at work even if the act was done unlawfully, it was an act in the performance of duty.

Vice-Chair Levinson said he did not have a problem with Mayor Caldwell’s four goal posts as long as the understanding is that a particular act which can give rise to liability on the officer’s part can be unlawful and yet the officer still be entitled to representation.
MINUTES OF THE REGULAR MEETING  
May 16, 2018  
Page 5

Chair Sheehan then made a motion that Commissioner Levinson work with the Department of the Corporation Counsel to try and incorporate the goal posts suggested by the Mayor. Commissioner Gibson seconded the motion.

Discussion: Commissioner Alivado then asked if Chair Sheehan's draft memo would be moot, to which Chair Sheehan acknowledged it would be moot. Chair Sheehan then asked if any other commissioner would like to work with Vice-Chair Levinson. Commissioner Alivado encouraged a working relationship with COR and not repeat of what has happened. She would prefer to have COR on board going into the public hearing. Commissioner Sword also said he feels Mayor Caldwell prepared the letter with consultation from COR and that it would be appropriate for Vice-Chair Levinson to work with COR.

Vote: By a unanimous vote, the motion carried.

Lime Scooter
Commissioner Gibson reported over the weekend he had spoken with Deputy Chief McCarthy on the Lime Scooter and the issue is an interesting dilemma. For those that were not familiar with the scooters, he explained the Lime Scooter is operated by using an app that you download. Once you have downloaded and registered with Lime Scooter you can get on the scooter and ride to your destination and leave the scooter. The difference between the Biki Bikes and the Lime Scooters is that the bikes have a docking station and the scooters can be left anywhere. Approximately 200 scooters were distributed in the Waikiki and University area. Use of the scooters can be dangerous to pedestrians because riders are on sidewalks and streets.

Chair Sheehan thanked Commissioner Gibson for being available to Deputy Chief McCarthy.

Memo to the Department of the Corporation Counsel for Requests for Legal Counsel
Vice-Chair Levinson distributed copies of the current and his proposed memorandum signed by the HPC executive officer when transmitting requests for legal counsel to COR. He then explained that for some time he felt the memo could be elaborated.

Vice-Chair Levinson explained that his draft addresses a few problems—the first that routinely the memo received from COR that contains a recommendation as to whether an officer’s request should be granted or denied, has a notation of attorney/client privilege. He explained that it is his view that there is no attorney/client relationship between the Commission and COR for purposes of the recommendations, and that COR’s opportunity to provide input regarding the determination is mandated by HRS 52D-9, which requires before commissioners make a determination Commission’s consult with COR who may, not must, make a recommendation to the Police Commission if COR so desires.

This is a statutory obligation to give COR an opportunity to weigh in. When COR takes the position that a request for legal representation should be denied, it appears as an adversary party in the contested case hearing opposing the police officer’s request for legal representation, so COR cannot serve as the Commission's attorney with respect to the determination memos; however, they are entitled to provide input and commissioners appreciate the input COR provides.
MINUTES OF THE REGULAR MEETING  
May 16, 2018  
Page 6

Memo to the Department of the Corporation Counsel for Requests for Legal Counsel (Cont’d.)
The new draft memo puts COR on notice that commissioners do not view the interchange as taking place within the attorney/client relationship and that commissioners are going to make whatever input COR provides to the commission available to the requesting officer because it would be unfair in a contested case hearing. The memo also seeks to expedite the process because some of the requests drag on because the Commission has waited for COR to provide the Commission with recommendation memos. The draft memo informs COR that if no memo is received by a given deadline, the Commission will deem COR to have waived its statutory input.

Chair Sheehan said she appreciated the draft memo by Vice-Chair Levinson and that it is accurate and provides notice to COR of the Commission’s position. Chair Sheehan then suggested the memo be used. Commissioner Alivado asked if the goal was to provide the officer subject to the complaint the ability to review. Chair Sheehan explained that by statute the Commission is required to consult with COR and COR has the right to do so or not. She then explained the role of the Commission’s attorney versus the role of the attorney drafting the recommendation. Commissioner Alivado then said with respect to COR’s opinion and COR seeing the memo and deciding not to make a recommendation it would not be beneficial to a current or future commissioner not to have a recommendation from COR.

Vice-Chair Levinson said that based on previous experience it is unlikely to happen because for the last several contested case hearings, commissioners have attached COR’s memo as an exhibit, so the memos have been available to the requesting police officer which has been, on occasion, objected to but it has not deterred COR from continuing to provide the memos.

HPC staff then requested commissioners defer voting on using the memo and work with staff because the memo is transmitted under staff signature. The executive officer should be comfortable with signing the memo, and even though we have an acting executive officer the Commission will have a new executive officer soon. Chair Sheehan and Vice-Chair Levinson explained the purpose of the memo and understood staff concerns. Commissioner Sword also stated it would only be fair to the new executive officer. Vice-Chair Levinson then stated he did not want to see another memo going out as presently written, to which Chair Sheehan indicated the current memo would be used until the Commission could discuss the matter with the new executive officer.

Meeting with City Councilmember Ikaika Anderson. Resolution 17-308
Chair Sheehan reported she and Vice-Chair Levinson met with Councilmember Anderson on Resolution 17-308 concerning the appointment of commissioners to the Police Commission and the mayor appointing the police chief, which was referred back to committee. The meeting with Councilmember Anderson was productive and he indicated the City Council wants to get to know the commissioners. Chair Sheehan informed commissioners she made it clear that commissioners also want to have good communication with the City Council, to which all commissioners agreed.

Commissioner Alivado suggested commissioners discuss the drafting of a letter to the Executive Matters and Legal Affairs Committee which will meet on May 22, 2018. Chair Sheehan then asked commissioners if they were uniformly opposed to Resolution 17-308. Commissioners in attendance all acknowledged their opposition to Resolution 17-308.
MINUTES OF THE REGULAR MEETING
May 16, 2018
Page 7

Meeting with City Councilmember Ikaika Anderson, Resolution 17-308 (Cont’d.)
Chair Sheehan then made a motion for Commissioner Alivado to draft a letter on behalf of the entire commission and to transmit it to the Executive Matters and Legal Affairs Committee.

Discussion: Commissioner Sword requested the letter reflect changes to the City Charter, HPD’s new chief, and the need for time for commissioners to adjust to operating under the Revised City Charter.

Vote: By a unanimous vote, the motion carried.

Consideration of Requests for Legal Counsel
Corporal Francis K. Yanagi, Civil No. 18-00088
Commissioner Alivado made a motion to approve the request for legal counsel from Corporal Francis K. Yanagi for Civil No. 18-00088. Commissioner Gibson seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.

Officer Tracy N. Tamondong, Civil No. 18-00088
Commissioner Alivado made a motion to approve the request for legal counsel from Officer Tracy N. Tamondong for Civil No. 18-00088. Commissioner Chang seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.

Officer Minh-Hung P. Nguyen, CR17-00582
Commissioner Alivado made a motion to set a contested case hearing for Officer Nguyen’s request for legal counsel for CR17-00582. Commissioner Gibson seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.

Officer Daniel S. Sellers, CR17-00582
Commissioner Alivado made a motion to set a contested case hearing for Officer Sellers’ request for legal counsel for CR17-00582. Commissioner Chang seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.
MINUTES OF THE REGULAR MEETING
May 16, 2018
Page 8

**Lieutenant Derek W. Hahn, CR17-00582**
Commissioner Alivado made a motion to set a contested case hearing for Officer Hahn’s request for legal counsel for CR17-00582. Chair Sheehan seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.

Letters will be sent to those requesting legal counsel informing them of the Commission’s decisions.

Public Portion of the Report from the Permitted Interaction Group Formed to Interview and Recommend an Executive Officer for the Honolulu Police Commission
Commissioner Sword introduced Mr. Masa Arakaki of the Human Resources Department who assisted the Permitted Interaction Group. He then reported eight persons were qualified by the Department of Human Resources for the position of Executive Officer of the Honolulu Police Commission. All eight were notified by U.S. Mail and e-mail of their qualification and were asked to call the Honolulu Police Commission office to schedule an interview.

Two persons scheduled interviews; however, one person withdrew from the interview prior to the interview date.

On May 9, 2018, Mr. Arakaki provided the Permitted Interaction Group (Commissioners Loretta Sheehan, Shannon Alivado, and Max Sword) with an interview training session.

The remaining applicant was interviewed on May 10, 2018, by the Permitted Interaction Group. Mr. Arakaki, served as the facilitator for the interview. The interview results will be presented to the full commission during the executive session.

**EXECUTIVE OFFICER’S REPORT**
Acting Executive Officer Ashak reported as of May 16, 2018, the Commission has received 32 complaints compared to 40 in 2017. Seven complaints are pending, 13 referrals were referrals to PSO, and there are 19 pending requests for legal counsel (some were addressed today).

As for the office report, Acting Executive Officer informed commissioners the process for hiring two investigators is moving along.
Questions from Commissioners
After consultation with Counsel Wong, Chair Sheehan made a motion for the following documents to be attached to the minutes and made part of the public record:

1. Mayor’s letter of May 4, 2018
2. Commissioner Levinson’s Response dated May 8, 2018
3. Chair Sheehan’s draft response to the Mayor’s letter
4. Memo drafted to Donna Leong by Vice-Chair Levinson concerning HRS 52D-8
5. All memoranda from the Department of the Corporation Counsel reviewed for the consideration of requests for legal counsel (New Business Items 6 a-e)

Commissioner Levinson seconded the motion.

Discussion: Commissioner Alivado requested clarification on the memos from COR as they are marked confidential. Vice-Chair Levinson answered the memos have been made public record previously, there is no attorney/client relationship concerning the memos, and that as clients the Commission can release the memos.

Vote: By a unanimous vote, the motion carried.

EXECUTIVE SESSION
A 3:10 p.m., Commissioner Gibson 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.

Chair Sheehan 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 4:12 p.m.

ANNOUNCEMENTS
Chair Sheehan announced the next meeting Honolulu Police Commission will be on May 18, 2018 at 8:15 a.m.
MINUTES OF THE REGULAR MEETING
May 16, 2018
Page 10

ADJOURNMENT
At 4:12 p.m. Vice-Chair Levinson made a motion to adjourn the meeting. Chair Sheehan seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.
Aloha Police Commissioner Sheehan,

I'm hoping that yourself and the commission will help the police department respond to the current crisis.

I read of the "257 officer shortage" in recent headlines with crime victims getting letters from the department that they don't have the resources. According to Chief Ballard's quote in HNN - "The property crimes, you know, we're still going to do some of the investigations if we have the leads," Ballard said. "It will take years to fill the gaps in staffing"

Drastic resource changes need to be made to respond to this crisis!

1) In East Honolulu and perhaps elsewhere, multi-officer units run speed traps on the highway during heavy commuting hours as people go to work and school. These back up traffic and create dangerous situations when folks are pulled over. Each night the highway becomes very dangerous as young racers race at dangerous speeds. I have never seen one speed trap at night. (Among the dangerous speeders are often the police cars).

2) Remote cameras monitored in real time by a civilian for high crime areas can resolve much of the shortage of officers. Security cameras are inexpensive and used worldwide.

3) Home visits for non emergency crimes also tie up needed resources. To report credit card fraud on my statement an officer had to came to my home. Reporting this type of crime electronically or at the station would free up officer resources.

4) Police stationed on road construction projects also should be reduced where possible and replaced with civilian road workers.

I would hope that the Commission works with the Department to oversee and fix this crisis. Having a department where according to the Chief, they are unable to fully respond to crime because of their 257 officer shortage is serious and not acceptable.

Mahalo,

Chris Cramer
East Honolulu
May 4, 2018

Ms. Loretta A. Sheehan, Chair
and Members
Honolulu Police Commission
1060 Richards Street, Suite 170
Honolulu, Hawaii 96813

Dear Chair Sheehan and Commissioners:

I would like to thank Chair Sheehan and Commissioner Levinson for meeting with Managing Director Roy Amemiya and me regarding the Honolulu Police Commission’s amended Rules 10 and 11. I deeply appreciate that the two of you have taken the lead in initiating a long overdue review and changes to the Commission rules.

Rule 11 which deals with the procedures relating to Hawaii Revised Statutes (“HRS”) Sections 52D-8 and 9, and the determination as to when the City would provide a police officer with legal counsel for action done while in the performance of the officer’s duty, is of significance, as it simultaneously demonstrates the City’s full support of our police officers’ actions while also assuring that City funds are responsibly expended.

In reviewing the amendment to Rule 11, I note that it restates the language that is already stated in HRS § 52D-9 with no further explanation or guidance. As a lawyer, I am cognizant of the importance of standards and guidelines that members of the public, lawyers, judges, as well as the Commissioners, can clearly understand and rely upon, rather than referring to specific case citations, which in my mind could be interpreted differently depending on ones perspective. I am also aware that the Hawaii Courts give great deference to boards and commissions when they are interpreting their own governing statutes and authority. During our meeting you graciously indicated that you are amenable to considering my concerns regarding the amendment to Rule 11. I would therefore request that you consider providing more specific guidance and explanation of what the Commission means when it uses the phrase “performance of the officer’s duty as a police officer.”
Again, I would like to express my sincere thanks to both of you and the other Commissioners for volunteering to perform such an important role in our City government.

Sincerely,

Kirk Caldwell
Mayor
STEVEN H. LEVINSON
3430-F KEAHI PLACE
HONOLULU, HAWAII 96822-1264
808-988-7868 (Home)
808-780-8845 (Mobile)
stevenhlevinson@gmail.com

May 8, 2018

Mayor Kirk Caldwell
Office of the Mayor
City and County of Honolulu
530 South King Street, Room 300
Honolulu, Hawaii 96813

Dear Mayor Caldwell:

Thank you for your letter dated May 4, 2018, addressed to Chair Loretta Sheehan and the members of the Honolulu Police Commission. Referencing our March 9, 2018 meeting with you and Managing Director Roy Amemiya regarding the commission’s amended Rules 10 and 11. My response is in my individual capacity as the commission’s Vice Chair, and the opinions expressed in this letter are mine.

Rule 11 undertakes to implement the mandate of HRS §§ 52D-8 and -9 that whenever a police officer is prosecuted for a crime or sued in a civil action for acts done in the performance of the officer’s duty as a police officer, the police officer shall be represented by counsel provided by the county. You are correct that Rule 11, as amended, restates the “acts done in the performance of the officer’s duty as a police officer” language, as set forth in the statutes, without further elaboration or alteration. This is because the Hawaii appellate courts have never had occasion to construe or interpret the language. The old Rule 11, which I understand was drafted by the Department of the Corporation Counsel, superimposed and engrafted a “course and scope of employment” standard on the statutes for purposes of determining whether a requesting police officer’s acts, for which he or she is being sued, were done in the performance of his or her duty as a police officer. The engrafted “course and scope” test is in derogation of the statute and is therefore unlawful. No judicial deference is required when an agency’s interpretation of a statute, as set forth in an implementing administrative rule, conflicts with or contradicts the manifest purpose of the statute it seeks to implement. The Hawaii Supreme Court has not hesitated to reject an incorrect statutory construction advanced by an administrative agency entrusted with the statute’s implementation. An agency may not enact rules that restrict the provisions of the act being administered. I am unaware of any alternative formulation or test designed to ascertain whether a police officer’s acts were done in the performance of duty as a police officer that would not restrict the provisions of HRS §§ 52D-8 and -9. That is why I am
unwilling to superimpose such a formulation or test onto an amended Rule 11. In the absence of an amended Rule 11, I anticipate that the Commission will have no choice but to ignore the unlawful "course and scope of employment" language of the current rule in order not to exceed the Commission's power and authority, as the Department of the Corporation Counsel has improperly been exhorting the Commission to do for years, in passing on police officers' requests for legal representation.

Sincerely,

[Signature]

Steven H. Levinson

Cc. Loretta A. Sheehan, Esq.
    Members, Honolulu Police Commission
May 16, 2018

MEMORANDUM

To: The Honorable Kirk Caldwell, Mayor
City and County of Honolulu

From: Loretta A. Sheehan, Chair

Subject: Honolulu Police Commission’s Proposed Rule 11

Thank you for your letter of May 4, 2018, expressing your concerns with the Honolulu Police Commission’s proposed Rule 11 language. We share your concern as to the lack of guidelines provided under HRS § 52D-8, i.e., the failure of the statute to define “acts” which are “done in the performance of the officer’s duty as a police officer,” thus entitling the officer with counsel at City and County expense.

The problem with our current Rule 11, however, is that it grafts inapposite language, and thus, a body of law, on to the statute. In short, the Police Commission’s current Rule 11 injects a “course and scope of employment” analysis where it does not belong.

“Acts done in the performance of an officer’s duty as a police officer,” is not synonymous with “acts done in the course and scope of employment.” Acts “done in the performance of an officer’s duty as a police officer” is considerably broader and subsumes “acts done in the course and scope of employment.”

Conduct is considered within the “course and scope” of employment only if:

1. The work is of the kind that the officer is employed to perform;
2. It occurs substantially within the authorized time and space limits; [and]
3. It is actuated, at least in part, by a purpose to serve the master.

In addition, “[a]though an act is a means of accomplishing an authorized result, it may be done in so outrageous or whimsical a manner that it is not within the scope of employment.” Restatement of Agency § 229, comments a and b.
Acts done in the performance of an officer's duty are just that—any act done in the performance of an officer's duty. The acts do not have to be actuated, at least in part, by a purpose to serve the master. It doesn't matter, moreover, how outrageous or whimsical the act is.

We believe that the Corporation Counsel, in attempting to find guidance, has grafted a body of law that does not fit on HRS § 52D-8. It is for this reason that we seek to change Rule 11.

There are two solutions, as we see it. One is to change Rule 11 to make it comport with the law. We could add commentary to our Rule 11 to provide examples of what we think constitutes. The second is to change the law. The Honolulu Police Commission is willing to request that Corporation Counsel draft an amendment to HRS § 52D-8 which changes the standard from acts "done in the performance of an officer's duty" to acts "done in the course and scope of employment" and to seek its passage in the Legislature. This solution will reconcile the two views as to the standards to be applied under HRS § 52D-8 and will provide guidance to Police Commissioners seeking to make determinations under the statute.

Thank you for your consideration of this important topic. We look forward to continuing this conversation with you.

LORETTA A. SHEEHAN
Chair

LAS:ey
009

cc: Members of the Honolulu Police Commission
(date)

TO: DONNA Y.L. LEONG, CORPORATION COUNSEL  
DEPARTMENT OF THE CORPORATION COUNSEL

FROM: ______________________, EXECUTIVE OFFICER

SUBJECT: REQUEST FOR LEGAL COUNSEL – (Plaintiff’s name)  
(Officer’s name) CIVIL/CRIMINAL NO. (Civil/Criminal No.)

Attached is the Request for Legal Counsel, form HPD-195, as well as other documents submitted by (officer’s name) [] relating to the above-mentioned [] matter, which we have set for a Hawaii Revised Statutes (HRS) §§ 52D-8 and -9 hearing to be conducted during the Honolulu Police Commission’s regularly scheduled meeting on [date].

[] As mandated by HRS § 52D-9, you may, no later than (due date), make a recommendation to the Honolulu Police Commission with respect to whether the officer is being prosecuted or sued for acts done in the performance of the officer’s duty if you so desire. We will not deem any recommendation that you make as occurring within any attorney-client relationship, and we will not treat your recommendation as privileged and confidential. We will make your recommendation available to Officer (name) in advance of the hearing. We will deem any failure to submit a recommendation prior to the date of the hearing as a waiver of your statutory right to make a recommendation.

Should you have any questions regarding this request, please contact me at 723-7581.

[NAME]  
Executive Officer

DWSL:xx  
Attachments
May 1, 2018

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ATTORNEY-CLIENT COMMUNICATION
DO NOT CIRCULATE

MEMORANDUM

TO: LORETTA SHEEHAN, CHAIR
AND MEMBERS OF THE HONOLULU POLICE COMMISSION

VIA: GEORGE P. ASHAK, ACTING EXECUTIVE OFFICER

FROM: SARAH T. CASKEN, DEPUTY CORPORATION COUNSEL

SUBJECT: IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAI’I, JOHN C. FERGUSON, M.D. V. CITY AND COUNTY OF HONOLULU, ET AL., CIVIL NO. 18-00088 – REQUEST FOR LEGAL COUNSEL BY CORPORAL FRANCIS K. YANAGI

I. INTRODUCTION


Employees and officers of the City and County of Honolulu (the “City”) are provided legal representation by the Department of the Corporation Counsel (“COR”) in matters relating to their official powers and duties. See RCH § 5-203. The alleged conduct must relate to the employer’s business in order to determine whether his/her actions were within the course and

CONFIDENTIAL – Communication of Counsel
scope of his/her employment. In addition to the above requirement under RCH § 5-203, under Haw. Rev. Stat. §§ 52D-8 and 52D-9, HPD police officers are statutorily entitled to legal representation for acts done in the performance of the officer’s duty as a police officer.

Based on the information provided, it is recommended that the request for legal counsel for Cpl. Yanagi be granted.

II. BACKGROUND

Plaintiff John C. Ferguson, M.D. (“Plaintiff”) filed the Complaint against Cpl. Yanagi, among others HPD officers. As to the allegations relating to Cpl. Yanagi’s conduct, the following facts are set forth below.¹

On August 9, 2016, Plaintiff got into a physical altercation with his fiancée, Teresa Miki (“Miki”). The accounts by Plaintiff and Miki differ as to who was the victim and who was the suspect. Cpl. Yanagi was assigned to the Criminal Investigation Division (“CID”), First Watch Detail and was directed to handle this case for CID. On August 10, 2016, Cpl. Yanagi conducted a recorded interview of Miki, a recorded voluntary statement of Plaintiff, and took two witness statements. Cpl. Yanagi apprised his lieutenant of the facts and circumstances regarding this case and was instructed to present this case to the Department of the Prosecuting Attorney (“PAT”). After Cpl. Yanagi advised PAT as to the facts of the investigation, PAT chose to decline prosecution. Neither the Complaint nor the HPD records indicate any other actions taken by Cpl. Yanagi.

Plaintiff asserts that the responding officers were unduly influenced by the fact that Miki was the ex-wife of an HPD officer. He alleges that Cpl. Yanagi, along with other HPD officers, acted negligently, violated Plaintiff’s constitutional rights, unlawfully detained him, and caused intentional infliction of emotional distress.

III. ANALYSIS

COR is the legal representative of all agencies, the council and all officers and employees of the City in matters relating to their official powers and duties. See RCH § 5-203.

The Corporation Counsel shall serve as the chief legal adviser and legal representative of all agencies, the council and all officers and employees in matters relating to their official powers and duties. Except as otherwise provided by federal or state law,

¹ The facts set forth in this memorandum are based on the allegations in the Complaint and information contained in the HPD reports. COR does not take a position with regard to the truth of the allegations.
the determination whether a matter relates to official powers and
duties shall be made by the corporation counsel and shall include,
among other things, consideration of case law applicable to the
concept of course and scope of employment. The corporation
counsel shall represent the city in all legal proceedings, except as
otherwise provided in this charter. The corporation counsel shall
perform all other services incident to the office as may be required
by this charter or by law.

Id. (emphases added) (citations omitted).

Accordingly, COR provides legal representation to employees and officers of the City in
matters relating to their official powers and duties.

Haw. Rev. Stat. § 52D-8 requires that the City represent and defend police officers who
are prosecuted for a crime or sued in a civil action for “acts done in the performance of [their] duties.” Haw. Rev. Stat. § 52D-8 provides as follows:

Whenever a police officer is prosecuted for a crime or sued in a civil action for acts done in the performance of the officer’s duty as a police officer, the police officer shall be represented and defended:

(1) In criminal proceedings by an attorney to be employed and paid by the county in which the officer is serving; and

(2) In civil cases by the corporation counsel or county attorney of the county in which the police officer is serving.

Id. (emphasis added).

Haw. Rev. Stat. § 52D-9 titled, “Determination of scope of duty,” gives the Honolulu Police Commission (“HPC” or “Commission”) the authority, after consultation with COR, to determine if a police officer was acting within the scope of his or her duty for the purpose of legal representation:

The determination of whether an act, for which the police officer is being prosecuted or 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, shall be made by

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the police commission of the county. Before making a determination, the police commission shall consult the county attorney or the corporation counsel, who may make a recommendation to the police commission with respect thereto if the county attorney or corporation counsel so desires. The determination of the police commission shall be conclusive for the purpose of this section and section 52D-8.

Id.

The Intermediate Court of Appeals ("ICA") has interpreted the statutory term "performance of duty" in a case pertaining to employee retirement benefits as follows:

Where an employee is on the employer's premises, doing what the employer requires at a time and place the employee is required to do it, surely the employee is engaged in the actual performance of duty.

_Hua v. Bd. of Trs. of the Emples. Ret. Sys., 112 Hawai'i 292, 300, 145 P.3d 835, 843 (App. 2006)._

Rule 11 of the Rules of the Honolulu Police Commission, which were adopted on February 18, 2004, establishes procedural rules for HPC to follow "in determining whether a police officer's actions were done in the course and scope of employment, so as to entitle the police officer to legal representation provided by the City and County of Honolulu as stated in Haw. Rev. Stat. §§ 52D-8 and 52D-9. See HPC Rule 11._2

The Hawai'i Supreme Court has adopted the following test to determine whether an individual was acting within the course and scope of employment:

(1) Conduct of a servant is within the scope of employment if, but only if:

(a) it is of the kind he is employed to perform;

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2 We understand that HPC recently amended HPC Rule 11 to specify that the analytical framework should be based on the "performance of the police officer's duty" language only. The amended Rule does not provide any guidance as to the meaning of this term. Our recommendation herein does not address the impact, if any, that the proposed amendment to HPC Rule 11 may have on our analysis. Because the Mayor has not signed the amended HPC Rule 11 to date, COR's analysis is based on the existing Rule 11.
(b) it occurs substantially within the authorized
time and space limits; [and]

(c) it is actuated, at least in part, by a purpose to
serve the master, . . . .

* * * * *

(2) Conduct of a servant is not within the scope of
employment if it is different in kind from that authorized, far
beyond the authorized time or space limits, or too little actuated by
a purpose to serve the master.

Restatement (Second) of Agency § 228 (1958)). The Court further held that, relevant to the
scope of employment determination, is an assessment of whether the employer derived any
benefit from the conduct or whether such conduct was related to the employer’s business.
Henderson, 72 Haw. at 394, 819 P.2d at 89; see also Wong-Leong v. Hawaiian Indep. Refinery,
another person when driving while under the influence of alcohol can be found to have acted
within the “course and scope” of his employment when he drank alcohol at a job promotion party
located on the work site, where there was a tradition of drinking activities on the work site and
the drinking activities benefitted the enterprise).

In applying the above standard to this case, the available information provided to us for
review indicates that Cpl. Yanagi’s actions were done in the course and scope of employment
and in the performance of his duties as a police officer. Cpl. Yanagi conducted an investigation
the day after the incident, taking statements from Plaintiff, the alleged victim, and two witnesses.
Cpl. Yanagi presented the information to PAT, which declined to prosecute the case.

The information provided indicates that Cpl. Yanagi’s conduct was the kind he was
employed to perform and occurred within his authorized work time and geographical location.
Lastly, Cpl. Yanagi’s actions and activities appear to be actuated by a purpose to serve the
employer.

Based on the foregoing, we recommend that Cpl. Yanagi’s request for legal counsel be
granted. In reaching this conclusion, we do not make, nor are we required to make, a
determination that the allegations are true or not, nor do we make a determination whether his
actions or activities were proper or not. We have merely reviewed the allegations and the limited
information provided to us to determine whether the conduct complained of was done in the
course and scope of employment and in the performance of Cpl. Yanagi’s duties as a police
officer.

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IV. CONCLUSION

Pursuant to RCH Section 5-203, Haw. Rev. Stat. §§ 52D-8 and 52D-9, and Rule 11, by signing below, Corporation Counsel has determined that upon consideration of case law applicable to the concept of course and scope of employment and based on the information provided, the conduct alleged in the Complaint to have been taken by Cpl. Yanagi was done in the course and scope of employment and in the performance of his duties as a police officer. Accordingly, based on the information provided, it is recommended that Cpl. Yanagi’s request for legal counsel be granted.

Should you have any questions, please contact the undersigned at 768-5152.

SARAH T. CASKEN
Deputy Corporation Counsel

APPROVED:

DONNA Y. L. LEONG
Corporation Counsel

CONFIDENTIAL – Communication of Counsel
May 1, 2018

CONFIDENTIAL AND PRIVILEGED
ATTORNEY-CLIENT COMMUNICATION
DO NOT CIRCULATE

MEMORANDUM

TO: LORETTA SHEEHAN, CHAIR
AND MEMBERS OF THE HONOLULU POLICE COMMISSION

VIA: GEORGE P. ASHAK, ACTING EXECUTIVE OFFICER

FROM: SARAH T. CASKEN, DEPUTY CORPORATION COUNSEL

SUBJECT: IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAI‘I, JOHN C. FERGUSON, M.D. V. CITY AND COUNTY OF HONOLULU, ET AL., CIVIL NO. 18-00088 – REQUEST FOR LEGAL COUNSEL BY OFFICER TRACY N. TAMONDONG

I. INTRODUCTION

This memorandum responds to the Request for Legal Counsel received from Officer Tracy N. Tamondong (“Officer Tamondong”), dated March 28, 2018, in accordance with Section 5-203 of the Revised Charter of the City and County of Honolulu 1973 (2017 Edition) (“RCH”) and Haw. Rev. Stat. §§ 52D-8 and 52D-9. Our response and recommendation are based on the information provided as of the date of this memorandum including the complaint filed in the United States District Court for the District of Hawaii on March 8, 2018, in John C. Ferguson, M.D. v. City and County of Honolulu, et al., Civil No. 18-00088 (“Complaint”) and HPD Report Nos. 16-316728 and 16-316743.

Employees and officers of the City and County of Honolulu (the “City”) are provided legal representation by the Department of the Corporation Counsel (“COR”) in matters relating to their official powers and duties. See RCH § 5-203. The alleged conduct must relate to the employer’s business in order to determine whether his/her actions were within the course and

CONFIDENTIAL – Communication of Counsel
Loretta Sheehan, Chair  
and Members of the Honolulu Police Commission  
May 1, 2018  
Page 2

scope of his/her employment. In addition to the above requirement under RCH § 5-203, under Haw. Rev. Stat. §§ 52D-8 and 52D-9, HPD police officers are statutorily entitled to legal representation for acts done in the performance of the officer’s duty as a police officer.

Based on the information provided, it is recommended that the request for legal counsel for Officer Tamondong be granted.

II. BACKGROUND

Plaintiff John C. Ferguson, M.D. ("Plaintiff") filed the Complaint against Officer Tamondong, among others. As to the allegations relating to Officer Tamondong’s conduct, the following facts are set forth below.1

On August 9, 2016, Plaintiff got into a physical altercation with his fiancée, Teresa Miki ("Miki"). The accounts by Plaintiff and Miki differ as to who was the victim and who was the suspect. Officer Tamondong was assigned to District 6 as a uniformed patrol officer. He was called to the scene to relieve 3rd Watch Officers on an argument-type call. When Officer Tamondong arrived at the scene, the 3rd Watch Officers had already separated the parties and begun to take statements from the victim, complainant, and witnesses. Based on the facts and circumstances of the incident, Officer Jesse Takushi instructed Officer Tamondong to place Plaintiff under arrest for Abuse of Household Member and Harassment. Officer Tamondong handcuffed Plaintiff at the small of his back and double locked the handcuffs without incident. Officer Tamondong also issued Plaintiff a period of separation warning, which Plaintiff acknowledged he understood.

Officer Tamondong transported Plaintiff to the main police station via Straub Hospital. Officer Tamondong apprised the desk lieutenant, Lt. Kon, of the facts and circumstances of the arrest. Based on the information provided, Lt. Kon accepted the arrest. Neither the Complaint nor the HPD records indicate any other actions taken by Officer Tamondong.

Plaintiff asserts that the responding officers were unduly influenced by the fact that Miki was the ex-wife of an HPD officer. Plaintiff alleges that Officer Tamondong, along with other HPD officers, acted negligently, violated Plaintiff’s constitutional rights, unlawfully detained him, and caused intentional infliction of emotional distress.

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1 The facts set forth in this memorandum are based on the allegations in the Complaint and information contained in the HPD reports. COR does not take a position with regard to the truth of the allegations.
Loretta Sheehan, Chair  
and Members of the Honolulu Police Commission  
May 1, 2018  
Page 3

III. ANALYSIS

COR is the legal representative of all agencies, the council and all officers and employees of the City in matters relating to their official powers and duties. See RCH § 5-203.

The Corporation Counsel shall serve as the chief legal adviser and legal representative of all agencies, the council and all officers and employees in matters relating to their official powers and duties. Except as otherwise provided by federal or state law, the determination whether a matter relates to official powers and duties shall be made by the corporation counsel and shall include, among other things, consideration of case law applicable to the concept of course and scope of employment. The corporation counsel shall represent the city in all legal proceedings, except as otherwise provided in this charter. The corporation counsel shall perform all other services incident to the office as may be required by this charter or by law.

Id. (emphases added) (citations omitted).

Accordingly, COR provides legal representation to employees and officers of the City in matters relating to their official powers and duties.

Haw. Rev. Stat. § 52D-8 requires that the City represent and defend police officers who are prosecuted for a crime or sued in a civil action for “acts done in the performance of [their] duties.” Haw. Rev. Stat. § 52D-8 provides as follows:

Whenever a police officer is prosecuted for a crime or sued in a civil action for acts done in the performance of the officer’s duty as a police officer, the police officer shall be represented and defended:

(1) In criminal proceedings by an attorney to be employed and paid by the county in which the officer is serving; and

(2) In civil cases by the corporation counsel or county attorney of the county in which the police officer is serving.

Id. (emphasis added).
Haw. Rev. Stat. § 52D-9 titled, “Determination of scope of duty,” gives the Honolulu Police Commission (“HPC” or “Commission”) the authority, after consultation with COR, to determine if a police officer was acting within the scope of his or her duty for the purpose of legal representation:

The determination of whether an act, for which the police officer is being prosecuted or 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, shall be made by the police commission of the county. Before making a determination, the police commission shall consult the county attorney or the corporation counsel, who may make a recommendation to the police commission with respect thereto if the county attorney or corporation counsel so desires. The determination of the police commission shall be conclusive for the purpose of this section and section 52D-8.

Id.

The Intermediate Court of Appeals (“ICA”) has interpreted the statutory term “performance of duty” in a case pertaining to employee retirement benefits, as follows:

Where an employee is on the employer’s premises, doing what the employer requires at a time and place the employee is required to do it, surely the employee is engaged in the actual performance of duty.


Rule 11 of the Rules of the Honolulu Police Commission, which were adopted on February 18, 2004, establishes procedural rules for HPC to follow “in determining whether a police officer’s actions were done in the course and scope of employment, so as to entitle the police officer to legal representation provided by the City and County of Honolulu as stated in Sections 52D-8 and 52D-9 of the Hawaii Revised Statutes.” See HPC Rule 11.²

² We understand that HPC recently amended HPC Rule 11 to specify that the analytical framework should be based on the “performance of the police officer’s duty” language only. The amended Rule does not provide any guidance as to the meaning of this term. Our recommendation herein does not address the impact, if any, that the proposed amendment to HPC Rule 11 may have on our analysis. Because the Mayor has not signed the amended HPC Rule 11 to date, COR’s analysis is based on the existing Rule 11.
The Hawai‘i Supreme Court has adopted the following test to determine whether an individual was acting within the course and scope of employment:

(1) Conduct of a servant is within the scope of employment if, but only if:

(a) it is of the kind he is employed to perform;

(b) it occurs substantially within the authorized time and space limits; [and]

(c) it is actuated, at least in part, by a purpose to serve the master, . . .

* * * * *

(2) Conduct of a servant is not within the scope of employment if it is different in kind from that authorized, far beyond the authorized time or space limits, or too little actuated by a purpose to serve the master.

Henderson v. Professional Coatings Corp., 72 Haw. 387, 392, 819 P.2d 84 (1991) (citing Restatement (Second) of Agency § 228 (1958)). The Court further held that, relevant to the scope of employment determination, is an assessment of whether the employer derived any benefit from the conduct or whether such conduct was related to the employer’s business. Henderson, 72 Haw. at 394, 819 P.2d at 89; see also Wong-Leong v. Hawaiian Indep. Refinery, Inc., 76 Haw. 433, 438-44, 879 P.2d 538, 543-49 (1994) (holding that an employee who injures another person when driving while under the influence of alcohol can be found to have acted within the “course and scope” of his employment when he drank alcohol at a job promotion party located on the work site, where there was a tradition of drinking activities on the work site and the drinking activities benefitted the enterprise).

In applying the above standard to this case, the available information provided to us for review indicates that Officer Tamondong’s actions were done in the course and scope of employment and in the performance of his duties as a police officer. Officer Tamondong was on duty at the time he responded to a call to relieve 3rd Watch Officers. He arrested Plaintiff based on the facts and circumstances of the case. The information provided indicates that Officer Tamondong’s conduct was the kind he was employed to perform and occurred within his authorized work time and geographical location. Lastly, Officer Tamondong’s actions and activities appear to be actuated by a purpose to serve the employer.
Based on the foregoing, we recommend that Officer Tamondong’s request for legal counsel be granted. In reaching this conclusion, we do not make, nor are we required to make, a determination that the allegations are true or not, nor do we make a determination whether his actions or activities were proper or not. We have merely reviewed the allegations and the limited information provided to us to determine whether the conduct complained of was done in the course and scope of employment and in the performance of his duties as a police officer.

IV. CONCLUSION

Pursuant to Rule 11, RCH Section 5-203, and Haw. Rev. Stat. §§ 52D-8 and 52D-9, by signing below, Corporation Counsel has determined that upon consideration of case law applicable to the concept of course and scope of employment and based on the information provided, the conduct alleged in the Complaint to have been taken by Officer Tamondong was done in the course and scope of employment and in the performance of his duties as a police officer. Accordingly, based on the information provided, it is recommended that Officer Tamondong’s request for legal counsel be granted.

Should you have any questions, please contact the undersigned at 768-5152.

Sarah T. Casken
SARAH T. CASKEN
Deputy Corporation Counsel

APPROVED:

Donna Y. L. Leong
Corporation Counsel

STC:mw
May 9, 2018

MEMORANDUM

TO: LORETTA A. SHEEHAN, CHAIR, AND MEMBERS OF THE HONOLULU POLICE COMMISSION

VIA: GEORGE P. ASHAK, EXECUTIVE OFFICER

FROM: ROBERT L. RAWSON, DEPUTY CORPORATION COUNSEL

SUBJECT: UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAII CASE NO. CR17-00582 JMS, UNITED STATES OF AMERICA v. KATHERINE P. KEALOHA, ET AL - REQUEST FOR LEGAL COUNSEL BY MINH-HUNG P. NGUYEN

This memorandum is in response to your request for legal counsel dated October 23, 2017. Based on the information provided which included the indictment filed in the United States District Court for the District of Hawaii on October 19, 2017, in United States of America v. Katherine P. Kealoha, et al., Case No. 17-00582 JMS (D. Haw.), it is the recommendation of this office that the request for legal counsel be scheduled for contested case hearing. A written recommendation containing a “course and scope of employment” analysis will be provided to the Commission in advance of the scheduled hearing date.

ROBERT L. RAWSON
Deputy Corporation Counsel

APPROVED:

DONNA Y. L. LEONG
Corporation Counsel

RLR/au
17-08584/649308
MEMORANDUM

TO: Loretta A. Sheehan, Chair, and Members of the Honolulu Police Commission

VIA: George P. Ashak, Executive Officer

FROM: Robert L. Rawson, Deputy Corporation Counsel


This memorandum is in response to your request for legal counsel dated October 26, 2017. Based on the information provided which included the indictment filed in the United States District Court for the District of Hawaii on October 19, 2017, in United States of America v. Katherine P. Kealoha, et al., Case No. 17-00582 JMS (D. Haw.), it is the recommendation of this office that the request for legal counsel be scheduled for contested case hearing. A written recommendation containing a "course and scope of employment" analysis will be provided to the Commission in advance of the scheduled hearing date.

Robert Rawson
Deputy Corporation Counsel

APPROVED:

Donna Y. L. Leong
Corporation Counsel

RLR/au
17-08845/649304
MEMORANDUM

TO: LORETTA A. SHEEHAN, CHAIR, AND MEMBERS OF THE HONOLULU POLICE COMMISSION

VIA: GEORGE P. ASHAK, EXECUTIVE OFFICER

FROM: ROBERT L. RAWSON, DEPUTY CORPORATION COUNSEL

SUBJECT: UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAII CASE NO. CR17-00582 JMS, UNITED STATES OF AMERICA v. KATHERINE P. KEALOHA, ET AL. - REQUEST FOR LEGAL COUNSEL BY DEREK WAYNE HAHN

This memorandum is in response to your request for legal counsel dated October 26, 2017. Based on the information provided which included the indictment filed in the United States District Court for the District of Hawaii on October 19, 2017, in United States of America v. Katherine P. Kealoha, et al., Case No. 17-00582 JMS (D. Haw.), it is the recommendation of this office that the request for legal counsel be scheduled for contested case hearing. A written recommendation containing a “course and scope of employment” analysis will be provided to the Commission in advance of the scheduled hearing date.

Robert Rawson
DEPUTY CORPORATION COUNSEL

APPROVED:

DONNA Y. L. LEONG
Corporation Counsel

RLR/au
17-08844/649311