



# HAWAII CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 • HONOLULU, HI 96813-5095 • PHONE: (808) 586-8636 • FAX: (808) 586-8655 • TDD: (808) 586-8692

## MINUTES

Hawai'i Civil Rights Commission Office  
March 17, 2014  
3:00 p.m.

Present: Linda Krieger, Raymund Liongson, Wally Fukunaga, Artemio Baxa, and Kim Coco Iwamoto, Commissioners; Livia Wang, Bill Hoshijo, and Marcus Kawatachi, Staff; Dan Purcell, Public.

Chair Linda Krieger called the meeting to order.

### Approval of Minutes

The minutes of the January 13 and 24, 2014, were approved. (m/s/p Liongson/Fukunaga; 4-0) (Commissioner Iwamoto had not yet joined the meeting).

Approval of the minutes of the February 21, 2014, meeting was deferred, because Commissioner Iwamoto had not yet joined the meeting. The Commissioners agreed that the three members who attended and participated in the February 21, 2014, meeting should review and approve the minutes.

### Executive Director's Report

Deputy Executive Director (DED) Marcus Kawatachi presented an FY 2014 HCRC Mediation Program Year-to-Date Summary.

#### **Summary & Details (7/1/13 through 3/17/14)**

Referrals:	19
Dispositions:	17
Settlements:	11
Non-agreements:	6
Settlement Rate:	64.7 %
Employment cases settled:	11
Non-employment cases settled:	0
Dual-filed (EEOC/HCRC) settlements:	10
State-only settlements:	1

#### **Primary Bases for Complaints Settled in Mediation**

Disability	2
Ancestry/National Origin	2
Retaliation	2

Age	2
Race	2
Sex (pregnancy)	1

**Dispositions by Mediation Center**

Mediation Center of the Pacific	5/9	(settlement rate 55.6 %)
Private Mediators	4/4	(settlement rate 100 %)
Mediation Services of Maui	1/1	(settlement rate 100%)
West Hawaii Mediation Center	0/1	(settlement rate 0 %)
Ku'ikahi Mediation Services (Hilo)	0/1	(settlement rate 0 %)
Kauai Economic Opportunity, Inc.	1/1	(settlement rate 100%)
<b>OVERALL</b>	<b>11/17</b>	<b>(settlement rate 64.7%)</b>

DED Kawatachi presented a data and production report showing caseload data through March 17, 2014.

As of March 17, 2014, the report showed 429 open cases, a decrease of 1 case from the number reported as of February 21, 2014. Of those, 16 (3.7%) were filed in 2009, 42 (9.8%) filed in 2010, 38 (8.9%) filed in 2011, 61 (14.2%) in 2012, 214 (49.9%) in 2013, and 58 (13.5%) in 2014.

The report also showed a breakdown of the status of the open cases by investigation stage.

	2009	2010	2011	2012	2013	2014	Total
Housing Cases	0	0	1	10	12	4	27
Intake Stage	0	0	3	1	130	49	183
Mediation	0	1	0	2	23	3	29
Pending Assignment	0	35	28	40	38	2	143
Active Investigation	16	6	6	8	11	0	47
<b>TOTAL</b>	<b>16</b>	<b>42</b>	<b>38</b>	<b>61</b>	<b>214</b>	<b>58</b>	<b>429</b>

It was reported that: 24.2% of all investigation cases were 2 years old or older (from date of filing); 7.7% were over 18 months but less than 2 years old; 10.3 % were over 12 months but less than 18 months old; 23.1% were over 6 months but less than 12 months old, and 34.7% were 6 months old or less.

Executive Director (ED) Bill Hoshijo reported on two ongoing outreach initiatives.

Regarding the public education plan around Act 248, the “Domestic Workers Have Rights” campaign roll-out was tentatively scheduled for May 7, 2014. In preparation for the roll-out, a training for Immigrant Resource Center staff from all islands was planned for late April.

Work continued on the HCRC and the Disability Communication Access Board planning for a public education campaign to raise awareness of health care providers' obligation under federal and state law to provide a sign interpreter for deaf patients, if required for effective communication. The plan called for completion of discrete project work by the end of May, with a press conference to focus public attention on the issue.

Chair Krieger reported on her work on the HCRC process discussion. She and ED Hoshijo had engaged in discussion with EEOC Honolulu Local Office Executive Director Tim Riera, and she had begun review of closed cases. ED Hoshijo added that he and Chair Krieger would discuss the role of the Commission in establishing strategic enforcement priorities.

### **Chief Counsel's Report**

Chief Counsel (CC) Livia Wang distributed the Hearing Examiner's proposed decision in the *Bate* case. She then reviewed the Commission process and timetable. The parties had until March 27, 2014, to file exceptions to the proposed decision, and then 15 days to file statements in support. The record of hearing would be prepared for the Commission, so a Commission hearing of oral argument could be scheduled for late April or early May. Chair Krieger suggested, and the Commissioners agreed, that the *Bate* hearing of oral argument should be scheduled for April 30, 2014.

A member of the public asked how the Commission handled conflicts of interest. Chair Krieger replied that Commissioner members had an obligation to disclose conflicts, and CC Wang added that where there was a conflict, a Commissioner should recuse themselves from adjudication of the case.

### **Rulemaking**

CC Wang reviewed the pending proposed amendments to HAR §§ 12-46-1, 12-46-109, and 12-46-175, dated April 5, 2007, (public hearing held on June 15, 2007), discussing the proposed rule amendments, the rulemaking history, and a recommendation that the Commission take action on disposition of the proposed rule amendments.

The Commissioners voted to go into closed executive session to confer with counsel. **(m/s/p Iwamoto/Liongson; all)**

The Commission came out of closed executive session.

Commissioner Fukunaga offered a motion to reject the proposed rule amendments.

Chair Krieger discussed the reasons why the proposed rule amendments should be rejected. In its February 2014 *Lales* decision, the Hawai'i Supreme Court endorsed the sexual harassment and ancestry harassment rules that existed prior to 1988, before the HCRC came into existence. And, adoption of the federal *Farragher/Ellerth* affirmative defense would run counter to public policy, not appropriate for Hawai'i.

The Commissioners voted to reject the proposed rule amendments. **(m/s/p Fukunaga/Iwamoto; all)**

### **Legislation -2014 Session**

The Commissioners reviewed Legislative Summary 4, an update on the status of bills, and CC

Wang reported on bills that were still alive.

## **EMPLOYMENT**

**HB 1975 HD1  
SB 2420 SD1**

**Criminal history record checks for certain county employees**

Amends HRS § 846-2.7 to allow criminal history record checks for county employees to have access to secured areas relating to traffic management and confidential information; and for employees who use firearms for non-law enforcement purposes; exempts all 3 new categories from arrest and court record protections under HRS § 378-2.5

**Status: HB 1975 ref. to LAB, JUD; hrg. before LAB on 1/24/14; passed with requested amendments; hrg. before JUD on 2/20/14, passed unamended; crossed on 3/6/14; ref. to HMS/PSM, JDL**

**SB 2420 ref. to HMS/PSM, JDL; hrg. before HMS/PSM on 1028014; passed with requested amendments; hrg. before JDL on 2/21/14, passed unamended; crossed on 3/4/14; ref. to LAB, JUD; hrg. before LAB on 3/11/14, passed unamended**

**HCRC position:** No opposition with agreed amendments. Staff met with CCH personnel staff and reached agreement that only provision regarding employees who use firearms for non-law enforcement purposes would be exempt from HRS § 378-2.5.

## **HOUSING**

**HB 676, HD2  
[SB-805]**

**Source of income housing discrimination**

Amends HRS Chapter 515 to prohibit housing discrimination based on lawful source of income.

**Status: HB 676 ref. to CPC, JUD; hrg. before CPC on 1/30/13, passed w/ amendments moving prohibitions to HRS Chapter 521 (landlord tenant law); hrg. Before JUD on 1/16/14, passed w/ amendments keeping protection under landlord tenant law; 2/13/14 crossed to Senate; ref. to CPN/EGH, JDL**

**SB 805 ref. to CPN, JDL; hrg. before CPN on 1/30/13, deferred**

**HCRC position:** (based on past positions) - Support, on condition of requested additional enforcement positions and funding, citing loss of capacity and impact on enforcement. Lawful public sources of income include Section 8 vouchers, social security disability insurance, unemployment compensation, food stamps, temporary assistance to needy families; lawful private sources of income can include special needs trusts, and income from legal settlements. The majority of people who receive rental assistance are people with disabilities, single female heads of households, families with children and members of certain minority groups. Therefore, there is a correlation between those that are protected under our fair housing law and those who receive rental assistance. 13 other states have source of income protection statutes.

## PUBLIC ACCOMMODATIONS

**HB 1420 HD1**      **Service dogs in public accommodations; tags; leash**  
Amends Chapter 347 to require counties to issue service dog tags to trained service dogs requires service dogs to wear these tags when in public accommodations.

**Status:** ref. to JUD; hrg. on 1/24/14 before JUD; passed w/ amendments to only contain penalty for falsely representing an animal as a service animal; crossed on 2/6/14; ref. to JDL

**HCRC position:** Oppose. Intent is only to allow trained service dogs in public accommodations – this conflicts with HCRC’s interpretation of Chapter 489 to allow other assistance animals to be reasonable accommodations. Also conflicts with federal ADA Title II DOJ regs which do not allow a public accommodation to require documentation that an animal is licensed, trained or certified as a service animal. In addition there are no state or federal standards for determining what a trained service animal is, and out of state service dogs won’t have tags.

## OTHER CIVIL RIGHTS ISSUES

**HB 1740 HD1**      **Amends appropriation for Office of Language Access resource center and multilingual website project**

**Status:** Ref. to HLT, FIN; hrg. before HLT on 1/24/14; passed w/ amendments; hrg. before FIN on 2/20/14, passed unamended; crossed on 2/28/14; ref. to HMS, WAM; hrg. before HMS on 3/18/14

**HCRC position:** Support. Last session the HCRC supported HB 266 which created the resource center and website project.

**HB 1748 HD1**      **Appropriates funds for financial assistance for interpreters for training and certification in medical interpretation and for development of medical glossaries in main languages spoken in Hawaii**

**Status:** Ref. to HLT, FIN; hrg before HLT on 1/24/14; hrg. before FIN on 2/20/14, passed unamended; crossed on 2/28/14; ref. to HTH, WAM

**HCRC position:** Support – this is another OLA bill.

**HB 1889 HD1**      **Homeless Person’s Bill of Rights**

**[HB 2661]** Establishes a homeless person's bill of rights, including the right to equal opportunities in employment

**Status: HB 1889 ref. to HUS, FIN; hrg. before HUS on 2/13/14; passed w/ amendments; hrg. before FIN on 2/25/14, passed unamended; crossed on 3/4/14; ref. to HMS, JDL; hrg. before HMS on 3/11/14, passed unamended**

**HB 2661 ref. to HUS, JUD; no hearings held.**

**HCRC position:** Comments only. HCRC opposes discrimination and disparate treatment against people because they are poor or homeless. Regardless of socio-economic class, all of Hawaii's people should be accorded respect and dignity, equal opportunity, and equal protection of the law. People should not be denied access to goods, services, or accommodations based on discriminatory reasons. It should be recognized and acknowledged that these proposed protections, while they may overlap with existing protected bases (e.g., disability) that are disparately impacted by discrimination against the poor, are different in kind from the other protected bases in our civil rights / non-discrimination laws (race, ancestry, sex, etc.)

## **RESOLUTIONS**

**HCR 12      Requesting UH to affirm its commitment to Title IX and VAWA**  
**SCR 7      Requests UH to affirm commitments to Title IX and the Violence Against Women Act through notices, developing plans and hiring personnel dedicated to implementing these acts.**

**Status: HCR 12 ref. to HED, JUD; hrg. before HED on 3/13/14; passed unamended**  
**SCR 7 ref. to HRE, JDL**

**Recommendation:** Support.

## **Old Business**

ED Hoshijo said there was nothing new to report on *Cervelli v. Aloha Bed & Breakfast*, which remained pending before the Intermediate Court of Appeals.

ED Hoshijo reported that in the *McDonough* federal court case that the Executive Director filed an amicus brief in support of a motion to dismiss a declaratory relief action filed by a respondent in a fair housing complaint, the motion to dismiss was granted. It being likely that the HCRC case would be reopened, with the possibility that the case could be brought before the Commission, the ED's report did not include any discussion of the facts or the merits of the complaint.

## **New Business**

There was no new business.

## **Announcements**

There were no announcements.

**Next Meeting**

The next meeting was scheduled for May 5, 2014, at 3:00 p.m., subject to polling of and confirmation by the Commissioners.

**Adjournment**

