



HAWAII CIVIL RIGHTS COMMISSION

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MINUTES

Hawai'i Civil Rights Commission Office

July 24, 2014

2:30 p.m.

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

Chair Linda Krieger called the meeting to order.

Approval of Minutes

The minutes of the June 6, 2014, meeting were approved. (m/s/p Liongson/Iwamoto; 4-0) (Commissioner Fukunaga joined the meeting after the vote to approve the minutes).

Executive Director's Report

Deputy Executive Director (DED) Marcus Kawatachi presented a data and production report showing caseload data through July 24, 2014.

As of July 24, 2014, the report showed 381 open cases, a decrease of 20 cases from the number reported as of June 5, 2014. Of those, 6 (1.6%) were filed in 2009, 21 (5.5%) filed in 2010, 25 (6.6%) filed in 2011, 53 (13.9%) in 2012, 158 (41.5%) in 2013, and 118 (30.9%) 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	8	5	8	22
Intake Stage	0	0	2	0	97	95	194
Mediation	0	0	0	1	12	9	22
Pending Assignment	0	8	16	40	32	3	99
Active Investigation	6	13	6	4	12	3	44
TOTAL	6	21	25	53	158	118	3811

It was reported that: 20.7% of all investigation cases were 2 years old or older (from date of filing); 7.9% were over 18 months but less than 2 years old; 16.2 % were over 12 months but less than 18 months old; 27.6% were over 6 months but less than 12 months old, and 27.6% were 6 months old or less.

Chair Kreiger called attention to the breakdown by type of case, asking if there were fewer housing cases in the “intake” stage. She emphasized that the intake stage takes too long, and that should and will be a focus of the review and discussion of HCRC enforcement procedures and priorities.

Commissioner Artemio Baxa noted that there was no data report on the basis for dismissal.

DED Kawatachi advised that the basis for closure data is aggregated and reported annually in the HCRC annual report.

Commissioner Baxa wondered when jurisdiction over a complaint is established at initial intake. He noted that jurisdiction is determined by the nature of the matter, and it should not take too long to determine threshold jurisdiction.

DED Kawatachi presented an FY 2014 HCRC Mediation Program Year-End Summary.

Summary & Details (7/1/13 through 6/30/14)

Referrals:	32
Dispositions:	25
Settlements:	15
Non-agreements:	10
Settlement Rate:	60 %
Employment cases settled:	15
Non-employment cases settled:	0
Dual-filed (EEOC/HCRC) settlements:	14
State-only settlements:	1

Primary Bases for Complaints Settled in Mediation

Disability	3
Ancestry/National Origin	3
Race	3
Age	2
Retaliation	2
Sex (pregnancy)	1

Dispositions by Mediation Center

Mediation Center of the Pacific	7/14	(settlement rate 50 %)
Private Mediators	5/5	(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)	1/2	(settlement rate 0 %)
Kauai Economic Opportunity, Inc.	1/2	(settlement rate 100%)
OVERALL	15/25	(settlement rate 64.7%)

Executive Director (ED) Bill Hoshijo distributed a June 10, 2014, DHRD “Guidance Regarding the Employment of Transgender Individuals,” expressing the policy of the State of Hawai‘i as an employer and providing guidance to address common questions that arise around the employment of transgender individuals. He noted that the guidance was very good, drawing from a similar guidance issued earlier by the federal Office of Personnel Management.

ED Hoshijo reported on the HCRC budget and staffing.

He reported that the HCRC was looking to fill four permanent positions: two Investigator IVs (due to anticipated retirements), an Office Assistant IV, and a Civil Rights Program Specialist (mediation coordinator).

He reviewed the Council on Revenues May 29, 2014, projection of state revenues for FY 2014 and FY 2015. The COR adjusted FY 2014 projected revenues from 0% growth to a negative -0.4%, and left projected growth for FY 2015 unchanged at 5.5%. It was anticipated that the FY 2015 projection would be adjusted at the next meeting of the COR, and that it was likely that they would make a downward adjustment, based on actual tax revenues.

ED Hoshijo then reviewed the Interim Budget Execution Policies and Instructions for FY 2015 issued by Governor Abercrombie on June 19, 2014. In response to the COR projection and anticipated downward adjustment for FY 2015, Budget and Finance had decided to release only 90% of the general funds appropriation for the first quarter of FY 2015, effectively a 10% restriction on general funds. The impact of the reduced release of general funds for the first quarter was compounded by a decision not to release funds appropriated to cover CBA pay increases of approximately 4%, which the department was obligated to pay and, due to a legislative error, a lack of general funds for leave payouts, which the department was also obligated to pay. As a result of the budget execution policies and instructions, the DLIR was forced to delay hiring to fill vacancies during the first quarter of 2015, and it was unlikely that the HCRC would be able to fill its four general funded permanent positions before September 30, 2014.

Chair Krieger suggested that the Commission should consider making a statement about the impact of budget issues on HCRC services.

Commissioner Baxa agreed, stating that there are times not to be silent. He added that so many in the civil rights community cannot speak out, but the Chair and Commissioners are independent and can make a statement. He suggested that it would be appropriate for the Chair to make a statement.

Commissioner Kim Coco Iwamoto said that there could be some push back if the Commission made a public statement.

Commissioner Wally Fukunaga said he thought about what he would think when he looked back at the end of his term, that he would question “what did I do” ... how meaningful and purposeful his time as a Commissioner was.

Chair Krieger suggested that a Commissioner should work with staff, Chief Counsel, on a draft statement.

Commissioner Raymund Liongson added that making a statement could also affect other boards and commissions who face the same challenges.

A motion was approved to designate Commissioners Iwamoto and Fukunaga to work with staff on a statement to the Governor, and then to report back on the draft. **(m/s/p Krieger/Iwamoto; all)**

Chair Krieger suggested that the statement and strategy should be discussed at the next meeting under old business.

Chief Counsel's Report

Chief Counsel (CC) Livia Wang gave the Commissioners a briefing on the recent U.S. Supreme Court decision in *Burwell v. Hobby Lobby*. She reported that the Supreme Court decided that: closely held corporations are "persons" under the Religious Freedom Restoration Act and can assert religious exercise rights; the Affordable Care Act burdened the corporation's exercise of religion; the ACA furthered a compelling government interest in providing cost free contraceptives; and, that compelling corporations to provide cost free contraceptives is not the least restrictive means of accomplishing the government's compelling interest.

ED Hoshijo noted that the federal RFRA did not apply to state laws, and that Hawai'i did not have a state RFRA.

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.

New Business

CC Wang reported on the proposed plan for the HCRC's annual public EEOC training program, scheduled for October 30, 2014, at the Blaisdell Exhibition Hall Pikake Room. The program would include EEOC basics and a focus on the topic of LGBT discrimination issues in the workplace.

CC Wang reported that Tracey Wiltgen would serve as program moderator, and panel presenters would be confirmed soon. She asked if one of the commissioners could deliver welcoming comments, in lieu of a keynote presentation. Commissioner Liongson suggested that Commissioner Fukunaga deliver the opening remarks, and he agreed.

Announcements

ED Hoshijo reminded the Commissioners that the HCRC would have a contingent walking in the 2014 Pride Parade on Saturday, June 7.

Next Meeting

The next meeting was scheduled for September 15, 2014, at 1:30 p.m., subject to polling of and confirmation by the Commissioners.

CLOSED EXECUTIVE SESSION

The Commission went into closed executive session to discuss enforcement procedures, pursuant to HRS § 368-4. **(m/s/p Iwamoto/ Liongson; all)**

Adjournment