



# HAWAII CIVIL RIGHTS COMMISSION

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## MINUTES

Hawai'i Civil Rights Commission Office  
October 27, 2014  
1:30 p.m.

Present: Linda Krieger, Wally Fukunaga, Artemio Baxa, and Kim Coco Iwamoto, Commissioners; Livia Wang, Marcus Kawatachi, and Bill Hoshijo, Staff. Members of the public were also in attendance.

Commissioner Raymund Liongson, excused.

Chair Linda Krieger called the meeting to order.

### Approval of Minutes

The minutes of the September 17, 2014, meeting were approved. (m/s/p Fukunaga/Iwamoto; all)

### Executive Director's Report

Deputy Executive Director (DED) Marcus Kawatachi's presented an FY 2015 HCRC Mediation Program Year-to-Date Summary.

#### **Summary & Details (7/1/14 through 10/27/14)**

Referrals:	11
Dispositions:	14
Settlements:	6
Non-agreements:	8
Settlement Rate:	42.9 %
Employment cases settled:	6
Non-employment cases settled:	0
Dual-filed (EEOC/HCRC) settlements:	4
State-only settlements:	2

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

Sex (3 pregnancy & 1 SH)	4
Ancestry/National Origin	1
Race	1

#### **Dispositions by Mediation Center**

Mediation Center of the Pacific	2/7	(settlement rate 28.6 %)
Kauai Economic Opportunity, Inc.	2/3	(settlement rate 66.7%)
West Hawaii Mediation Center	1/2	(settlement rate 50 %)
Private Mediators	1/1	(settlement rate 100 %)

Ku‘ikahi Mediation Services (Hilo)	0/1	(settlement rate 0 %)
Mediation Services of Maui	0/0	(settlement rate 0%)
<b>OVERALL</b>	<b>6/14</b>	<b>(settlement rate 42.9%)</b>

DED Kawatachi noted that the mediation program would be affected by the departure of temporary mediation coordinator Laurel Nishi at the end of September.

Commissioner Wally Fukunaga asked if there was reason for concern over the lower than usual settlement rate for Mediation Center of the Pacific (MCP) dispositions.

DED Kawatachi responded that disposition results varied on a case by case basis, and that the small sample did not raise program concerns. He also noted that there are often benefits from mediations that do not result in settlements.

Chair Krieger asked at what stage the HCRC offered mediation.

DED Kawatachi responded that mediation is offered at an early stage, prior to the submission of a response to a complaint. Executive Director (ED) Hoshijo added that in addition to early stage referrals to mediation, the parties could choose to mediate at any time in the process, and that the Executive Director sometimes engaged as a party in mediation of cause cases in conciliation.

DED Kawatachi presented a data and production report showing caseload data through October 27, 2014.

As of October 27, 2014, the report showed 378 open cases, an increase of 3 cases from the number reported as of September 17, 2014. Of those, 4 (1.0%) were filed in 2009, 15 (4.0%) filed in 2010, 23 (6.1%) filed in 2011, 51 (13.5%) in 2012, 117 (31.0%) in 2013, and 168 (44.4%) 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	7	2	11	21
Intake Stage	0	0	2	0	64	136	202
Mediation	0	0	0	1	9	12	22
Pending Assignment	0	8	16	39	30	5	98
Active Investigation	4	7	4	4	12	4	35
<b>TOTAL</b>	<b>4</b>	<b>15</b>	<b>23</b>	<b>51</b>	<b>117</b>	<b>168</b>	<b>378</b>

It was reported that: 22.8% of all investigation cases were 2 years old or older (from date of filing); 7.1% were over 18 months but less than 2 years old; 16.1 % were over 12 months but less than 18 months old; 23.6% were over 6 months but less than 12 months old, and 30.4% were 6 months old or less.

Chair Kreiger asked why there were 8 cases from 2010 that remained pending assignment. DED Kawatachi said he did not know the specific reasons that those cases remained pending, but that it was likely that they were “A” cases involving complex investigations and issues. He explained that the loss of investigator positions and capacity had most severely impacted these investigations.

Commissioner Fukunaga asked if it would be better to prioritize oldest cases, in order to address concern over oldest pending cases.

DED Kawatachi said that older cases were given priority, but that as the oldest cases reached disposition, other cases aged out and became older cases as well.

ED Hoshijo added that it was also important to prioritize based on case assessment, not just age of case, so all cases would not turn into old cases, with a focus on cases that merit prosecution.

Chair Krieger asked why there was such a difference between the number of intakes and the number of complaints filed. DED Kawatachi said there were numerous reasons that an intake might not result in a complaint filing, including a complainant choosing not to file a complaint, or a complaint not being taken based on a threshold determination of non-jurisdiction. ED Hoshijo added that this was a subject being discussed, whether less resources should be spent on intake and the threshold determination of jurisdiction, which would result in more complaints being filed, with those issues being left to the investigation process.

Commissioner Kim Coco Iwamoto asked about subpoena enforcement, wondering if there was incentive for respondents to submit timely responses. She asked if subpoena enforcement actions should be reported, with increased subpoena enforcement to increase prompt responses. ED Hoshijo noted that there were two issues with untimely or insufficient responses. One involved failure to file a timely response, the other a timely filing of an incomplete response. The first could usually be resolved by the threat of or issuance of an administrative subpoena. The latter were more likely to be negotiated or contested. Most subpoena issues were eventually settled without resort to a circuit court subpoena enforcement action.

ED Hoshijo reported on transitions and staffing.

He reported that US EEOC Honolulu Local Office Executive Director Timothy Riera would be leaving Hawai‘i after 17 years to take a promotion at EEOC headquarters in Washington, D.C. Before leaving, he provided a two-day investigator training for the HCRC.

He reported that the HCRC was in the process of filling three investigator positions, two permanent positions and one temporary position, and a temporary attorney position.

### **Chief Counsel’s Report**

Chief Counsel (CC) Livia Wang reported that on September 24, 2014, the respondent had filed an appeal from the August 26, 2014, Commission decision in *Bate* issued on August 26, 2014, with a request for a jury trial. The HCRC filed a motion to dismiss on October 13, 2014, which was scheduled to be heard on October 31, 2014.

CC Wang also reported that a petition for declaratory relief had been filed by Petitioner TD Food Group, and that the Commission would take the matter up in adjudication.

### **Legislation**

ED Hoshijo presented a draft administration package bill to provide discretion for the ED to either issue a final demand or dismiss a complaint and issue a notice of right to sue in cases in which conciliation failed.

Commissioner Artemio Baxa commented that the proposed bill would result in a shift to the civil courts, raising a concern that most people cannot afford to sue in court. Chair Krieger suggested that the Commission could, if the bill is enacted, direct the ED to take the resources of a complainant, or whether they are represented, into consideration, but that the bill provided the discretion to use resources most effectively.

ED Hoshijo gave an overview of the FB 2015-2017 budget process.

Each department was to prepare two budget submissions: one a “status quo” budget at existing general fund (GF) levels, and another with additional budget requests to be considered by the new administration. For the latter, the HCRC had submitted a request for restoration of the 3 GF permanent investigator positions that were lost to reduction in force and GF budget cuts since 2008, and another to provide funds to pay on a contract basis for an appointed hearings examiner in contested case hearings.

ED Hoshijo then described a Department of Budget and Finance requirement that each department submit its projected cuts for three tiers of GF budget cuts for the next biennium: -5%; -7.5%, and -10%. He indicated that each division and attached agency was asked to submit a projection for each of the three tier scenarios.

Commissioner Iwamoto made a motion that the Commission direct the ED to not respond to the request, and, instead, communicate to the new administration that the Executive Director is willing to provide any information that it might request. The motion did not pass. (Iwamoto/Fukunaga; 1-3).

**Chair Krieger offered a motion to empower the ED to structure a response to express grave concern over the impact of further budget cuts, built into the response. The motion was approved. (Krieger/Fukunaga; 3-1).**

### **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.

CC Wang reminded the Commissioners about the HCRC’s annual public training program, scheduled for October 30, 2014, at the Blaisdell Exhibition Hall Pikake Room.

Commissioner Fukunaga thanked CC Wang for her work on the training. CC Wang added her thanks to Commission secretary Cathy Simmons for all of her work on the training.

### **New Business**

There was no new business.

**Announcements**

There were no announcements.

**Next Meeting**

The November meeting of the Commission was scheduled, for November 17, 2014, at 1:30 p.m., subject to polling of and confirmation by the Commissioners.

**Adjournment**