



# HAWAII CIVIL RIGHTS COMMISSION

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## MINUTES

Hawai'i Civil Rights Commission Office

December 15, 2014

1:30 p.m.

Present: Linda Krieger, Raymund Liongson, Wally Fukunaga, Kim Coco Iwamoto, and Artemio Baxa, Commissioners; Livia Wang, Marcus Kawatachi, and Bill Hoshijo, Staff; Francine Wai, Executive Director, Disability and Communication Access Board. Dan Purcell and Peter Fritz, members of the public were also in attendance.

Chair Linda Krieger called the meeting to order.

### Approval of Minutes

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

### Executive Director's Report

Deputy Executive Director (DED) Marcus Kawatachi's presented an FY 2015 HCRC Mediation Program Year-to-Date Summar, noting that three additional cases had been successfully mediated since the November report; 2 sexual harassment cases and 1 disability case, all mediated by the Mediation Center of the Pacific.

#### **Summary & Details (7/1/14 through 11/17/14)**

Referrals:	11
Dispositions:	18
Settlements:	10
Non-agreements:	8
Settlement Rate:	55.6 %
Employment cases settled:	10
Non-employment cases settled:	0
Dual-filed (EEOC/HCRC) settlements:	8
State-only settlements:	2

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

Sex (3 pregnancy & 1 SH)	6 (3 pregnancy and 3 sexual harassment)
Race	2
Ancestry/National Origin	1
Disability	1

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

Mediation Center of the Pacific	5/10	(settlement rate 50 %)
Kauai Economic Opportunity, Inc.	2/3	(settlement rate 66.7%)
West Hawaii Mediation Center	1/2	(settlement rate 50 %)

Private Mediators	2/2	(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>10/18</b>	<b>(settlement rate 55.6%)</b>

DED Kawatachi presented a data and production report showing caseload data through December 15, 2014.

As of December 15, 2014, the report showed 371 open cases, a decrease of 5 cases from the number reported as of November 17, 2014. Of those, none were filed in 2009, 11 (3.%) filed in 2010, 23 (6.1%) filed in 2011, 51 (13.7%) in 2012, 107 (28.9%) in 2013, and 176 (47.4%) 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	6	2	14	23
Intake Stage	0	0	2	0	60	146	208
Mediation	0	0	0	1	7	7	15
Pending Assignment	0	7	14	39	29	0	89
Active Investigation	3	4	6	5	9	9	36
<b>TOTAL</b>	<b>3</b>	<b>11</b>	<b>23</b>	<b>51</b>	<b>107</b>	<b>176</b>	<b>371</b>

It was reported that: 23.7% of all investigation cases were 2 years old or older (from date of filing); 10.5% were over 18 months but less than 2 years old; 16.7 % were over 12 months but less than 18 months old; 20.5% were over 6 months but less than 12 months old, and 29.8% were 6 months old or less.

DED Kawatachi reported that no administrative subpoenas were issued.

Chair Krieger asked how many investigators were doing intake. DED Kawatachi answered that 2.5 investigators were doing intakes.

Chair Krieger asked how many investigators were doing active investigations. DED Kawatachi answered that 2.5 investigators were doing active investigations.

Chair Krieger asked if there was an opportunity to do things differently. DED Kawatachi said that a change might be made, not dedicating an investigator to monitor responses for completeness and reassessment on response, but to use supervisor review and utilize all investigators to review their assigned cases.

Executive Director (ED) Bill Hoshijo added that with staff turnover due to retirements, that in the near future nearly half of the investigators would be new or nearly new, and that it was a good time to review and implement changes through training and adding tools and resources for investigators.

In response to a request from Chair Krieger at the November 2014 meeting, DED Kawatachi reported on the breakdown of the number of intake decisions and complaints filed, and the reasons for non-filing of complaints:

Based on a data query of recent intake decisions, DED Kawatachi reported that of 951 intake decisions:

Case taken	444	46.7%
No jurisdiction	212	22.3%
Cp does not wish to pursue cpt	83	8.7%
Cp reevaluates situation	9	1.0%
Cp does not return signed cpt	25	2.6%
Cp failed to cooperate	106	11.1%
Cp already filed w/ EEOC or HUD	72	7.6%

Chair Krieger said that the Commissioners and staff should look at what causes cases to fall into a “no-jurisdiction” decision. She suggested that these could be culled out in the process without the use of as much in resources. She cited an example of an intake decision that raised the question of whether the complainant raised a termination claim or a failure to hire claim – either one was jurisdictional, and the issue could be sorted out in the investigation, rather than on intake.

Commissioner Wally Fukunaga asked what Chair Krieger’s view of how the system could be improved. He added that staff should report not just numbers, but also how things are being improved.

DED Kawatachi suggested that looking at the annual report would track the progress being made on case inventory, with caseload down to 371 as of December 15, 2014.

ED Hoshijo added that staff was considering and implementing some changes, including early attorney involvement in priority investigations. Another possible change being discussed was accepting complaints at intake and then dismissing non-jurisdictional complaints, rather than making threshold intake decisions to reject complaints as non-jurisdictional, issuing notices of right to sue rather than exhaustion letters.

### **Request for Extension of Time to Investigate**

ED Hoshijo presented a request for extension of time to investigate all cases, through July 31, 2015.

Commissioner Kim Coco Iwamoto, noting that she had recused herself from the vote the last time the request for extension came up, said that she checked with the Ethics Commission on the question of whether she could have voted on the extensions of time if staff had not informed her of a conflict of interest. She noted that if staff had not informed her of the conflict, she would not have had knowledge that the vote would affect cases against a respondent in which she had an interest. Commissioner Iwamoto expressed her disappointment, because she felt staff informed her of the conflict to silence her, because she would have opposed the extension of time.

Chief Counsel (CC) Livia Wang responded that it was not the intent of staff to silence a Commissioner by informing her of an ethical conflict of interest. CC Wang said that she would make a written request to

the Hawai'i State Ethics Commission for a clarification of whether it would be an ethics conflict for a Commissioner to vote on an extension of time that directly affects a party in which she has an ownership interest, and whether staff should inform the Commissioner of the conflict, if she might not otherwise have knowledge of the conflict. The Commissioners agreed that it would be the best course of action to seek such clarification from the Ethics Commission.

Commissioner Iwamoto recused herself from the vote and the discussion. Chair Krieger also recused herself from the vote and the discussion, explaining that she knew there was a pending complaint against the AOA, in which she had a condo owner's interest.

Member of the public Peter Fritz raised a question of whether recusal required a conflicted commissioner to leave the room during the discussion, suggesting that they might not have to do so, and might be able to participate in the discussion and recuse themselves from the vote.

Based on their recusal, Commissioner Iwamoto and Chair Krieger left the room during the discussion of and vote on the request for extension of time to investigate.

Commissioner Artemio Baxa asked if it was possible to report back on the pending investigations.

CC Wang said that it was her understanding that the pending investigation cases reported were not necessarily the same cases from month to month, because cases are closed, others age, and new complaints are filed.

Commissioner Baxa emphasized that oldest cases need closure.

Member of the public Peter Fritz was recognized and said that from an employer's side, dragging things out without resolution was a problem, and that the HCRC should seek additional staffing from the legislature.

**The Commissioners approved an extension of time to investigate all cases, through July 31, 2015. (m/s/p Liongson/ Fukunaga; 3-0; Krieger and Iwamoto recused).**

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

CC Livia Wang reported that Commission's October 28, 2014, decision and order in the *Elento* case was appealed, the notice of appeal filed on November 26, 2014. The appeal was before J. Nishimura in the First Circuit Court. The record on appeal was transmitted, with the opening brief due on January 26, 2015, the answering brief on March 9, 2015, and oral argument to be heard in April 2015. She advised that it was best to hold off on any rulemaking until after the appeal is decided.

Member of the public Dan Purcell asked if the transcript from the *Elento* argument was available to the public. CC Wang responded that it was a public record.

CC Wang distributed the FY 2014 HCRC Annual Report to the Commissioners. Commissioner Baxa commended those who prepared the report. He asked if there was a way to report in summary fashion the cases that the HCRC deals with, the impact, not just the numbers. CC Wang said the report did include some case summaries of that kind.

## Legislation

**There was nothing new to report on legislation.**

## 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

Chair Krieger suggested that the Commission should think about engaging in rulemaking on HRS chapter 489 public accommodations, including guidance on issues like assistance animals and whether medical insurance is a public accommodation.

DCAB Executive Director was recognized and asked if the intent would be for the HCRC to address the use of assistance animals as a reasonable accommodation for persons with disabilities in public accommodations, not other assistance animal issues outside of HRS chapter 489. She also raised a question about the lack of protection against insurance discrimination under state law.

ED Hoshijo informed the Commissioners that former HCRC Commissioner Faye Kennedy requested HCRC co-sponsorship of an event celebrating civil rights, planned for February at Washington Place. It was understood that the co-sponsorship was in name and support, with no monetary contribution to the cost of the event. **The Commissioners agreed to the request. (m/s/p Fukunaga/Liongson,; all).**

## Announcements

ED Hoshijo informed the Commissioners that former HCRC Commissioner Faye Kennedy requested HCRC co-sponsorship of an event celebrating civil rights, planned for February at Washington Place. It was understood that the co-sponsorship was in name and support, with no monetary contribution to the cost of the event. **The Commissioners agreed to the request. (m/s/p Fukunaga/Liongson,; all).**

## Next Meeting

The January 2015 meeting of the Commission was scheduled, for January 26, 2015, at 1:30 p.m., subject to polling of and confirmation by the Commissioners. ED Hoshijo suggested that it would be necessary to continue the January 26, 2015, meeting to a date certain after the legislature's bill introduction cut-off, in order for the Commissioners to review and take positions on bills introduced on or after that date.

**Closed Executive Session**

**The Commissioners voted to go into closed executive session to discuss a personnel matter. (m/s/p Iwamoto/Fukunaga; all).**

Member of the public Dan Purcell interjected that the open meeting law required more detail on the subject matter of a closed executive session.

The Commissioners went into closed executive session.

**Adjournment**