



HAWAII CIVIL RIGHTS COMMISSION

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MINUTES

Hawai'i Civil Rights Commission Office
April 29, 2015*
1:30 p.m.

Present: Linda Hamilton Krieger, Raymund Liongson, Kim Coco Iwamoto, Wally Fukunaga, and Artemio Baxa, Commissioners; Livia Wang, Bill Hoshijo, and Marcus Kawatachi, Staff; Leonard Hoshijo, Deputy Director of Labor and Industrial Relations, was also in attendance.

Chair Linda Hamilton Krieger called the meeting to order.

Approval of Minutes

The minutes of the March 30, 2015, meeting were approved. (m/s/p Liongson/Baxa; all in favor).

Executive Director's Report

Deputy Executive Director (DED) Marcus Kawatachi's reported on FY 2015 HCRC Mediation Program Year-to-Date progress, noting that six additional cases had been referred to mediation and one case had been successfully mediated since the last report on March 30, 2015.

Summary & Details (7/1/14 through 4/29/15)

Referrals:	34
Dispositions:	22
Settlements:	12
Non-agreements:	10
Settlement Rate:	54.5 %
Employment cases settled:	12
Non-employment cases settled:	0
Dual-filed (EEOC/HCRC) settlements:	10
State-only settlements:	2

Primary Bases for Complaints Settled in Mediation

Sex	8 (4 pregnancy and 4 sexual harassment)
Race	2
Ancestry/National Origin	1
Disability	1

Dispositions by Mediation Center

Mediation Center of the Pacific	6/12 (settlement rate 50 %)
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* as approved with corrections May 27, 2015.

Kauai Economic Opportunity, Inc.	2/3	(settlement rate 66.7%)
West Hawaii Mediation Center	2/3	(settlement rate 66.7 %)
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%)
OVERALL	12/22	(settlement rate 54.5%)

DED Kawatachi presented a data and production report showing caseload data through April 29, 2015.

As of April 29, 2015, the report showed 396 open cases, an increase of 3 cases from the number reported as of March 30, 2015. Of those, 3 (0.8%) were filed in 2009, 5 (1.3%) filed in 2010, 20 (5.0%) filed in 2011, 44 (11.1%) in 2012, 71 (17.9%) in 2013, 147 (37.1%) in 2014, and 106 (26.8%) in 2015.

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

	2009	2010	2011	2012	2013	2014	2015	Total
Housing Cases	0	0	1	5	1	9	10	26
Intake Stage	0	0	2	0	23	85	77	187
Mediation	0	0	0	1	5	22	12	40
Pending Assignment	0	0	0	23	12	7	1	43
Active Investigation	3	5	17	15	30	24	6	106
TOTAL	3	5	20	44	71	147	106	396

It was reported that: 20.2% of all investigation cases were 2 years old or older (from date of filing); 10.4% were over 18 months but less than 2 years old; 14.1 % were over 12 months but less than 18 months old; 18.7% were over 6 months but less than 12 months old, and 36.6% were 6 months old or less.

DED Kawatachi reported that no administrative subpoenas were issued.

Chair Kreiger asked what happens when parties call to ask about the status of their case. Executive Director Bill Hoshijo said that whether it is the assigned investigator, a supervisor, or the DED, enforcement staff try to respond to inquiries in a timely manner. DED Kawatachi added that the ED has sent letters to attorneys explaining the length of time it takes to investigate cases, including the loss of enforcement capacity.

DED Kawatachi reported that 10 notices of cause had been issued to date during FY 2015, and that he expected additional notices of cause to be issued during the last quarter of the fiscal year.

Chief Counsel's Report

Chief Counsel (CC) Livia Wang reported on the status of two cases on appeal to the state circuit court.

In the *Bate* appeal, she reported on the hearing on the HCRC and Complainant/Appellee motion to strike. The circuit court judge agreed that the Respondents/Appellants were entitled to a jury trial only on claims that for which legal relief was granted but not for those claims in which only equitable relief was granted, in this case for the harassment claims but not for the termination claim. From the bench, the judge stated that there should be a jury trial on only those claims in which legal damages were awarded, followed by a bench trial on the remaining claims, and that if there were common issues of fact that the jury findings would be the factual findings in the bench trial on those factual issues. The judge then denied the motion to strike, without prejudice.

In the *Elento* appeal, CC Wang reported that an oral argument was scheduled for June 5, 2015.

Legislation -2015 Session

ED Hoshijo reported that the FB 2015-2017 budget included \$25,000 for the HCRC to pay for a contract hearings examiner.

Commissioner Kim Coco Iwamoto asked if the HCRC request for restoration of any of the 3 permanent investigator positions lost since 2008 was included in the budget. ED Hoshijo said no, there was no restoration of lost capacity.

Commissioner Wally Fukunaga said the HCRC needed to mobilize the civil rights community. Commissioner Raymund Liongson agreed, adding that he knew of several agencies that have mobilized community support to fight for resources.

Commissioner Iwamoto said the Department of Education website had information posted on capital improvement projects, and which legislative districts those projects were located in.

Commissioner Fukunaga asked how the HCRC could get the word out, suggesting the convening of an ad hoc committee might be useful. Chair Krieger added that the work of such a committee would be subject to the open meetings law.

Commissioner Artemio Baxa suggested that the Commission needed to identify important issues.

Chair Krieger agreed, asking, "What are the important issues in employment discrimination?" She suggested that one important issue was the small number of women and minorities working in construction on public works projects.

Commissioner Liongson added that he was concerned about the growing number of women and families who are homeless. He wondered if the Commissioners can organize and rally the community on these kinds of issues. ED Hoshijo responded that the Commissioners are free to express and act on their convictions and beliefs, making it clear when they are acting as individuals and not in their official capacity.

ED Hoshijo suggested that the Commission could invite experts to a meeting to discuss issues involving women in the workplace.

Chair Krieger summarized the issue for further discussion, as underutilization of women in the building trades on public works projects, specifically including rail construction. She emphasized that this was an important economic empowerment issue, given the County's long term commitment to rail construction.

The Commissioners reviewed Legislative Summary 5, prepared by CC Wang.

CIVIL RIGHTS COMMISSION

HB 683 HCRC – ED Authority to Dismiss Complaints SB 362

Amends HRS §368-13 to authorize ED to dismiss a complaint and issue a notice to sue if cause is found and conciliation fails

**Status: HB 683 ref. to LAB, JUD; hrg. before LAB on 2/17, passed unamended
SB 362 ref. to JDL; ; hrg. before JDL on 4/6, passed 2/ amendments; conf. com. mtg.
on 4/30.
SB 362 ref. to JDL; no hearing held.**

HCRC position: Support. This is the bill originally submitted as part of the admin. package; emphasize how this will save staff time and costs.

NOTE: HUD requires housing cases exempted from this authority.

EMPLOYMENT

HB 561 HD1 Personal Social Media Account; Privacy, Employment [SB-1269]

Amends HRS Ch. 378 Part I to prohibit employers from requiring or requesting employees and applicants to grant access to personal social media account user names and passwords

**Status: HB 561 ref. to LAB, JUD; hrg. on 2/3 before LAB, passed w/ requested amendments deleting (e) but still keeping provision in HRS 378 Part I; decision making before JUD on 2/26, passed unamended; crossed on 3/6, ref. to JDL; hrg. before JDL on 3/23, decision making deferred to 3/30, passed w/ amendments putting provision in new part of HRS Chapter 378; conf. com. mtg. on 4/30.
SB 1269 ref. to JDL, no hearings held.**

HCRC position: Support intent with amendment to delete section (e) and urge placement in a new part of HRS Ch. 378 and provide direct cause of action in court with injunctive relief and attorneys' fees. In pre-employment and employment context, information related to protected bases gained from social media accounts is already prohibited by HRS § 378-2.

[HB-795] Medical Marijuana; Employment Protections
SB 1291 SD1

Amends both HRS § 329-125 and adds a new part to HRS Ch. 378 to prohibit an employer from disciplining, suspending, discharging or discriminating against an employee solely because the employee tested positive for marijuana if the employee is a qualifying patient/user of medical marijuana, the marijuana is not used in the workplace. Prohibition does not supersede any statute, rule, employment contract, collective bargaining agreement, or workplace regulation or policy prohibiting an employee from being under the influence of marijuana while working in the workplace.

Status: HB 795 ref. to HLT, JUD; hrg. before HLT on 2/7; decision making on 2/11; deferred.

SB 1291 ref. to HTH, JDL; hrg. before HTH on 2/18, passed w/amendments changing effective date only; hrg. before JDL on 2/26; passed w/ requested amendments to take provision out of HRS 378 part I and changing protections for marijuana patients and caregivers from discrimination by schools, landlords and Courts; crossed on 3/12, ref. to HLT, JUD; hrg. before HLT on 3/25, passed w/ amendments, hrg. before JUD on 4/2, decision making on 4/7, passed w/ amendments; conf. com. mtg. 4/29.

HCRC position: Support and state that section 2 of bill should be deleted – protections should only be in HRS Ch. 329 and not repeated in HRS Ch. 378.

[HB-944] Background checks on employees, applicants and operators of
SB 1113 SD1 healthcare facilities and the state Dept. of Health

Expands authority of DOH to conduct background checks to include criminal history record checks, adult abuse perpetrator and child abuse record checks, and certified nurse aid registry record checks for people seeking employment with the state or its contractors where the work involves direct client care in healthcare facilities.

Status: HB 944 ref. to HLT, JUD.

SB 1113 ref. to HTH/HSH, JDL; hrg. before HTH/HSH on 2/10, deferred to 2/11, passed w/ amendments; decision making before JDL on 2/27, passed w/ amendments; crossed on 3/10, ref. to HLT, LAB, JUD; hrg. before HLT on 3/18, passed w/ amendments; hrg. before LAB on 3/24, passed unamended; hrg. before JUD on 3/31, passed unamended; conf. com. mtg. 4/29.

HCRC position: Monitor and comment that HCRC does not oppose criminal history record checks for positions that involve work with vulnerable populations.

PUBLIC ACCOMMODATIONS

HB 1272 HD1 Open Movie Captioning and Descriptive Narration in Motion Picture Theaters

Amends HRS § 347 to require motion picture theaters that have 2 or more facilities to provide closed movie captioning and descriptive narration for at least 2 showings per

week of a motion picture.

Status: ref. to EPB, CPC/JUD; hrg. before EPB on 2/10, passed w/ amendments requiring open captioning and descriptive narration in theaters having 2 or more facilities during at least 2 showings a week, making a violation of the statute a discriminatory practice, placing enforcement under HRS Chapter 489 and directing the DLIR director to adopt rules to this effect; hrg. before CPC/JUD on 3/3, passed w. requested amendments; crossed on 3/12; ref. to CPN, JDL; hrg. before CPN on 3/17; passed w/ amendments; decision making before JDL on 3/31, passed w/ requested amendments but with sunset provision in January 2018 ; House agrees w/ SD2; transmitted to Governor on 4/21.

HCRC position: Support, with request to amend by deletion of the provision requiring the Director of Labor and Industrial Relations to adopt rules, because any rules would be adopted by the HCRC, and rulemaking would not be necessary where the statute is so specific; also, with suggestion that “motion picture theater” and “facility” be clearly defined.

**HCR 141 IID1 Requesting DLNR and Counties to Provide Reasonable
HR 84 Access for Disabled Persons to Access Beaches**

Asks DLNR and counties that maintain beach transit corridors to provide reasonable accommodation for access to shoreline for persons with disabilities at any beach that has a public restroom facility and is within an ocean recreation management area by July 1, 2016

Status: Ref. to OMH/WAL, FIN; hrg. before OMH/WAL on 3/27, passed w/ amendments changing reference from “reasonable accommodation” to “access”; decision making before FIN on 4/7, passed unamended; transmitted to Senate on 4/9; hrg. before WTL on 4/20, passed w/ amendments requesting DLNR and counties to “improve” (vs. “provide”) access and report to leg only; referral to JDL waived on 4/24; sent back to House.

Discussion: Staff recommendation was to support with amendments, based on HCRC support for H.B. No. 721, with reference to HCRC jurisdiction over state-funded beach programs and activities under HRS § 368-1.5.

HCRC position: Support with amendments, based on HCRC support for H.B. No. 721, with reference to HCRC jurisdiction over state-funded beach programs and activities under HRS § 368-1.5. (m/s/p Iwamoto/Liongson; all).

Chair Krieger strongly reiterated that denial of access to state funded beach programs and activities fall under HRS § 368-1.5.

OTHER CIVIL RIGHTS ISSUES

HB 631 IID1 New Birth Certificate; Gender Designation

Amends HRS §338-17.7 to change gender designation on birth certificate when statement from a licensed medical or social service provider attests that current birth certificate does not align with

