



HAWAII CIVIL RIGHTS COMMISSION

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MINUTES

Hawai'i Civil Rights Commission Office
June 18, 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.

Chair Linda Hamilton Krieger called the meeting to order.

Approval of Minutes

The minutes of the May 27, 2015, meeting were approved. (m/s/p Liongson/Fukunaga; all).

Executive Director's Report

Deputy Executive Director (DED) Marcus Kawatachi's reported on FY 2015 HCRC Mediation Program Year-to-Date progress, noting that two additional cases had been referred to mediation and one case had been mediated without a settlement since the last report on May 27, 2015.

Summary & Details (7/1/14 through 6/18/15)

Referrals:	36
Dispositions:	27
Settlements:	14
Non-agreements:	13
Settlement Rate:	51.9 %
Employment cases settled:	14
Non-employment cases settled:	0
Dual-filed (EEOC/HCRC) settlements:	12
State-only settlements:	2

Primary Bases for Complaints Settled in Mediation

Sex	9 (including 4 pregnancy and 4 sexual harassment)
Disability	2
Race	2
Ancestry/National Origin	1

Dispositions by Mediation Center

Mediation Center of the Pacific	7/14	(settlement rate 50 %)
Kauai Economic Opportunity, Inc.	2/3	(settlement rate 66.7%)
West Hawaii Mediation Center	2/3	(settlement rate 66.7 %)
Private Mediators	3/3	(settlement rate 100 %)
Ku'ikahi Mediation Services (Hilo)	0/3	(settlement rate 0 %)
Mediation Services of Maui	0/1	(settlement rate 0%)
OVERALL	14/27	(settlement rate 51.9%)

DED Kawatachi presented a data and production report showing caseload data through June 18, 2015.

As of May 27, 2015, the report showed 392 open cases, a decrease of 1 case from the number reported as of May 27, 2015. Of those, 2 (0.5%) were filed in 2009, 2 (0.5%) filed in 2010, 17 (4.4%) filed in 2011, 41 (10.5%) in 2012, 64 (16.3%) in 2013, 113 (28.8%) in 2014, and 153 (39.0%) 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	3	1	7	12	24
Intake Stage	0	0	2	0	14	60	99	175
Mediation	0	0	0	2	4	17	20	43
Pending Assignment	0	0	2	32	32	10	8	84
Active Investigation	2	2	12	4	13	19	14	66
TOTAL	2	2	17	41	64	113	153	392

Chair Krieger asked why there were two 2011 cases in the intake stage (no complete response received). DED Kawatachi said he would have to check on the specific reason.

DED Kawatachi's report indicated that no subpoena enforcement actions had been filed. Executive Director (ED) Bill Hoshijo said that he would find and provide the Chair with copies of earlier pleadings and memoranda that explain the reason for motions to keep the parties confidential in subpoena enforcement proceedings, to address issues raised in the May 27, 2015, discussion of subpoena enforcement.

Request for Extension of Time to Investigate

ED Hoshijo presented a request for extension of time to investigate all cases, through January 31, 2016.

Commissioner Kim Coco Iwamoto recused herself from the discussion and vote on the request for extension of time, to avoid taking any official state action directly affecting a business in which she had a financial interest. Chair Krieger was not required to recuse herself from the discussion and vote, based on DED Kawatachi's record check, which confirmed that there was no open case in which the condominium association in which she had a financial interest was a party.

Commissioner Raymund Liongson asked what would happen if the request for extension of time to investigate were not granted.

ED Hoshijo said that without the extension of time to investigate, there would be no authority to continue to investigate complaints older than 180 days from time of filing, resulting in the administrative dismissal of older complaints.

Commissioner Artemio Baxa said he would prefer to preserve the cases by giving more time, and that he would support the extension of time.

Commissioner Liongson asked how many cases would be affected. Chair Krieger pointed out the information provided in DED Kawatachi's data report would provide that information.

Commissioner Wally Fukunaga asked if the request should not be routinely granted.

Chair Krieger said that the Commission would then be facilitating dysfunction, in effect giving up. She said oldest cases were the most troublesome.

ED Hoshijo gave some background information, pointing out that: the HCRC inherited over 240 cases from the DLIR in 1990, before it had trained staff; the investigation "backlog" had been substantially reduced to 271 cases at the end of FY 2007, but grew directly as a result of lost capacity since 2008, due to the recession; investigation capacity had not been restored; there were a substantial number of likely cause cases that were over 180 days old; and that wholesale administrative dismissal of complaints would violate the requirements of HCRC federal contracts.

Commissioner Baxa said that the Commission should vote in favor of the extension, because it protects the people the HCRC serves.

Commissioner Liongson agreed that class dismissal would hurt those aggrieved, and to dismiss would be to abdicate Commission responsibility.

Commissioner Fukunaga said he wants to give more time.

Chair Krieger asked if Commission scrutiny helps to "light a fire" to increase efficiency.

ED Hoshijo responded that scrutiny and a tension between efficiency and effectiveness have been healthy and helpful, forcing a reexamination of process and priorities.

Commissioners Fukunaga and Baxa emphasized the need for progress.

The Commissioners approved an extension of time to investigate all cases, through January 31, 2016. (m/s/p Baxa/ Fukunaga; 4-0; Ivamoto recused).

Legislation -2015 Session

Chief Counsel (CC) Livia Wang said there was nothing new to report on bills pending Governor's approval or veto.

Chief Counsel's Report

In anticipation of planned Commission rulemaking on public accommodations, CC Wang reviewed the State Policy and Procedure for the Adoption, Amendment, or Repeal of Administrative Rules. Administrative Directive No. 09-01 (October 29, 2009).

CC Wang said that initial research was being done on model rules from other jurisdictions, and that she would seek informal feedback before the rulemaking process was initiated. Commissioner Iwamoto suggested that the HCRC should contact the San Francisco Human Rights Commission for input.

CC Wang reported that in the *Shavelson* case, a pro se §1983 lawsuit in which the plaintiff asserts that a no cause dismissal of her complaint violated her rights, the HCRC had filed a motion to dismiss. Ms. Shavelson had filed a memorandum in opposition, and a reply was due.

CC Wang also reported on the status of the *Elento* Circuit Court appeal. Oral argument was heard on June 5, 2015, and the appeal was pending.

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.

On the issue of discriminatory exclusions in health plan coverage, CC Wang suggested a meeting with Ellen Carson, attorney for HMSA.

It was agreed that meetings should be scheduled with University of Hawai'i Equal Opportunity Office and Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) Student Services Office, to explore how to seek change in UH health plan coverage.

Commissioner Iwamoto added that the State Department of Health would be hosting a visitor from Cuba, and suggested that the HCRC might want to meet and open a dialog on the health coverage issue.

New Business

Although first discussed on April 29, 2015, and again on May 27, 2015, the subject of "Underutilization of Women in the Construction Trades on Public Works Projects" was discussed as new business.

Chair Krieger and ED Hoshijo reported that a second meeting on the subject was held on June 10, 2015, and that a third meeting would be scheduled, to meet with DLIR Workforce Development Division (WDD) Administrator Elaine Young, as the group continued its information gathering.

Commissioners Fukunaga and Liongson reported that they met to discuss their strong continuing interest in development a public education component. They wanted further discussion of a forum on an issue that they are passionate about, specifically to address homelessness and the human rights of the homeless. Chair Krieger reminded everyone of the requirements of the open meeting law, which limited discussion between a committee of more than two commissioners outside of a noticed public meeting. She also expressed concerns over limited staff resources and going outside the scope of the HCRC's statutory mandate.

Commissioner Fukunaga said they felt more passionately about homelessness issues than the issue of women in the construction trades, and wanted to discuss an HCRC role in the discussion of homelessness, the criminalization of homelessness, and the disenfranchisement of homelessness.

Commissioner Baxa said that although there was a distinction between human rights and civil rights, they were not so different.

Chair Krieger pointed out that the HCRC's civil rights authority and jurisdiction was statutory, and that a connection would have to be made to that statutory authority.

Commissioner Iwamoto said she liked the discussion, and pointed out that Compact of Free Association (COFA) migrants who suffer discrimination are over-represented among the homeless, and are often denied language access.

Commissioner Fukunaga said the HCRC could help shine a light on the issue of homelessness.

Commissioner Baxa said he sees civil rights as protection of the inherent dignity of the individual, far beyond the statutory protections.

Announcements

ED Hoshijo announced that an Oahu memorial for HCRC Enforcement Attorney Shirley Garcia was scheduled for Friday, July 24, 2015, at the UH William S. Richardson School of Law.

Next Meeting

The next meeting of the Commission was scheduled, for July 23, 2015, at 1:30 p.m., subject to polling of and confirmation by the Commissioners.

CLOSED EXECUTIVE SESSION

The Commission voted to go into closed executive session, for the purposes of discussion of a confidential personnel matter and for attorney-client meeting with Chief Counsel. **(m/s/p Liongson/Krieger; all).**

Adjournment