



# HAWAII CIVIL RIGHTS COMMISSION

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## MINUTES

Hawai'i Civil Rights Commission Office  
August 13, 2015  
1:30 p.m.

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

Commissioner Raymund Liongson, excused.

Chair Linda Hamilton Krieger called the meeting to order.

### Approval of Minutes

The minutes of the June 18, 2015, meeting were approved, with a correction on page 4, noting that it was reported that a Cuban physician who specialized in LGBT access to health care would be visiting Hawai'i. (m/s/p Baxa/Iwamoto; all).

### Executive Director's Report

Deputy Executive Director (DED) Marcus Kawatachi's presented a FY 2015 HCRC Mediation Program Year-End report.

#### **Summary & Details (7/1/14 through 6/30/15)**

Referrals:	36
Dispositions:	28
Settlements:	15
Non-agreements:	13
Settlement Rate:	53.6 %
Employment cases settled:	15
Non-employment cases settled:	0
Dual-filed (EEOC/HCRC) settlements:	13
State-only settlements:	2

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

Sex	10 (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)	1/4	(settlement rate 25 %)

Mediation Services of Maui  
**OVERALL**

0/1 (settlement rate 0%)  
**15/28 (settlement rate 53.6%)**

DED Kawatachi reported that new HCRC Mediation Coordinator Sharon Ferguson-Quick would start work on Monday, August 17, 2015.

DED Kawatachi presented a data and production report showing caseload data through August 13, 2015.

As of August 13, 2015, the report showed 382 open cases, a decrease of 10 cases from the number reported as of June 18, 2015. Of those, 0 (0%) were filed in 2009, 1 (0.3%) filed in 2010, 11 (2.9%) filed in 2011, 31 (8.1%) in 2012, 49 (12.8%) in 2013, 96 (5.18%) in 2014, and 194 (50.8%) 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	2	0	4	17	24
Intake Stage	0	0	0	0	14	60	137	211
Mediation	0	0	0	2	4	13	20	39
Pending Assignment	0	0	0	15	22	7	7	51
Active Investigation	0	1	10	12	9	12	13	57
<b>TOTAL</b>	0	1	11	31	49	96	194	382

The report indicated that no subpoena enforcement actions had been filed.

DED noted that, in a fiscal year comparison, there were increased numbers of pre-determination settlements (PDS) in FY 2013 and FY 2014, and that the numbers of PDS in FY 2015 would be consistent with that trend. He also reported that there would be an increased number of notices of cause issued in FY 2015.

Chair Krieger reported that in her review of closed dual-filed cases that were submitted for substantial weight review by the US EEOC, she found the majority of no cause determinations were based on a respondent employer's proffer of a legitimate nondiscriminatory reason for an alleged discriminatory act, with no finding of evidence that the proffered reason was a pretext for discrimination. She strongly recommended that new investigators be given training on proof of pretext analysis. Executive Director (ED) Bill Hoshijo agreed, noting that staff was exploring the possibility of having EEOC assist with investigator training on pretext analysis.

DED Kawatachi noted that implementation of prioritization was having a positive impact on investigations. ED Hoshijo added that prioritization also was a factor in increasing numbers of pre-determination settlements.

Chair Krieger extended the Commissioners' gratitude to staff for their work.

**Legislation -2015 Session**

Chief Counsel (CC) Livia Wang presented her Legislative Summary 7, listing bills enacted and resolutions adopted:

SB 1291, SD2, HD2, CD1, enacted as Act 242.  
Relating to Medical Marijuana

Passed with amendments, taking out employment protections. Act 242 allows planned community associations and associations of apartment owners to prohibit the use of medical marijuana smoking, if they prohibit the smoking of tobacco. Expressly does not diminish the fair housing law obligation of housing providers to provide reasonable accommodations for persons with disabilities.

SB 1113, SD2, HD2, CD1, enacted as Act 190.  
Relating to Background Checks

Compiles, clarifies, and expands the authority of the DOH to conduct background checks that 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 for work that involves direct client care in healthcare facilities.

HB 1272, HD2, SD2, enacted as Act 39.  
Relating to Movie Theaters

Requires theater chains that operate theaters in more than two locations in Hawai'i to provide open movie captioning during at least two showings a week of each movie that is produced and offered with open movie captioning. Also requires all movie theaters to provide, upon request, audio description of any motion picture that is produced and offered with audio description.

HCR 141, HD1, SD1, adopted.  
Requesting the Department of Land and Natural Resources and the Counties to Improve Public Beach Access for Persons with Disabilities in Hawaii

Concurrent resolution requests DLNR and the counties to "improve" access to shoreline for persons with disabilities.

HB 631, HD2, SD1, CD1, enacted as Act 226.  
Relating to Certificates of Birth

Amends HRS § 338-17.7 to change standard for change of gender designation on birth certificate; requires affidavit from licensed treating physician attesting that applicant has received appropriate clinical treatment resulting in "complete" gender transition.

HB 1007, HD1, SD2, enacted as Act 172.  
Relating to Motor Vehicle Driver Licensing

Authorizes the issuance of limited purpose driver's licenses, provisional licenses and instruction permits for individuals who are otherwise eligible for a license or permit but do not present proof of authorized presence in the U.S.

SR 44, SD1, adopted.

Urging Congress and the President of the United States to Support the Passage of Legislation to Expedite Family Reunification for Certain Filipino Veterans of World War II

Senate resolution urges support for legislation to expedite immigration to allow reunification for elderly Filipino WW II veterans in the U.S. with their families.

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

CC Wang reported on the status of the *Bate* appeal from a Commission final decision. A case management hearing was scheduled for August 24, 2015.

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 motion to dismiss was granted. The plaintiff filed an appeal to the 9th Circuit Court of Appeals, and the State Attorney General would represent the HCRC on appeal.

CC Wang also reported on the status of the *Elento* Circuit Court appeal. The Circuit Court reversed the Commission decision on declaratory relief, without explanation. The HCRC filed an appeal to the Intermediate Court of Appeals, and was considering whether to request a transfer of the case to the Supreme Court. The HCRC's opening brief was due September 30, 2015.

### **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, Chair Krieger and Commissioner Kim Coco Iwamoto indicated that they would like meetings with the University of Hawai'i EEO/AA Officer and GLBTI Student Services Coordinator, scheduled after September.

Chair Krieger reported that she had corresponded with HMSA's attorney Ellen Carson, and that it was unlikely that HMSA would initiate any change to HMSA's coverage exclusion for medical services relating to "sexual transformation."

Chair Krieger and ED Hoshijo reported on ongoing work on the issue of Underutilization of Women in the Construction Trades. A fifth meeting of a working group was scheduled for August 19, 2015. The group was still focused on information gathering. Chair Krieger observed that there was less connection between DOE STEM programs and the trades than she thought there would be, and that during the recession there were fewer opportunities for new workers, including women, in many of the construction trades. Commissioner Iwamoto suggested that qualification requirements might serve to exclude women.

Commissioner Wally Fukunaga raised the discussion of homelessness issues as old business that he wanted to keep on the Commission agenda. He reported that he had spoken with people who were involved in the issues and wanted to talk about an HCRC role. He noted that HCRC Commissioner Raymund Liongson had been ill, so that the discussion might be continued until his return.

ED Hoshijo noted that there was a lot of public concern and activity around the issues of homelessness, with dedication and involvement of officials and people, expertise, time, and resources, as finding solutions has been made a priority. The HCRC should be careful about wading into this discussion.

Commissioner Fukunaga said it was an important issue, and the HCRC should ask, “what do we have to offer?”

Commissioner Artemio Baxa stated that homelessness was a complex issue, and the HCRC should sort things out before jumping in.

Commissioner Iwamoto suggested institutionalized discrimination by government agencies can have a negative disparate impact on minority populations that civil rights laws should protect.

Chair Krieger said she would want clear, solid grounding to the HCRC’s statutory jurisdiction. She noted the distinction between statutory civil rights protections, which are legal and formal, and broader human rights protections, which address basic human needs and dignity.

Commissioner Fukunaga addressed the distinction between the human standpoint and legal protections, asking, “In this human rights disaster, how are legal rights affected?” He thought the Commission had to “think outside the box,” and bring people together

Chair Krieger said the Commission would have to consider what it has to add to the discussion.

### **New Business**

There was no new business.

### **Announcements**

ED Hoshijo announced that the HCRC had been invited to make several presentations, scheduled for August 20, 2015: two panel presentations at the annual conference of the Aloha State Association of the Deaf (ASAD), one on the right to a sign language interpreter when required for meaningful communication in health care, and the other on the newly enacted state law requiring theaters to show films with open captioning for at least two showings per week; and a testimony on Micronesians and civil rights in Hawai’i at a meeting of the US Commission on Civil Rights (USCCR) Hawai’i State Advisory Committee..

### **Next Meeting**

The next meeting of the Commission was scheduled, for October 8, 2015, at 1:30 p.m., subject to polling of and confirmation by the Commissioners.

### **Adjournment**