



# HAWAII CIVIL RIGHTS COMMISSION

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## MINUTES

Hawai'i Civil Rights Commission Office

April 27, 2016

1:00 p.m.

Present: Linda Krieger, Raymund Liongson, Kim Coco Iwamoto, Wally Fukunaga, and Artemio Baxa, Commissioners; Bill Hoshijo and Robin Wurtzel, Staff.

Guests/public: Peter Fritz.

Chair Linda Krieger called the meeting to order.

### Approval of Minutes

The minutes of the April 1, 2016, meeting were approved, with corrections on page 7. Chair Krieger clarified that the subject of the University of Hawai'i law school course discussed will be "anti-discrimination law and policy," and that a major component of the course will be drafting civil rights rules and regulations, based on civil rights statutes. (m/s/p Liongson/Fukunaga; all in favor).

### Executive Director's Report

Deputy Executive Director (DED) Marcus Kawatachi was not present, because he was presenting a fair housing training for respondents in fair housing cases. In his absence, Executive Director (ED) Bill Hoshijo presented a FY 2016 HCRC Mediation Program year to date report, noting that since April 1, there were 3 additional cases referred to mediation, and 1 case mediated without settlement.

#### **Summary & Details (7/1/15 through 4/26/16)**

Referrals:	37	
Dispositions:	42	
Settlements:	25	
Non-agreements:	119	
Settlement Rate:	59.5 %	
Employment cases settled:		20
Non-employment cases settled:		5
Dual-filed (EEOC/HCRC) settlements:		17

**Primary Bases for Complaints Settled in Mediation**

Disability	10
Sex	4 (2 pregnancy, 2 sexual harassment)
Arrest & Court Record	3
Age	2
Religion	2
Retaliation	2
National Origin/Ancestry	1
Race	1

**Dispositions by Mediation Center**

Mediation Center of the Pacific	17/24	(settlement rate 70.8 %)
Mediation Services of Maui	3/4	(settlement rate 75%)
Private Mediators	2/5	(settlement rate 40 %)
Ku'ikahi Mediation Services (Hilo)	1/4	(settlement rate 25 %)
West Hawaii Mediation Center	1/4	(settlement rate 25%)
Kauai Economic Opportunity, Inc.	1/3	(settlement rate 33.3%)
<b>OVERALL</b>	<b>25/42</b>	<b>(settlement rate 59.5%)</b>

In DED Kawatachi's absence, ED Hoshijo also presented a data and production report showing caseload data through April 26, 2016.

As of April 26, 2016, the report showed 302 open cases, a decrease of 13 cases from the number reported as of April 1, 2016. Of those, 1 (0.3%) filed in 2011, 3 (1.0%) in 2012, 9 (3.0%) in 2013, 30 (9.9%) in 2014, 157 (52.0%) in 2015, and 102 (33.8%) in 2016.

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

	2011	2012	2013	2014	2015	2016	Total
Housing Cases	0	1	0	2	12	9	24
Intake Stage	0	0	4	15	79	67	165
Mediation	0	1	3	4	18	11	37
Pending Assignment	0	0	0	0	24	3	27
Active Investigation	1	1	2	9	24	12	49
<b>TOTAL</b>	<b>1</b>	<b>3</b>	<b>9</b>	<b>30</b>	<b>157</b>	<b>102</b>	<b>302</b>

The report included year-to-date data for the first three fiscal year quarters of the past five years, showing that the number of complaints filed, investigations closed, notices of cause issued, and enforcement closures were the highest in the last five years:

Category	7/1/11 – 4/26/12	7/1/12 – 4/26/13	7/1/13 – 4/26/14	7/1/14 – 4/26/15	7/1/15 – 4/26/16
PCQ Received	648	580	578	554	546
Intake Decision	582	634	562	555	599
Complaint Filed	317	270	251	271	327
Investigation Closed	273	277	299	253	402
Notice of Cause	6	4	2	12	17
Enforcement Closure	19	6	6	8	21

ED Hoshijo reported that there were no actions or pending actions for subpoena enforcement.

Chair Krieger noted that the Commissioners appreciated the hard work of staff in reducing inventory and backlog.

Commissioner Wally Fukunaga credited Chair Krieger's leadership in this effort. Chair Krieger gave credit to the Commissioners, noting Commissioner Kim Coco Iwamoto's critical role.

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

Commissioner Kim Coco Iwamoto recused herself from the discussion and vote on the request for extension of time to investigate.

In light of anticipated vacancies on the Commission, which could affect the ability to convene a quorum to vote on requests for extension of time to investigate, ED Hoshijo requested that the Commission approve an extension of time to investigate all cases from July 31, 2016, through March 31, 2017.

**The Commissioners approved a request for extension of time to investigate all cases, through March 31, 2017 (m/s/p Liongson/Fukunaga; 4-0; Iwamoto recused).**

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

In Chief Counsel (CC) Livia Wang's absence, due to an extended medical leave, ED Hoshijo offered a brief update.

In the *Bate* appeal, the HCRC and Appellees' answering brief was due on April 28, 2016.

In the *Elento* appeal, briefing was completed, and the case was pending oral argument.

Legislation 2016 Session

The Commissioners reviewed Legislative Summary 4, presented by Staff Attorney Robin Wurtzel.

2016 LEGISLATIVE SUMMARY 4

Staff Attorney Wurtzel reported on the status of three bills:

**HB 1739, H.D. 2, S.D. 1 Relating to Employment; Personal Social Media Account; Privacy, Employment**

Amends HRS Ch. 378 Part I to prohibit employers from requiring or requiring employees to grant access to personal social media accounts, and by adding subsection (10) to prohibit employers from discriminating because of person's refusal to disclose information regarding a personal account

**Status: In conference, to reconvene April 27, 2016.**

Notes: HCRC supports S.D. 1 which places the statute in a new part of Chapter 378, not part I. The conference committee is discussing the remedy. The last version of the bill called for a \$25.00 fine, and DLIR does not want enforcement. A private right of action is under discussion, but the defense bar objects to the attorney fee provision.

**HB 2084, SD 1 Relating to Health Insurance and Prohibiting Discrimination**

Prohibits health insurers from discriminating on the basis of actual gender identity or perceived gender identity

**Status: ref. to: House agreed to SD1 and the bill goes to the Governor for approval or veto.**

**SB 2727, H.D. 1, S.D. 1 Relating to Movie Theaters**

**Ref to: In Conference, to reconvene April 28, 2016.**

Notes: HCRC supports S.D. 1. Both versions remove the current sunset date

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.

University of Hawai'i William S. Richardson School of Law student Brett Ritter offered testimony on this agenda item, expressing support for the HCRC's intervention and continuing litigation in *Cervelli v. Aloha Bed & Breakfast*. Mr. Ritter noted that states that have limited protections against discrimination for LGBT individuals have suffered economic backlash.

## **New Business**

ED Hoshijo gave an update on the status of Commissioner terms and anticipated vacancies:

Chair Linda Krieger's first term expired on June 30, 2015. She continued to serve on a holdover basis. During the 2016 legislative session, Governor Ige submitted the nomination of Chair Krieger for a second term, and the Senate gave advise and consent. Term ends June 30, 2019.

Commissioner Raymund Liongson's first term expired on June 30, 2015. He continued to serve on a holdover basis. During 2016 legislative session, Governor Ige submitted the nomination of Commissioner Liongson for a second term. Commissioner Liongson withdrew for personal family reasons, and will no longer be able to serve.

Commissioners Kim Coco Iwamoto and Wally Fukunaga's first terms expire on June 30, 2016. Both will not seek a second term, but have expressed willingness to serve on a holdover basis until the Governor appoints their replacements, hoping that interim appointments will be made within a few months.

Commissioner Artemio Baxa's first term expires on June 30, 2017.

ED Hoshijo noted that Governor Ige will have to make three appointments to fill vacancies in the near or immediate future, and that timing is critical to Commission function, quorum, and planned rulemaking.

Chair Krieger suggested a discussion of desired qualifications for consideration, in addition to the statutory qualifications.

Commissioner Fukunaga suggested that the Commission should be diverse, reflecting the community, and including non-attorneys and attorneys.

Commissioner Iwamoto suggested that young candidates should be considered, with an eye toward transition planning as one generation gives way to another. She added that inclusion of different perspectives was valuable, citing her own experience as a landlord.

Commissioner Liongson emphasized the importance of commitment to civil rights.

Commissioner Baxa suggested that broad knowledge was important.

Member of the public Peter Fritz asserted that representation of business interests was important.

## **Announcements**

There were no announcements.

## **Closed session**

There was no closed session.

**Next Meeting**

The next meeting of the Commission was tentatively scheduled for June 2, 2016, at 1:00 p.m., subject to polling of and confirmation by the Commissioners.

**Adjournment**