



HAWAI'I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 • HONOLULU, HI 96813-5095 • PHONE: (808) 586-8636 • FAX: (808) 586-8655 • TDD: (808) 586-8692

MINUTES

Hawai'i Civil Rights Commission Office

March 22, 2013

3:30 p.m.

Present: Linda Krieger, Mark G. Valencia, Raymund Liongson, and Wally Fukunaga, Commissioners; Livia Wang, Bill Hoshijo, and Marcus Kawatachi, Staff.

Kim Coco Iwamoto, Commissioner, excused.

Ryan Sanada, and Bruce Voss, Public/Guest.

Chair Linda Krieger called the meeting to order.

Approval of Minutes

The minutes of the January 18, 2012, meeting, continued to and completed on February 1, 2013, were approved. (m/s/p Fukunaga/Liongson; all in favor).

Executive Director's Report

Deputy Executive Director (DED) Marcus Kawatachi presented an FY 2013 HCRC Mediation Program Year to Date report, from July 1, 2012, through March 22, 2013.

Summary & Details (FY 2013 year to date)

Referrals:	48
Dispositions:	46
Settlements:	33
Non-agreements:	13
Settlement Rate:	71.7 %
Employment cases settled:	26
Non-employment cases settled:	7 (Public Accommodations)
Dual-filed (EEOC/HCRC) settlements:	21
State-only settlements:	12

Primary Bases for Complaints Settled in Mediation

Sex	11 (incl. 3 pregnancy and 3 sexual harassment cases)
Disability	7
Retaliation	4
Arrest & Court Record	3
Sexual Orientation	3
Marital Status	2
Age	2
Ancestry	1

Dispositions by Mediation Center

Mediation Center of the Pacific	20/28	(settlement rate 71.4 %)
Private Mediators	8/8	(settlement rate 100 %)
Mediation Services of Maui	2/3	(settlement rate 66.6 %)
West Hawaii Mediation Center	2/3	(settlement rate 66.7%)
Ku'ikahi Mediation Services (Hilo)	1/2	(settlement rate 50 %)
Kauai Economic Opportunity, Inc.	0/2	(settlement rate 0%)
OVERALL	33/46	(settlement rate 71.7%)

DED Kawatachi presented a data and production report showing caseload data through March 22, 2013.

As of March 22, 2013, the report showed 475 open cases, decrease of 3 cases from the number reported as of December 18, 2012. Of those, 24 (5.0%) were filed in 2009, 54 (11.4%) filed in 2010, 63 (13.3%) filed in 2011, 258 (54.3%) in 2012, and 76 (16.0%) in 2013.

DED Kawatachi noted that the number of older cases had been reduced despite the loss of two temporary investigators and one permanent investigator, and that investigation coverage and production were affected by this turnover.

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

	2009	2010	2011	2012	2013	Total
Intake Stage	5	5	17	133	62	222
Housing	1	0	4	17	12	34
Cases						
Pending	13	39	30	38	0	120
Assignment						
Active	5	10	12	70	2	99
Investigation						
TOTAL	24	54	63	258	76	475

Chair Krieger suggested that enforcement staff should review the intake process and use of resources, to consider whether changes could be made to improve efficiency.

It was reported that: 19.6% of all investigation cases were 2 years old or older (from date of filing); 7.2% were over 18 months but less than 2 years old; 8.2% were over 12 months but less than 18 months old; 32.2% were over 6 months but less than 12 months old, and 32.8% were 6 months old or less.

DED Kawatachi also reviewed caseload variances by fiscal year and year to date comparisons, which were unchanged from the November 30 report.

Category	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
PCQ Received	952	800	769	743	727	860	933	874	778	774
Intake Decision	989	785	776	685	716	784	934	800	786	684
Complaint Filed	491	421	360	341	318	359	430	481	368	397
Investigation Closed	463	450	427	381	360	286	384	430	373	334
Notice of Cause	22	11	30	48	21	16	10	10	6	8
Enforcement Closure	22	16	18	23	20	15	31	20	22	22

DED Kawatachi explained the subsets of investigation closures, including mediation settlements, other settlements between the parties, and predetermination settlements.

He also reviewed the fiscal year to date, from July 1 through March 22, for fiscal years 2009, 2010, 2011, 2012, and 2013.

Executive Director (ED) Bill Hoshijo reported on the HUD Partnership Initiative (PI)-funded project that the HCRC was finishing in partnership with the Medical Legal Partnership for Children in Hawai'i, a project of the University of Hawai'i William S. Richardson School of Law. The project included presentation of a series of fair housing/civil rights workshops targeting communities of people from Compact of Free Association (COFA) nations, primarily in the Chuukese and Marshallese communities, and production of four videos, with versions in Chuukese, Marshallese, Ilocano, and Tagalog. The English language versions of the four videos were viewed, covering the topics of fair housing, fair employment, language access, and what to do if you have been discriminated against.

ED Hoshijo reported on the status of the budget in the legislature. The House Draft of the budget bill included a shift of means of funding (MOF) for 4.0 permanent positions (affecting seven positions, six 50% and one 100%) from federal funds to state general funds, addressing the critical problem of over-reliance on federal funding. This shift of MOF added \$267,373 per year to the HCRC state general fund budget for each of the next two fiscal years, FY 2014 & FY 2015. However, the House eliminated all vacant positions, including an HCRC position that could not be filled due to the lack of federal funds. The HCRC, with DLIR support, was requesting that the Senate restore the position.

ED Hoshijo also reported on the impact of the federal budget sequester, which would impact both the HCRC's EEOC and HUD contracts. While neither EEOC nor HUD had communicated any specific details, it was anticipated that state & local agency funding would be reduced by 9-15 % during the current FY 2013.

Chief Counsel's Report

Chief Counsel (CC) Livia Wang reported that the draft proposed rules to conform to the amendments to HRS chapter 515 were approved by the Attorney General (AG) in February 2013. A presentation to the Small Business Regulatory Review Board for its required review of the proposed rules was scheduled for April 17, 2013. Upon that review, the proposed rules would be submitted for Governor's approval. It was anticipated that the public hearing on the proposed rules would then be scheduled for June or July, 2013.

CC Wang reported that the *Lales* case before the Hawai'i Supreme Court was pending.

CC Wang reported that the *Bate* case had been docketed for hearing before a Hearings Examiner. She said the case involved claims of religious and sex harassment and discussed the anticipated timetable for the adjudication process. It was anticipated that a hearing would be conducted in August 2013, with a Hearings Examiner's recommended decision within 60 days thereafter, followed by Commission adjudication on parties' exceptions to the Hearings Examiners' recommended decision.

Legislation -2013 Session

The Commissioners reviewed Legislative Summary 3, with staff recommendations prepared by CC Wang. The Commissioners decided on HCRC positions on nine resolutions as follows:

**HR 88 Urging Congress to include resident citizens of COFA states as "Qualified
HCR 117 Aliens" under the Personal Responsibility and Work
Opportunity Recognition Act**

SR 74

SCR 108

Recognition would allow COFA immigrants to be eligible for numerous federal benefits such as Medicaid, social security, food stamps and housing benefits.

**Status: HR 88 and HCR 117 ref. to VMI, JUD
SR 74 and SCR 108 ref. to TIA/HMS/PSM**

Recommendation: support. COFA immigrants are from former U.S. Trust Territories, which were used for nuclear and other military tests and U.S. military occupation. A disproportionately large number of COFA immigrants also serve in the U.S. military. Therefore, they should be eligible for these benefits.

Discussion: Chair Krieger and ED Hoshijo reviewed the historical context of Compact of Free Association (COFA) and the impact of the Personal Responsibility and Work Opportunity Act, popularly known as "welfare reform", on COFA nation citizens in Hawai'i. Commissioner Mark G. Valencia said he would abstain, because he was not comfortable with the level of information and unsure of how the issues affect HCRC jurisdiction. Chair Krieger stated that cost to the state is at the center of animus and discrimination against COFA migrants in Hawai'i. .

HCRC position: Support. (m/s/p Fukunaga/Liongson; 3-0 in favor, Valencia abstain).

**HR 104 Requesting Agencies in the Criminal Justice System to conduct
HCR 134 mandatory and ongoing implicit, unconscious bias training for all employees
SR 80
SCR 116**

Status: HR 104 and HCR 155 ref. to PBS, FIN;
SR 80 and SCR 116 ref. to PSM/JDL, WAM

Recommendation: support intent (based on position on HB 52).

HCRC position: Support. (m/s/p Fukunaga/Krieger; all in favor).

HR 155 **Expressing support for the national draft to include women**
HCR 194

Given that DOD has lifted the ban on women in combat, supports women being included in the national draft.

Status: HR 155 and HCR 194 ref. to VMI, FIN;

Recommendation: support.

Discussion: Commissioner Valencia expressed concern that the issues were outside of HCRC expertise. He explained that the issue was complex - drafting women of a certain age indiscriminately when many would not meet physical standards to qualify for combat roles. Chair Krieger agreed and said she would abstain, based on her view that the military decision was outside HCRC expertise and purview. Commissioner Fukunaga said that the physical qualification argument has been overcome in other areas once exclusively male. Commissioner Liongson agreed, expressing concern about the implication of exclusion of women. Commissioner Valencia said that women have made great strides in the military, citing examples of successful women from his own military experience, but pointed out that this was not about exclusion, but drafting women to serve against their will. Chair Krieger added that with the epidemic of sexual assault that the military has not addressed, on principle she could not support forcing women to serve until the military solves the problem.

HCRC position: A motion to support did not carry (m/s/p Liongson/Fukunaga; 1-1, 2 abstain).

HCR 74 **Requesting BOE to maintain, monitor and enforce anti-bully, anti-cyber**
SCR 81 **bullying, anti-harassment and anti-discrimination policies and procedures to**
protect public and charter school students

Status: HCR 74 ref. to EDN, JUD
SCR 81 ref. to EDU

Recommendation: support intent given position on HB 1226 and SB 525

HCRC position: Support. (m/s/p Liongson/Krieger; all in favor).

HCR 93 Encouraging the DOE to include the political, economic and social contributions of persons with disabilities in social studies curriculum

Status: ref. to EDN, FIN

Recommendation: support.

Discussion: Several Commissioners and ED Hoshijo expressed concern about the resolution calling for banning texts.

HCRC position: Support, but urge deletion of the call for banning of textbooks. (m/s/p Krieger/Fukunaga; all in favor).

**SR 66 Urging the governor to strive to achieve or maintain gender equity in
SCR 100 nominations to state boards and commissions**

Status: SR 66 and SCR 100 ref. to JDL

Recommendation: support given position on HB 189.

Discussion: Commissioner Valencia said he supported the intent of the resolution but that it would be ineffective.

HCRC position: Support. (m/s/p Fukunaga/Liongson; 3-1 in favor, Valencia opposed).

**SR 123 Requesting the convening of a task force to study the social, economic
SCR 166 and religious impacts of enacting marriage equity in Hawaii**

Creates task force headed by WSRSL Dean and composed of 2 attorneys, 2 members of business community, one clergy member, one member of a marriage equity organization, one professor of economics, the House Speaker, Senate President to determine: 1) whether civil unions are sufficient to provide rights necessary to ensure strong healthy families in Hawaii; 2) examine impact of U.S. S. Ct.'s decision in U.S. v. Windsor regarding the constitutionality of DOMA and Hollingsworth v. Perry, regarding the constitutionality of California's initiative banning same sex marriage; 3) examine the economic impact of passing or not passing marriage equity legislation in Hawaii; and 4) review effects of marriage equity in Conn., Iowa, Maine, Maryland, Mass., NH, NY, Vermont, Wash and D.C.

Status: ref. to JDL, WAM

Recommendation: No opposition. ACLU suggested this resolution and study because similar studies were done in states that did pass marriage equity laws. However, since marriage equity is a civil rights issue which should not be based on economic, social and religious impacts, and the HCRC supported HB 1109 and SB 1369 (same sex marriage bills), there is no need for such task force.

Discussion: Chair Krieger pointed out that in U.S. v. Windsor the economic impact of the Defense of Marriage Act is a focal issue. If lesbian and gay citizens are denied marriage, there is an economic impact, for example tax consequences.

HCRC position: No opposition. (m/s/p Liongson/Krieger; 3-0 in favor, Valencia abstained).

SCR 113 Recognizing Juneteenth National Freedom Day on 6/19 of each year.

Juneteenth celebrates the abolishment of slavery in the U.S. through the enactment of the Thirteenth Amendment to the U.S. Constitution. June 19, 1865 is the date that the news of the enactment reached the slaves in Arkansas, California, Louisiana, Oklahoma and Texas.

Status: ref. to JDL/TEC

Recommendation: support

HCRC position: Support. (m/s/p Fukunaga/Liongson; all in favor).

SCR 157 Urging the state to adopt the UN convention on the rights of persons with disabilities and the U.S. Senate to ratify the convention.

President Obama signed this Convention in 2009 but it hasn't been ratified by the U.S. Senate yet.

Status: ref. to HMS/TIA/PSM

Recommendation: support

Discussion: Commissioner Valencia asked why the U.S. needs to ratify the convention. Chair Krieger said that the U.S. has already passed laws protecting the rights of persons with disabilities, so the impact would be largely symbolic, noting that the U.S. has not ratified a number of UN conventions. Commissioner Valencia shared what he learned at a recent training on international law, that the reasons for the U.S. not signing off on some treaties might be conflict or inconsistency with U.S. law.

HCRC position: Deferred.

Old Business

ED Hoshijo reported that a hearing on motions for summary judgment in *Cervelli v. Aloha Bed & Breakfast* was scheduled for March 28, 2013.

New Business & Announcements

There were no new business or announcements.

Closed Executive Session

Closed executive session discussion of HCRC investigation procedures was deferred until a later date, when all Commissioners could be present and participate.

Next Meeting

The next meeting was scheduled for May 2, 2013, subject to polling of and confirmation by the Commissioners.

Adjournment