



HAWAI'I CIVIL RIGHTS COMMISSION

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MINUTES

Hawai'i Civil Rights Commission Office

October 11, 2013

3:30 p.m.

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

Artemio Baxa, Commissioner, excused.

Sheri-Ann Clark, Public/Guest.

Chair Linda Krieger called the meeting to order.

Approval of Minutes

The minutes of the August 22, 2013, meeting were approved. (m/s/p Iwamoto/Liongson; all in favor).

Executive Director's Report

Deputy Executive Director (DED) Marcus Kawatachi presented an FY 2014 HCRC Mediation Program Year-to-Date Summary.

Summary & Details (7/1/13 through 10/11/13)

Referrals:	10
Dispositions:	8
Settlements:	7
Non-agreements:	1
Settlement Rate:	87.5 %
Employment cases settled:	7
Non-employment cases settled:	0
Dual-filed (EEOC/HCRC) settlements:	7
State-only settlements:	0

Primary Bases for Complaints Settled in Mediation

Disability	2
Ancestry/National Origin	2
Retaliation	1
Age	1
Race	1

Dispositions by Mediation Center

Mediation Center of the Pacific	4/5	(settlement rate 80 %)
Private Mediators	3/3	(settlement rate 100 %)
OVERALL	7/8	(settlement rate 87.5%)

DED Kawatachi presented a data and production report showing caseload data through October 11, 2013.

As of October 11, 2013, the report showed 414 open cases, an decrease of 12 cases from the number reported as of August 22, 2013. Of those, 20 (4.8%) were filed in 2009, 45 (10.9%) filed in 2010, 55 (10.9%) filed in 2011, 94 (22.7%) in 2012, and 210 (50.7%) in 2013.

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

	2009	2010	2011	2012	2013	Total
Housing Cases	0	0	1	12	13	26
Intake Stage	0	2	3	22	140	167
Mediation	0	0	1	2	26	29
Pending Assignment	14	38	35	47	29	163
Active Investigation	6	5	5	11	2	29
TOTAL	20	45	45	94	210	414

It was reported that: 24.9% of all investigation cases were 2 years old or older (from date of filing); 4.3% were over 18 months but less than 2 years old; 12.8% were over 12 months but less than 18 months old; 24.9% were over 6 months but less than 12 months old, and 33.1% were 6 months old or less.

DED Kawatachi noted the status of the two complaints filed in 2010 that remained in the intake stage: one was returned to investigation after a failed mediation, and a full response was recently received on the other. He also noted that one of the three 2011 complaints in intake would be off the list before the next monthly report.

Commissioner Kim Coco Iwamoto asked if there were periodic offers of mediation to complainants in older cases.

Executive Director (ED) Bill Hoshijo responded that the HCRC mediation program was primarily an early stage mediation program, but that parties could explore and agree to mediation at any stage of the process. He noted that because mediation is voluntary, both parties have to agree to mediation, so even if a complainant opts for mediation, the respondent would have to agree before the case could be referred to mediation.

Commissioner Wally Fukunaga asked who was responsible for monitoring pending cases. DED Kawatachi responded that the DED and an Investigator Supervisor were responsible. Chair Krieger requested that for the next meeting, a breakdown be prepared for the 14 2009 cases pending assignment, showing case history and concrete steps taken toward assignment and disposition.

ED Hoshijo reported on the HCRC's FY 2015 Supplemental Budget Request. He reviewed the Department of Budget and Finance (B&F) Memorandum No. 13-08, Supplemental Budget Policies and Guidelines for Fiscal Biennium 2013-2015, covering the State's fiscal condition and providing guidelines regarding supplemental budget requests. He reported that in the first stage of the administration budget process, the HCRC requested restoration of three permanent investigator positions lost since 2008, necessary for viability of HCRC civil rights law enforcement. The Department of Labor and Industrial Relations (DLIR) budget request would be submitted to B&F for consideration.

ED Hoshijo noted that the loss of 3 of 11 permanent investigator positions had seriously impacted both the intake and investigation of complaints, causing lengthy delays in processing complaints and insufficient resources to effectively and timely investigate complaints, to the detriment of all parties.

He reported that in July 2007, the HCRC investigation caseload was 247 cases, and that at the end of September 2013 it was 436 cases, a 77% increase. The growing caseload, with fewer investigators, makes timely investigation difficult if not impossible.

Commissioner Raymund Liongson asked whether the HCRC budget was adversely impacted because the HCRC is under the DLIR, but not labor focused. He asked if the HCRC should consider whether it should be under the DLIR or look for another administrative attachment, suggesting the Office of the Ombudsman as an example of an independent agency.

ED Hoshijo responded that it makes sense for the HCRC to be attached to the DLIR, for a number of reasons. Historically, when the HCRC was established through legislation enacted in 1988 and 1989, it took jurisdiction over state fair employment law from the DLIR Enforcement Division, and 85% of the complaints filed with the HCRC are fair employment complaints. Although the HCRC is an administratively attached agency, a strong case can be made that its law enforcement mandate falls under the DLIR's core labor functions and priorities. He acknowledged that the DLIR was heavily federal funded, so that in times of recession and budget cuts, there were few programs with state general funds to absorb state budget cuts, and noted that the DLIR's general fund budget had been reduced since the 1980s from a high of approximately \$29 million to current levels of approximately \$14 million.

ED Hoshijo reviewed the critical impact of the recession and budget cuts since 2008 on the HCRC, with the loss of 8 of 30 permanent positions. He noted that under Governor Abercrombie's administration corrective action had been taken, with the FB 2013-2015 addressing an over-reliance on federal funds that had been imposed under earlier administrations, which would have resulted in further loss of capacity if not corrected. That having been accomplished through restoration of general funds in the FB 2013-2015 budget, the administration was supportive of a request for restoration of investigator positions in the FY 2015 supplemental budget. In short, he said, the HCRC and civil rights enforcement were well-placed being administratively attached to the DLIR.

The discussion of HCRC process was deferred until staff had time to meet with Chair Krieger as planned.

ED Hoshijo also reported that the HCRC co-sponsored pau hana civil rights event held on September 30 at the HGEA meeting room was well-attended and well-received. The program was moderated by University of Hawai'i Richardson School of Law Dean Avi Soifer, and presenters included William Tamayo, Moses Haia, Dina Shek, and Joakim Peter.

Chief Counsel's Report

Chief Counsel (CC) Livia Wang reported that the HCRC's proposed housing rule amendments regarding filing civil actions, assistance animals, and tight living exemptions were approved by the Governor, effective October 6, 2013.

CC Wang reported that there was no word on the *Lales* case pending before the Hawai'i Supreme Court.

CC Wang also reviewed the program for the October 29, 2013, annual HCRC public training, including Commissioner Liongson doing the welcome and opening remarks, and Commissioner Iwamoto doing the closing remarks.

Legislation -2014 Session

ED Hoshijo reported that, on review, staff decided that the HCRC statutory authority was broad enough to cover hiring a part-time hearings examiner or contract for hearing examiners, so no administrative legislation was necessary.

Special Session on Marriage Equality Legislation

ED Hoshijo reported that the HCRC had received numerous questions from legislators and the public about the application of HRS Chapter 489 public accommodations protections to religious organizations and religious facilities if marriage equality legislation were enacted. He discussed a draft response that was being prepared to address questions and concerns relating to the public accommodations law.

Chair Krieger suggested that the response should be posted on the HCRC webpage.

Commissioner Iwamoto asked whether HCRC Commissioners would testify at the legislative hearings on the marriage equality bill. ED Hoshijo responded that staff would prepare the testimony on behalf of the Chair and Commissioners, based on the Commission position taken at the August 22, 2013, Commission meeting. Staff would present the testimony on behalf of the Commission at hearing.

Commissioner Fukunaga noted that he was impressed by the response from churches to the proposed legislation, thoughtful and informed responses.

Old Business

ED Hoshijo reported on the status *Cervelli v. Aloha Bed & Breakfast*. On appeal to the Intermediate Court of Appeals, the Defendant-Appellant had filed its opening brief. The Appellees' answering brief was scheduled to be due on October 31, 2013, and it was anticipated that an extension of time to file the answering brief would be requested.

New Business

Chair Krieger requested that the HCRC start posting its minutes on its webpage going forward.

Next Meeting

The next meeting was scheduled for November 18, 2013, subject to polling of and confirmation by the Commissioners.

Adjournment