



# HAWAII CIVIL RIGHTS COMMISSION

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## MINUTES

Hawai'i Civil Rights Commission Office

December 16, 2013

3:00 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.

Chair Linda Krieger called the meeting to order.

### Approval of Minutes

The minutes of the November 18, 2013, meeting were approved. (m/s/p Liongson /Iwamoto; all in favor).

Commissioner Wally Fukunaga shared good news of personal nature with the Commissioners. He also presented a copy of the book, "Japanese Eyes, American Heart - Volume II", expressing appreciation to the Executive Director and HCRC staff.

### 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 12/16/13)**

Referrals:	11
Dispositions:	12
Settlements:	9
Non-agreements:	3
Settlement Rate:	75 %
Employment cases settled:	9
Non-employment cases settled:	0
Dual-filed (EEOC/HCRC) settlements:	9
State-only settlements:	0

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

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

**Dispositions by Mediation Center**

Mediation Center of the Pacific	5/6	(settlement rate 83.3 %)
Private Mediators	4/4	(settlement rate 100 %)
West Hawaii Mediation Center	0/1	(settlement rate 0 %)
Ku'ikahi Mediation Services (Hilo)	0/1	(settlement rate 0 %)
<b>OVERALL</b>	<b>9/12</b>	<b>(settlement rate 75%)</b>

DED Kawatachi presented a data and production report showing caseload data through December 16, 2013.

As of December 16, 2013, the report showed 412 open cases, an decrease of 1 case from the number reported as of November 18, 2013. Of those, 20 (4.8%) were filed in 2009, 45 (10.9%) filed in 2010, 44 (10.7%) filed in 2011, 74 (18.0%) in 2012, and 229 (54.5%) 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	12	25
Intake Stage	0	0	3	6	159	168
Mediation	0	0	1	2	24	27
Pending Assignment	4	37	33	47	27	148
Active Investigation	16	8	6	7	7	44
<b>TOTAL</b>	<b>20</b>	<b>45</b>	<b>44</b>	<b>74</b>	<b>229</b>	<b>412</b>

It was reported that: 25.9% of all investigation cases were 2 years old or older (from date of filing); 8.5% were over 18 months but less than 2 years old; 9.9 % were over 12 months but less than 18 months old; 22.4% were over 6 months but less than 12 months old, and 33.3% were 6 months old or less.

Commissioner Raymund Liongson expressed concern that the oldest cases in investigation and pending assignment, 4 filed in 2009 and 37 filed in 2010, should be assigned as soon as possible and the investigations completed. He strongly urged that at the end of calendar year 2013 a concerted effort was needed to complete investigation of these oldest cases. DED Kawatachi agreed that this was a priority, noting that a number of cases pending assignment had been assigned for investigation in recent months, and that these cases would follow.

The discussion of HCRC process was deferred until the January 2014 meeting, to allow time for Chair Krieger to meet with Executive Director (ED) Bill Hoshijo and DED Kawatachi as planned.

ED Bill Hoshijo reported that the Executive Director filed an amicus brief in a Federal Court case in support of a motion to dismiss a declaratory relief action brought by a respondent in a state fair housing complaint. The ED's motion for leave to file an amicus brief was granted. If dismissed, the case would be investigated by the Executive Director and could possibly be brought before the Commission, so ED Hoshijo said he would continue report on the litigation without discussing the facts or merits of the underlying fair housing case.

ED Hoshijo also reported that the DLIR was reviewing and updating its Limited English Proficient (LEP) language access plan, with the establishment of a working group.

ED Hoshijo also reported that the HCRC was participating in an implementation and outreach effort spearheaded by First Lady Dr. Nanci Caraway, on Act 248, the "Domestic Workers Bill of Rights." Act 248 addressed the historical exclusion of domestic workers from coverage under state fair employment law, providing for jurisdiction for discrimination claims other than discrimination in hiring or termination. He summarized the ongoing planning for a public information campaign to be launched in March 2014, to include development of education and outreach materials (flyers, cards, bus signs, posters, etc.) in several languages, training for service providers, and outreach through ethnic community media, around a theme of "domestic workers have rights." He reported that the ad hoc group's discussions over the past month had been broad, with weekly meetings. He noted that the work was both important and challenging, requiring an investment of time that would be difficult for him to maintain after the start of the 2014 legislative session. Commissioner Kim Coco Iwamoto asked if this was an activity that a Commissioner could help with, taking the lead and relieving staff of some of the time commitment required to move the project ahead. ED Hoshijo said that Commissioners' assistance would be much appreciated.

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

Chief Counsel (CC) Livia Wang reported that there was nothing new to report on the *Lales* case pending before the Hawai'i Supreme Court.

CC Wang reported that the hearing in a docketed case, the Bate case, had been completed, that post-hearing briefs would be due January 9, 2014, and that the Hearings Examiner then would have 60 days to write his proposed decision. The parties would then file any exceptions to the proposed decision, which would be heard by the Commissioners, with oral arguments in March or April 2014.

### **Legislation -2014 Session**

ED Hoshijo reported that the Administration's supplemental budget request included restoration of investigation capacity, specifically the 3 permanent investigator positions lost since 2008.

CC Wang went over the legislative calendar for the upcoming 2014 legislative session, noting that the session would open on January 15, 2014, with pre-introduction of bills starting as early as January 8, 2014. CC Wang and ED Hoshijo recommended that the Commissioners plan on a meeting in mid-January to take care of regular business and discuss any early bill introductions, with the January meeting then continued to a date after the bill introduction cut-off for consideration of HCRC positions on all bills.

### **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 on September 20, 2013. The Plaintiffs-Appellees answering brief was filed on November 27, 2013. He indicated that the briefs could be transmitted to the Commissioners.

A question was raised about the posting of meeting minutes on the HCRC webpage. ED Hoshijo said he would follow up to get the minutes posted going forward.

### **New Business**

Commissioner Iwamoto raised a question of whether a fair trade agreement developed by the Trans-Pacific Partnership (TPP) could potentially erode state fair employment law protections. ED Hoshijo said he would do some initial research on the question, starting with organized labor / union contacts to ask about concerns.

### **Announcements**

ED Hoshijo reminded the Commissioners that the HCRC would have a contingent in the January 20, 2014, Martin Luther King, Jr. Parade, meeting at Magic Island before the 9 a.m. start of the parade.

He also announced that Faith Action for Community Equity (FACE) sent an invitation to a December 23, 2013, discussion with Pulitzer Prize-winning journalist Jose Antonio Vargas at the State Capitol.

### **Next Meeting**

The next meeting was scheduled for January 13, 2014, subject to polling of and confirmation by the Commissioners.

### **Adjournment**