



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
February 21, 2014
3:15 p.m.

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

Wally Fukunaga and Artemio Baxa, Commissioners, excused.

Chair Linda Krieger called the meeting to order.

Approval of Minutes

Approval of the minutes of the January 13 and 24, 2014, meeting was deferred until the next meeting, because only two of the three Commissioners present were at the January meeting.

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 1/13/14)

Referrals:	19
Dispositions:	16
Settlements:	10
Non-agreements:	6
Settlement Rate:	62.5 %
Employment cases settled:	10
Non-employment cases settled:	0
Dual-filed (EEOC/HCRC) settlements:	9
State-only settlements:	1

Primary Bases for Complaints Settled in Mediation

Disability	2
Ancestry/National Origin	2
Retaliation	2
Age	2
Race	1
Sex (pregnancy)	1

Dispositions by Mediation Center

Mediation Center of the Pacific	5/9	(settlement rate 55.6 %)
Private Mediators	4/4	(settlement rate 100 %)
Mediation Services of Maui	1/1	(settlement rate 100%)
West Hawaii Mediation Center	0/1	(settlement rate 0 %)
Ku'ikahi Mediation Services (Hilo)	0/1	(settlement rate 0 %)
OVERALL	10/16	(settlement rate 75%)

DED Kawatachi presented a data and production report showing caseload data through January 13, 2014.

As of February 21, 2014, the report showed 430 open cases, an increase of 15 cases from the number reported as of January 13, 2014. Of those, 18 (4.2%) were filed in 2009, 43 (10.0%) filed in 2010, 39 (9.0%) filed in 2011, 62 (14.4%) in 2012, 226 (52.6%) in 2013, and 42 (9.8%) in 2014.

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

	2009	2010	2011	2012	2013	2014	Total
Housing Cases	0	0	1	10	14	3	28
Intake Stage	0	0	3	1	136	35	175
Mediation	0	0	1	2	26	2	31
Pending Assignment	0	35	29	41	40	1	146
Active Investigation	18	7	6	8	11	0	50
TOTAL	18	42	40	62	227	41	430

It was reported that: 24.7% of all investigation cases were 2 years old or older (from date of filing); 6.5% were over 18 months but less than 2 years old; 9.3 % were over 12 months but less than 18 months old; 22.5% were over 6 months but less than 12 months old, and 7.0% were 6 months old or less.

Executive Director (ED) Bill Hoshijo reported on two ongoing outreach initiatives.

Act 248, enacted in 2013 and known as the “Domestic Workers Bill of Rights,” extended state law protections to domestic workers previously excluded from fair employment and wage standards (minimum wage and overtime) protections. First Lady Dr. Nancie Caraway convened a planning group including the HCRC, DLIR Wage Standards, State Office of Community Services (OCS), State Commission on the Status of Women, Hawai‘i Immigrant Justice Center (HIJC) at the Legal Aid Society of Hawai‘i (LASH), Medical-Legal Partnership for Children, Faith Action for Community Equity (FACE), and other direct services and community advocacy organizations. Public education plans included development of informational materials, translated into several languages, bus signs, and posters,

and training for immigrant resource center staff and direct service providers, with a roll-out tentatively scheduled for May 1.

The HCRC and the Disability Communication Access Board were partnering on a public education campaign to raise awareness of health care providers' obligation under federal and state law to provide a sign interpreter for deaf patients, if required for effective communication. The HCRC was fortunate to have University of Hawai'i William S. Richardson School of Law LLM student Delphine le Maire coordinating the planning of this project. Commissioner Kim Coco Iwamoto asked if assistive technologies could be used in lieu of sign interpretation. ED Hoshijo responded that it depended on the situation, and that the key was effective communication. A member of the public, Peter Fritz, suggested a Florida Bar Association video as a good resource, and offered to provide a copy to the HCRC.

Chief Counsel's Report

Chief Counsel (CC) Livia Wang reported that the Hawai'i Supreme Court had recently issued its decision in the *Lales* case, in which the HCRC had submitted an amicus brief. The Court upheld strict liability for employers for ancestry harassment by supervisors, managers, or agents, affirming the HCRC's rulemaking authority, and struck down individual liability for supervisors, managers, or agents based on the definition of "employer." CC Wang recommended that Commissioners go into closed executive session, for them to confer with counsel on *Lales*. She also reported that there was another matter involving the Commission that should be addressed in closed session, because it involved legal advice on HCRC process.

The Commissioners went into closed executive session to confer with counsel. (m/s/p Iwamoto/Liongson; all).

The Commissioners came out of executive session.

The Commissioners directed CC Wang to commence a process for commission rulemaking arising out of *Lales*, addressing two issues: the definition of "supervisor" as used for the purpose of determining respondeat superior employer liability for harassment; and, to clarify "aiding and abetting" as used in HRS § 378-2(a)(3). (m/s/p Liongson/ Iwamoto; all).

CC Wang reported that the hearing in a docketed case, the Bate case, had been completed, that post-hearing briefs were submitted, and that the Hearings Examiner had until March 8, 2014, to submit his proposed decision. The parties would then have 15 days to file any exceptions to the proposed decision, followed by 15 days to file positions in support of the proposed decision. This would likely result in scheduling the case for oral arguments in April 2014.

Legislation -2014 Session

The Commissioners reviewed Legislative Summary 3, an update on the status of bills, and CC Wang reported on bills that were still alive.

EMPLOYMENT

**HB 1975 HD1
SB 2420 SD1**

Criminal history record checks for certain county employees
Amends HRS § 846-2.7 to allow criminal history record checks for county

employees to have access to secured areas relating to traffic management and confidential information; and for employees who use firearms for non-law enforcement purposes; exempts all 3 new categories from arrest and court record protections under HRS § 378-2.5

Status: HB 1975 ref. to LAB, JUD; hrg. before LAB on 1/24/14; passed with requested amendments; hrg. before JUD on 2/20/14

SB 2420 ref. to HMS/PSM, JDL; hrg. before HMS/PSM on 1028014; passed with requested amendments; hrg. before JDL on 2/21/14

HCRC position: No opposition with agreed amendments. Staff met with CCH personnel staff and reached agreement that only provision regarding employees who use firearms for non-law enforcement purposes would be exempt from HRS § 378-2.5.

HB 2649 HD1 Domestic Violence Victims

Amends HRS § 378-2 to require DV victims to provide employers with a copy of a TRO or protective order to verify DV status; allows employer to discriminate if employer reasonably believes that abuser could endanger other employees; amends § 378-81 to limit accommodations for a DV victim by just posting the protective order, letting other personnel know about the protective order and calling the police. Deletes all other accommodations; removes employer liability for failure to provide reasonable accommodations.

Status: Ref to HUS, LAB, JUD; re-referred to HUS, FIN; hrg. before HUS on 2/13/14; passed w/ amendments

HCRC position: Oppose. This bill restricts DV victims to those who only have court orders; allows employers to discriminate if they believe other employees may be endangered and takes away reasonable accommodations for DV victims.

HOUSING

HB 676, HD2 Source of income housing discrimination

[SB-805]

Amends HRS Chapter 515 to prohibit housing discrimination based on lawful source of income.

Status: HB 676 ref. to CPC, JUD; hrg. before CPC on 1/30/13, passed w/ amendments moving prohibitions to HRS Chapter 521 (landlord tenant law); hrg. Before JUD on 1/16/14, passed w/ amendments keeping protection under landlord tenant law

SB 805 ref. to CPN, JDL; hrg. before CPN on 1/30/13, deferred

HCRC position: (based on past positions) - Support, on condition of requested additional enforcement positions and funding, citing loss of capacity and impact on enforcement. Lawful public sources of income include Section 8 vouchers, social security disability insurance, unemployment compensation, food stamps, temporary assistance to needy families; lawful

private sources of income can include special needs trusts, and income from legal settlements. The majority of people who receive rental assistance are people with disabilities, single female heads of households, families with children and members of certain minority groups. Therefore, there is a correlation between those that are protected under our fair housing law and those who receive rental assistance. 13 other states have source of income protection statutes.

PUBLIC ACCOMMODATIONS

HB 1420 H HB 1420 HD1 **Service dogs in public accommodations; tags; leash**
Amends Chapter 347 to require counties to issue service dog tags to trained service dogs requires service dogs to wear these tags when in public accommodations.

Status: ref. to JUD; hrg. on 1/24/14 before JUD; passed w/ amendments to only contain penalty for falsely representing an animal as a service animal

HCRC position: Oppose. Intent is only to allow trained service dogs in public accommodations – this conflicts with HCRC’s interpretation of Chapter 489 to allow other assistance animals to be reasonable accommodations. Also conflicts with federal ADA Title II DOJ regs which do not allow a public accommodation to require documentation that an animal is licensed, trained or certified as a service animal. In addition there are no state or federal standards for determining what a trained service animal is, and out of state service dogs won’t have tags.

HB 2006 **Public Accommodations exemption for religious organizations**
SB 2164 Excludes facilities owned or operated by a religious organization and used for religious purposes from definition of “public accommodation”.

Status: HB 2006 ref. to JUD;
SB 2164 ref. to JDL

HCRC position: Oppose, again based on past position on marriage equity law and position on HB 1624.

OTHER CIVIL RIGHTS ISSUES

[HB-1673] **Driver’s licenses for undocumented immigrants**
SB 2395 SD1 Allows undocumented immigrants to obtain motor vehicle driver’s licenses.

Status: HB 1673 ref. to TRN, JUD; no hearings held.
SB 2395 ref. to PSM/TIA, JDL; hrg. before PSM/TIA on 2/4/14, passed w/ amendments.

HCRC position: Comment only. HCRC opposes ancestry and race-based discrimination with

attacks on and denial of rights to undocumented immigrants. It is good public policy that these residents be granted licenses to operate motor vehicles, making for improved road safety with undocumented immigrants being qualified through license exams and road tests and higher rates of insured drivers on the road. This will bring these residents out of the shadows and improve public safety.

HB 1740 HD1 **Amends appropriation for Office of Language Access resource center and multilingual website project**

Status: Ref. to HLT, FIN; hrg. before HLT on 1/24/14; passed w/ amendments; hrg. before FIN on 2/20/14

HCRC position: Support. Last session the HCRC supported HB 266 which created the resource center and website project.

HB 1748 HD1 **Appropriates funds for financial assistance for interpreters for training and certification in medical interpretation and for development of medical glossaries in main languages spoken in Hawaii**

Status: Ref. to HLT, FIN; hrg before HLT on 1/24/14; hrg. before FIN on 2/20/14

HCRC position: Support – this is another OLA bill.

HB 1749 HD1 **Appropriation for Office of Language Access**
Appropriates funds for 3 positions within OLA.

Status: Ref. to HLT, FIN; hrg. before HLT on 1/24/14; passed w/ amendments

HCRC position: Support – OLA lost all but one of its staff during the 2009 RIF and has only had 2 positions restored. These additional 3 positions are needed to establish the Language Access Resource Center.

HB 1759 **Voter identification**
Specifies the valid types of voter identification (government issued photo ID, copy of utility bill, bank statement, government check or paycheck, government document displaying voter's name and address) that precinct official may request a voter to provide.

Status: Ref. to JUD

HCRC position: Comment only. The HCRC opposes restrictive voter ID requirements that have the intent or effect of chilling the exercise of the right to vote, as used to suppress the voting rights of minorities, the elderly and the poor. To the extent that proposed legislation is intended to address and minimize the chilling effect of voter ID requirements by providing for the

acceptance of alternative forms of identification, the HCRC does not oppose such initiatives.

HB 1909 Gender Equity on Boards and Commissions

Requires governor or appointing authority to attempt gender equity when appointing members to state boards and commissions.

Status: Ref. to JUD

HCRC position: Support based on Commission past position on HB 189 and SB 1259.

HB 1889 HD1 Homeless Person's Bill of Rights

~~[HB 2661]~~ Establishes a homeless person's bill of rights, including the right to equal opportunities in employment

**Status: HB 1889 ref. to HUS, FIN; hrg. before HUS on 2/13/14; passed w/ amendments
HB 2661 ref. to HUS, JUD; no hearings held.**

HCRC position: Comments only. HCRC opposes discrimination and disparate treatment against people because they are poor or homeless. Regardless of socio-economic class, all of Hawaii's people should be accorded respect and dignity, equal opportunity, and equal protection of the law. People should not be denied access to goods, services, or accommodations based on discriminatory reasons. It should be recognized and acknowledged that these proposed protections, while they may overlap with existing protected bases (e.g., disability) that are disparately impacted by discrimination against the poor, are different in kind from the other protected bases in our civil rights / non-discrimination laws (race, ancestry, sex, etc.)

NEW BILL - HOUSING

SB 2393

CC Wang distributed copies of a bill that was just recently brought to the HCRC's attention. S.B. No. 2393, which impose county geographic separation requirements on group living facilities, and a copy of the Attorney General's testimony in opposition to that requirement as violative of the federal Fair Housing Act. Chair Krieger noted that there was a U.S. Supreme Court case that was on point, as well as numerous federal court decisions. **Staff recommended that the HCRC oppose S.B. No. 2393 on the same ground, that the limitation of the number of group homes in a geographic area violated federal and state fair housing law. The Commissioners approved the staff recommendation to oppose the bill on that ground. (m/s/p Iwamoto/Krieger; all).**

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.

ED Hoshijo also reported that in the *McDonough* case, in which the HCRC ED had filed an amicus brief,

the federal district court had heard arguments on a motion to dismiss, and the case was taken under advisement.

New Business

There was no new business.

Announcements

There were no announcements.

Next Meeting

The next meeting was scheduled for March 17, 2014, at 3:00 p.m., subject to polling of and confirmation by the Commissioners.

Adjournment