



# HAWAII CIVIL RIGHTS COMMISSION

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## MINUTES

Hawai'i Civil Rights Commission Office  
February 26, 2016  
1:30 p.m.

Present: Kim Coco Iwamoto, Wally Fukunaga, and Artemio Baxa, Commissioners; Bill Hoshijo, Marcus Kawatachi, and Robin Wurtzel, Staff.

Excused: Linda Krieger and Raymund Liongson, Commissioners.

In Chair Linda Krieger's absence, Commissioner Kim Coco Iwamoto called the meeting to order.

### Approval of Minutes

The minutes of the January 22, 2016, meeting, continued to and completed on January 29, 2016,, were approved, with two corrections, a grammatical and punctuation correction to clarify the discussion of HB 1591, and a correction regarding who moved and seconded the motion to support intent. (m/s/p Fukunaga/Baxa; all in favor).

### Executive Director's Report

Deputy Executive Director (DED) Marcus Kawatachi presented a FY 2016 HCRC Mediation Program year to date report.

#### **Summary & Details (7/1/15 through 2/26/16)**

Referrals:	33
Dispositions:	39
Settlements:	23
Non-agreements:	16
Settlement Rate:	59.0 %
Employment cases settled:	20
Non-employment cases settled:	3
Dual-filed (EEOC/HCRC) settlements:	17

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

Disability	8
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	15/22	(settlement rate 68.2 %)
Mediation Services of Maui	3/4	(settlement rate 75%)
Private Mediators	2/4	(settlement rate 50 %)
Ku'ikahi Mediation Services (Hilo)	1/4	(settlement rate 25 %)
West Hawaii Mediation Center	1/2	(settlement rate 50%)
Kauai Economic Opportunity, Inc.	1/3	(settlement rate 33.3%)
<b>OVERALL</b>	<b>23/39</b>	<b>(settlement rate 59.0%)</b>

DED Kawatachi presented a data and production report showing caseload data through February 26, 2016.

As of February 26, 2016, the report showed 355 open cases, a decrease of 5 cases from the number reported as of January 22, 2016. Of those, 1 (0.3%) filed in 2011, 4 (1.1%) in 2012, 15 (4.2%) in 2013, 56 (15.8%) in 2014, 206 (58.0%) in 2015, and 73 (20.6%) 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	3	20	5	29
Intake Stage	0	0	5	22	124	62	213
Mediation	0	1	3	5	20	4	33
Pending Assignment	0	1	0	14	20	0	35
Active Investigation	1	1	7	12	22	2	45
<b>TOTAL</b>	<b>1</b>	<b>4</b>	<b>15</b>	<b>56</b>	<b>206</b>	<b>73</b>	<b>355</b>

DED Kawatachi reported that 2 motions for subpoena enforcement, to obtain responses to complaints, had been filed in state circuit court; hearings were held on February 17, 2016, on Kauai, and February 18, 2016, on Oahu; both motions were granted.

Commissioner Iwamoto asked DED Kawatachi to share with staff how excited and pleased the Commission was with progress made.

**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 time for filing Cross-Appellants' opening brief had been extended, and the Appellees' answering brief was also being prepared for filing.

In the *Elento* appeal, the HCRC request to retain Lowell Chun-Hoon to serve as outside counsel for the HCRC had been approved by the Attorney General and the Governor.

### Legislation 2016 Session

The Commissioners reviewed Legislative Summary 2, presented by Staff Attorney Robin Wurtzel:

## 2016 LEGISLATIVE SUMMARY 2

### CIVIL RIGHTS COMMISSION

1. **HB-2366**      **Relating to the Civil Rights Commission**  
**SB 2895**      **HCRC – Executive Director's Authority to Dismiss Complaints**

Amends HRS §368-13 to authorize ED to dismiss a complaint and issue a notice to sue if cause is found and conciliation fails

Status: **HB 2366 is DEAD**  
**HCRC is asking that SB 2895 be heard by JDL**

### EMPLOYMENT

2. **SB 2005**      **Relating to Civil Rights**

Amends H.R.S. § 378-2((a) to prohibit retaliation for providing documentation about labor conditions of the premises.

Status: ref. to: **JDL – has not yet been set (First Decking is March 4<sup>th</sup>)**

Notes: HCRC supports the intent, but opposes putting it in Chapter 378

3. **HB 1739, HD 2**      **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: ref. to: **LAB, JUD – LAB passed HD1. JUD passed HD 2**

Notes: HCRC supported the intent, and requested that it be placed in a new part of chapter 378,

rather than in part I of chapter 378. HD 1 incorporated HCRC amendments authorizing employers to request information needed for investigations, but kept the statute within Part I of section 378, which would give HCRC jurisdiction. HD 2 has not yet been issued

**4. HB 1909, HD 1 Relating to Equal Pay  
SB 2313, SD 1**

Amends §378-2.3 Equal Pay; sex discrimination. It prohibits employer action for wage disclosure, and clarifies the employer defenses.

**Status: ref. to: HB 1909 referred to LAB, JUD; HD1 scheduled for JUD hearing on March 1, 2016  
SB 2313 referred to JDL,WAM; WAM hearing deferred to March 1, 2016**

**Notes:** The House passed HD1 with HCRC suggested amendments, and SD 1 also amended the bill. The HD includes HCRC's requested changes, though JUD has not yet set if for hearing. The SD1 includes some changes we requested, though the language is different. Both bills retain the provision prohibiting employer action for wage disclosure by employees.

**5. HB 2209, HD 1 Relating to Employment  
See also SB 3036 and HB 2444**

Amends §378-3 which lists the exceptions for employers, which may be used as defenses. Amends §378-3(3) which states that employers may fail to hire or discharge and employee based on the ability of the individual to perform the work, to state that nothing prohibits an employer from using any reason other than protected bases.

**Status: ref. to: LAB, JUD**

**This bill is substantially similar to SB 3036 which is set for hearing by JDL on Monday, February 29 at 10 am. The companion bill, HB 2444, is DEAD**

**Notes:** The House Labor Committee changed the effective date to 2091 to facilitate further discussion, and sent it to JUD. JUD has not set it, however the Senate has set SB 3036

**HCRC Position: STRONGLY OPPOSE.**

**HOUSING**

**6. HB-1591 Relating to Housing**

Prohibits discrimination in the rental of real property based on a veteran's use of HUD-VASH vouchers.

**Status: DEAD**

## **OTHER BILLS OF INTEREST**

- 7/8. **SB 845, SD 2 Bullying; Safe Schools for All Students**  
**SB 865, SD1 Bullying; Safe Schools for All Students**

**Status and Notes:** Both bills were introduced last year. HCRC supported these bills because we had overlooked it in 2015. Neither was heard and both are DEAD

9. **HB 1675 Relating to Minors (Conversion Therapy: Sexual Orientation; Minors) SB 2615**

**Status:** HB 1675 ref. to: CPC/HLT, EDN  
SB 2615, SD1 ref to: EDU/CPH, JDL

**HCRC Position:** No position

**Notes:** Staff initially recommended support of the bill, and the Commissioners chose to take no action because the bill was poorly drafted, and the intent was unclear. It could have unintended consequences and punish a teacher who is trying to support a student questioning his or her sexuality.

However, all testimony, and the Senate EDU/CPH Committee report has indicated that it is understood to be a bill protecting LGBT youth from sexual orientation change efforts. The bill was amended to remove the language prohibiting teachers from engaging in sexual orientation change efforts, though the prohibition against mental health counselors still remains. The SD1 also includes definitions which clarify the intent of the bill.

**Discussion:** Staff recommended that the Commission reconsider its decision to take no position on these bills, and consider supporting SB 2615, SD1. Commissioner Artemio Baxa raised the question of why teachers are left out, citing the important role of teachers. Commissioner Iwamoto noted that teachers are not “counselors.” Commissioner Wally Fukunaga expressed concern that clarification was needed on what constituted prohibited “coercion.” He wondered who would draw the line that would determine what was prohibited, and favored an affirmative approach, encouraging freedom to express, rather than prohibitions. Commissioner Baxa said there needed to be more focus on the child, and that the bill did not go far enough.

Commissioner Iwamoto moved that the Commission support the bill in its current form. There was no second for the motion.

**Staff suggests that we review the decision not to take a position**

10. **HB 2084, HD 2 Relating to Health Insurance and Prohibiting Discrimination**  
**based SB 2666 on a person’s gender identity**

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

**Status: ref. to: HB2084, HD 1 sent to JUD which passed HD 2  
SB 2666 to CPH, JDL**

**HCRC Position: Support**

**Notes:** HD 1 specified that the bill applies to policies issued after January 1, 2017. HD 2 has not yet been issued

## **RELIGIOUS FREEDOM**

### **11. ~~HB-2532~~ Relating to Religious Freedom**

**Status: DEAD** (HCRC opposed this bill)

### **12. ~~HB-2764~~ Relating to Religious Freedom – Religious Freedom Restoration Act**

**Status: DEAD** (HCRC opposed this bill)

### **13. HB 2727 Movie Theaters**

**Status: Referred to EDB, JUD, FIN; EDB passed unamended to JUD. The bill may be dead due to timetable deadlines for lateral movement to last committee, unless re-referred.**

**Notes:** Mandated movie captioning for two showings per week of each movie was passed last year. However, § 489-9 went into effect on January 1, 2016, and will sunset January 1, 2018. This bill would repeal the sunset date.

**HCRC Position: Support, based on HCRC support for Act 39 in 2015.**

## **Old Business**

Executive Director (ED) Bill Hoshijo said there was nothing new to report on *Cervelli v. Aloha Bed & Breakfast*, which remained pending before the Intermediate Court of Appeals.

## **Announcements**

There were no announcements.

## **Next Meeting**

The next meeting of the Commission was tentatively scheduled for March 26, 2016, at 1:30 p.m., subject to polling of and confirmation by the Commissioners.

## **Adjournment**