



# HAWAII CIVIL RIGHTS COMMISSION

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## MINUTES\*

Hawai'i Civil Rights Commission Office

April 1, 2016

3:30 p.m.

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

Excused: Raymund Liongson, Commissioner.

Chair Linda Krieger called the meeting to order.

### Approval of Minutes

The minutes of the February 26, 2016, meeting were approved. (m/s/p Iwamoto/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 4/1/16)**

|                                     |        |
|-------------------------------------|--------|
| Referrals:                          | 34     |
| Dispositions:                       | 41     |
| Settlements:                        | 25     |
| Non-agreements:                     | 18     |
| Settlement Rate:                    | 61.0 % |
| Employment cases settled:           | 20     |
| Non-employment cases settled:       | 5      |
| Dual-filed (EEOC/HCRC) settlements: | 17     |

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

|                          |                                      |
|--------------------------|--------------------------------------|
| Disability               | 10                                   |
| Sex                      | 4 (2 pregnancy, 2 sexual harassment) |
| Arrest & Court Record    | 3                                    |
| Age                      | 2                                    |
| Religion                 | 2                                    |
| Retaliation              | 2                                    |
| National Origin/Ancestry | 1                                    |
| Race                     | 1                                    |

\* as corrected and approved on April 27, 2016.

**Dispositions by Mediation Center**

|                                    |              |                                |
|------------------------------------|--------------|--------------------------------|
| Mediation Center of the Pacific    | 17/24        | (settlement rate 68.2 %)       |
| Mediation Services of Maui         | 3/4          | (settlement rate 75%)          |
| Private Mediators                  | 2/5          | (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>25/41</b> | <b>(settlement rate 59.0%)</b> |

DED Kawatachi noted the large number of disability cases settled in mediation. He also noted that the Mediation Center of the Pacific (MCP) was doing very well, with a higher settlement rate than private mediators.

Executive Director (ED) Bill Hoshijo added that planning for implementation of an HCRC housing mediation pilot project was ongoing. He also reported that the HCRC was planning to do training for civil rights mediators for community mediation centers statewide, from May through June, 2016.

DED Kawatachi presented a data and production report showing caseload data through April 1, 2016.

As of April 1, 2016, the report showed 315 open cases, a decrease of 40 cases from the number reported as of February 26, 2016. Of those, 1 (0.3%) filed in 2011, 3 (1.0%) in 2012, 13 (4.1%) in 2013, 35 (11.1%) in 2014, 167 (53.0%) in 2015, and 96 (30.5%) in 2016.

DED Kawatachi noted the substantial decrease in the total number of open cases pending investigation, a decrease of 40 cases since the February 26, 2016, report.

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         | 2         | 15         | 9         | 27         |
| Intake Stage         | 0        | 0        | 4         | 18        | 95         | 68        | 185        |
| Mediation            | 0        | 1        | 3         | 5         | 18         | 9         | 36         |
| Pending Assignment   | 0        | 0        | 0         | 3         | 21         | 3         | 27         |
| Active Investigation | 1        | 1        | 6         | 7         | 18         | 7         | 40         |
| <b>TOTAL</b>         | <b>1</b> | <b>4</b> | <b>13</b> | <b>35</b> | <b>167</b> | <b>96</b> | <b>315</b> |

DED Kawatachi highlighted year-to-date data for the first three fiscal year quarters of the past five years, noting that the number of complaints filed, investigations closed, notices of cause issued, and enforcement closures were the highest in the last five years:

| Category             | 7/1/11 –<br>4/1/12 | 7/1/12 –<br>4/1/13 | 7/1/13 –<br>4/1/14 | 7/1/14 –<br>4/1/15 | 7/1/15 –<br>4/1/16 |
|----------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| PCQ Received         | 588                | 533                | 533                | 510                | 507                |
| Intake Decision      | 533                | 583                | 499                | 508                | 560                |
| Complaint Filed      | 294                | 249                | 233                | 237                | 310                |
| Investigation Closed | 248                | 266                | 275                | 234                | 373                |
| Notice of Cause      | 5                  | 4                  | 0                  | 10                 | 15                 |
| Enforcement Closure  | 18                 | 5                  | 4                  | 7                  | 20                 |

DED Kawatachi reported that there were no actions or pending actions for subpoena enforcement.

The Commissioners collectively characterized the reported progress as “fabulous.”

ED Hoshijo reported that the HCRC was working with HUD, the State and counties to celebrate Fair Housing Month, with fair housing training statewide.

He also informed the Commissioners that the HCRC annual public training was scheduled for October 12, 2016, with the theme and focus, “Equal Opportunity for Women at Work.”

ED Hoshijo also gave advance notice of the HCRC’s planned participation in the October 22, 2016, Pride Parade.

He also informed the Commissioners of the announcement of the 2015-2016 E Ola Pono Campaign Winners. Chair Krieger noted the important message conveyed by the high school division winners, Farrington High School, which was “disable the label,” to encourage the people to stop using the label “retarded.”

### **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 and Cross-Appellants’ opening brief had been filed, and the Appellees’ answering brief was due on April 28, 2016.

In the *Elento* appeal, the HCRC reply brief was filed by outside counsel Lowell Chun-Hoon on March 22, 2016.

Legislation 2016 Session

The Commissioners reviewed Legislative Summary 3, presented by Staff Attorney Robin Wurtzel:

2016 LEGISLATIVE SUMMARY 3

CIVIL RIGHTS COMMISSION

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

DEAD.

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

Discussion: Commissioner Kim Coco Iwamoto and Chair Krieger suggested that the HCRC calculate the cost of taking a complex case to contested case hearing, final decision, and through judicial review appeal process.

EMPLOYMENT

2. ~~SB 2005~~ — ~~Relating to Civil Rights~~

DEAD.

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

3. **HB 1739, HD 2, SD1 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 and in Senate JDL – JDL passed SD1, and it will go to conference**

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. S.D. 1 removes it from our statute.

**4. ~~HB 1909, HD 1~~ Relating to Equal Pay  
SB 2313, SD 2, HD 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 LAB, JUD in House, JDL, WAM in Senate~~  
SB 2313 to JDL, WAM in Senate, LAB, JUD, FIN in House**

**Notes:** HB 1909 - The House passed HD1, to the Senate, which did not hear the bill. DEAD SB 2313, SD 2 crossed to the House. The bill was amended to accept HCRC's requests to delete reference to "bona fide occupational qualification," but the Labor Committee changed the term "substantially similar" to "substantially equal," and JUD passed that version. Finance has not yet set the bill for hearing, and may not.

Discussion: Commissioner Iwamoto asked about the effect of the House change from "substantially similar" to "substantially equal." Chair Krieger explained that "substantially equal" didn't work, if work is not identical. ED Hoshijo said the HCRC would prepare and submit a letter to the conferees, if the bill passed the House and went to conference committee.

**5. SB 3036 Relating to Employment  
See also ~~HB 2209, and HB 2444~~—dead**

Chamber of Commerce bill

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

**Status: ref. to: JDL in Senate, LAB, JUD in House**

**Notes:** This bill was proposed by the Chamber of Commerce in response to Adams v CDM media. HCRC opposes it, JUD has not yet set it for hearing, and may not.

**HOUSING**

**6. ~~HB 1591~~—Relating to Housing (veteran's use of HUD VASH vouchers).**

**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**

**DEAD.**

**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~~

**DEAD.**

10. ~~HB 2084, HD 2~~ **Relating to Health Insurance and Prohibiting Discrimination**  
~~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: CPC, JUD, in Senate CPH, JDL**  
Passed and going to Conference

## **RELIGIOUS FREEDOM**

11. ~~HB 2532~~ **Relating to Religious Freedom—**

**DEAD.**

12. ~~HB 2764~~ **Relating to Religious Freedom—Religious Freedom Restoration Act—**

**DEAD.**

## **OTHER**

13. **SB 2727, HD 1, SD 1** **Movie Theaters**

**Ref to: EDB, JUD, FIN in House, CPH in Senate**

**Status:** Passed, removing the sunset provisions, and going to Conference

**HCRC position:** Staff recommends support of this Bill. Commission accepts staff recommendation. (m/s/p Fukunaga/Baxa; all in favor).

**RESOLUTIONS (3 with duplicates of each)**

**HCRC position: Commission supports staff action on resolutions. (m/s/p Fukunaga/Iwamoto; all in favor).**

1. **HCR 136 /HC 88** Requesting State Departments and the Several Counties to Affirm the Tenets and Principles Found in the Convention of the Elimination of all Forms of Discrimination Against Women

Status: LAB,FIN- LAB passed, waiting for FIN

**SCR 132/SR 97**

Status: GVO/PSM, JDL – JDL decision on 4/4/2016

**HCRC did not submit testimony, due to timing. Staff suggests support**

2. **SCR 110, SD 1; SR 76, SD 1** Requesting the DOE to affirm its Commitment to Uphold the Tenets of Title IX of the Education Amendment Act of 1972

Status/Committees: EDU, JDL- EDU Passed SD1, JDL will issue decision 4/4/2016  
Testimony submitted based on previous position of HCRC - Reso and testimony attached

**HCR 137/ HR 89**

Status/Committees: EDN, FIN- EDN Passed SD1, waiting for FIN

3. **SCR 119/SR 87** - Urging the UH at Manoa to Fund and Fill the Vacant African American Studies Faculty Tenure Line Position at the College of Social Studies

Status/Committees: HEA, WAM – HEA passed, waiting for WAM  
Testimony submitted based on previous position of HCRC – Reso and testimony distributed.

Discussion: Commissioner Wally Fukunaga shared that he had been invited to participate in a panel on this issue.

~~**HCR 132/ HR 85** — Status/Committees: HED, FIN — DEAD~~

**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**

Chair Krieger announced the approval of a one year course at the UH William S. Richardson School of Law, starting in the Fall 2016 semester, on the subject of anti-discrimination law and policy. A major component of the course will be drafting civil rights rules and regulations for statutes under HCRC jurisdiction. This would be a valuable help to the HCRC in planned rulemaking.

Commissioner Fukunaga highly recommended a book, "Just Mercy," by Bryan Stevenson, about a lawyer's struggle against injustice.

**Next Meeting**

The next meeting of the Commission was tentatively scheduled for April 27, 2016, at 1:00 p.m., subject to polling of and confirmation by the Commissioners.

**Adjournment**