



HAWAII CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 586-8692

MINUTES

Hawai'i Civil Rights Commission Office

June 2, 2016

1:00 p.m.

Present: Linda Krieger, Kim Coco Iwamoto, and Wally Fukunaga, Commissioners, and Raymund Liongson, Departing Commissioner; Bill Hoshijo, Marcus Kawatachi, and Robin Wurtzel, Staff.

Excused: Artemio Baxa, Commissioner

Chair Linda Krieger called the meeting to order. Commissioners Kim Coco Iwamoto and Wally Fukunaga were present.

Approval of Minutes

The minutes of the April 27, 2016, meeting were approved, with two corrections on page 5. Commissioner Fukunaga noted that while he had indicated a willingness to serve as a holdover Commissioner, that he had stated that he would not serve beyond the end of September 2016. Commissioner Iwamoto, clarified that she had suggested that the Commission should be diverse, and that diversity should include generational diversity. (m/s/p Fukunaga/Iwamoto; 3-0 in favor).

Executive Director (ED) Bill Hoshijo and Deputy Executive Director (DED) Marcus Kawatachi noted that there was an error in the year-to-date mediation program report presented on April 27, 2016, in that the report should have reflected 44 dispositions, rather than 42. Correcting that error would have resulted in an adjustment of the settlement rate from 25/42 (59.5%) to 25/44 (56.8%). It was agreed that the April 27, 2016, minutes accurately reflect what was reported at that meeting, and that the error and corrected information should be reported in the June 2, 2016, meeting minutes.

Executive Director's Report

DED Marcus Kawatachi presented a FY 2016 HCRC Mediation Program year to date report, noting that since April 1, there were 3 additional cases referred to mediation and 2 additional dispositions, including 1 mediated settlement and 1 case mediated without settlement.

Summary & Details (7/1/15 through 6/2/16)

Referrals:	38
Dispositions:	46
Settlements:	26
Non-agreements:	20
Settlement Rate:	56.5 %
Employment cases settled:	20
Non-employment cases settled:	6
Dual-filed (EEOC/HCRC) settlements:	17
State-only settlements	9

Primary Bases for Complaints Settled in Mediation

Disability	11
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	18/26	(settlement rate 69.2 %)
Mediation Services of Maui	3/4	(settlement rate 75%)
Private Mediators	2/5	(settlement rate 40 %)
Ku'ikahi Mediation Services (Hilo)	1/4	(settlement rate 25 %)
West Hawaii Mediation Center	1/4	(settlement rate 25%)
Kauai Economic Opportunity, Inc.	1/3	(settlement rate 33.3%)
OVERALL	26/46	(settlement rate 56.5%)

DED Kawatachi also presented a data and production report showing caseload data through June 2, 2016.

As of June 2, 2016, the report showed 291 open cases, a decrease of 11 cases from the number reported as of April 26, 2016. Of those, 1 (0.3%) filed in 2011, 3 (1.0%) in 2012, 7 (2.4%) in 2013, 23 (7.9%) in 2014, 132 (45.4%) in 2015, and 125 (43.0%) 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	2	9	13	25
Intake Stage	0	0	3	12	53	85	153
Mediation	0	1	3	3	18	12	37
Pending Assignment	0	0	0	3	29	4	36
Active Investigation	1	1	1	3	23	11	40
TOTAL	1	3	7	23	132	125	291

The report included year-to-date data for the first eleven months of the past five fiscal years, showing 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 – 6/2/12	7/1/12 – 6/2/13	7/1/13 – 6/2/14	7/1/14 – 6/2/15	7/1/15 – 6/2/16
PCQ Received	720	633	645	632	632
Intake Decision	654	706	612	621	661
Complaint Filed	370	308	280	313	313
Investigation Closed	309	308	335	297	443
Notice of Cause	6	4	6	13	19
Enforcement Closure	20	6	7	11	25

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

DED Kawatachi and ED Hoshijo reported on the progress of the HCRC statewide training for civil rights mediators, with training provided in Honolulu, on Maui, Kauai, and two on the Island of Hawai'i, in Hilo and Kona. The last training was scheduled for Kona on June 16.

ED Hoshijo reported that HCRC, EEOC, and HUD civil rights enforcement staff were given training on Hawaiian rights and history, presented by Moses Haia and Alan Murakami from the Native Hawaiian Legal Corporation (NHLC). In turn, a civil rights training for NHLC staff was planned for late July. HCRC and EEOC enforcement staff were discussing joint work on the disparate impact of criminal history exclusions on racial and ancestry groups in Hawai'i, in light of the overrepresentation of Hawaiians in the criminal justice system and incarceration.

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, there was nothing new to report.

In the *Elento* appeal, there was nothing new to report.

Legislation 2016 Session

The Commissioners reviewed Legislative Summary 5, presented by Staff Attorney Robin Wurtzel.

2016 LEGISLATIVE SUMMARY 5

Staff Attorney Robin Wurtzel reported on the status of two bills that were passed and awaiting Governor's approval:

HB 1739, H.D. 2, S.D. 1, C.D. 1

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: The House agreed to SD1, and the bill goes to the Governor for approval or veto. The SD1 provides for enforcement by DLIR and a fine of \$25-\$100 for violations.

HB 2084, H.D. 2, S.D. 1

Relating to Health Insurance and prohibiting discrimination on a person's gender identity

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

Status: The House accepted S.D. 1, and the bill goes to the Governor for approval or veto.

Chair Krieger raised concern that the prohibition against discrimination will apply only to policies issued, renewed, modified, altered, or amended on or after January 1, 2017. She raised the question of what the largest health insurance providers would do with policies issued during annual open enrollment periods prior to January 1, 2017. ED Hoshijo noted that in addition to policies issued during open enrollment, all employer health plan providers enroll new employees throughout the year, raising the question of whether health insurance providers would have different plans, discriminatory and non-discriminatory, after January 1, 2017. ED Hoshijo indicated that he could follow up on earlier ED inquiries on this question.

Chair Krieger suggested that even with the elimination of express exclusions, there would continue to be serious concerns over discrimination in the denial of coverage based on gender identity. She gave examples of potential problem areas, including approval of diagnostic and treatment modalities of care, standards of care, denial of coverage based on coding issues, and training of medical providers. She suggested that the HCRC could and should initiate and call for the convening of an ad hoc working group, to include the HCRC, Insurance Commissioner, health insurance providers, and those in the medical community who serve transgender patients.

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.

There was nothing new to report or discuss on the status of Commissioner terms and vacancies.

Departing Commissioner Raymund Liongson joined the meeting. ED Hoshijo, Chair Krieger, Commissioners Fukunaga and Iwamoto, DED Kawatachi, and staff attorney Wurtzel, all expressed appreciation for Commissioner Liongson's service and commitment to civil rights, the perspective he

contributed to the Commission, and the passion for justice that he brought to the work and imparted to his students. The Commission bid him a fond farewell.

Announcements

Commissioner Fukunaga shared that he had traveled to Hakone, Japan, for Sunrise Ministry wellness work, as a guest of the Toho No Hikari church.

Commissioner Liongson, shared stories from a University of Hawai'i student contingent that he led on a trip to the Philippines, with education on politics and culture.

Closed session

There was no closed session.

Next Meeting

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

Adjournment