



HAWAI'I CIVIL RIGHTS COMMISSION

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MINUTES

Hawai'i Civil Rights Commission Office

October 11, 2016

2:00 p.m.

Present: Linda Krieger, Kim Coco Iwamoto, and Liann Ebesugawa, Commissioners; Livia Wang, Bill Hoshijo, and Marcus Kawatachi, Staff; April Bautista, State Office of Elections.

Excused: Artemio Baxa, Commissioner.

Chair Linda Krieger called the meeting to order.

Approval of Minutes

The minutes of the September 8, 2016, meeting were approved, with corrections on page 3, to more accurately reflect Chair Krieger's comments on potential proposed legislation. (m/s/p Krieger/Iwamoto; 3-0 in favor).

New Business (taken out of order)

April Bautista from the State Office of Elections made an outreach presentation on the need and qualifications for service as a precinct official on General Election day, Tuesday, November 8, 2016.

Executive Director's Report

Deputy Executive Director (DED) Marcus Kawatachi presented a FY 2017 HCRC Mediation Program year to date summary.

Summary & Details (7/1/16 through 10/11/16)

| | |
|-------------------------------------|--------|
| Referrals: | 9 |
| Dispositions: | 12 |
| Settlements: | 7 |
| Non-agreements: | 5 |
| Settlement Rate: | 58.3 % |
| Employment cases settled: | 7 |
| Non-employment cases settled: | 0 |
| Dual-filed (EEOC/HCRC) settlements: | 4 |
| State-only settlements | 3 |

Primary Bases for Complaints Settled in Mediation

| | |
|-------------------------|-----------------|
| Sex | 3 (2 pregnancy) |
| Ancestry | 2 |
| Arrest and Court Record | 1 |
| Race | 1 |

Dispositions by Mediation Center

| | | |
|------------------------------------|-------------|--------------------------------|
| Mediation Center of the Pacific | 4/6 | (settlement rate 66.7 %) |
| Mediation Services of Maui | 1/2 | (settlement rate 50%) |
| Private Mediators | 0 | |
| Ku'ikahi Mediation Services (Hilo) | 2/4 | (settlement rate 50 %) |
| West Hawaii Mediation Center | 0 | |
| Kauai Economic Opportunity, Inc. | 0 | |
| OVERALL | 7/12 | (settlement rate 58.3%) |

DED Kawatachi also presented a data and production report showing caseload data through October 11, 2016.

As of October 11, 2016, the report showed 234 open cases, a decrease of 4 cases from the number reported as of September 8, 2016. Of those, 0 (0%) were filed in 2011, 2 (0.9%) in 2012, 4 (1.7%) in 2013, 6 (2.6%) in 2014, 50 (21.4%) in 2015, and 172 (73.5%) 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 | 0 | 5 | 18 | 24 |
| Response Monitoring | 0 | 0 | 2 | 4 | 16 | 105 | 127 |
| Mediation | 0 | 1 | 2 | 1 | 8 | 16 | 28 |
| Pending Assignment | 0 | 0 | 0 | 0 | 3 | 8 | 11 |
| Active Investigation | 0 | 0 | 0 | 1 | 18 | 25 | 44 |
| TOTAL | 0 | 2 | 4 | 6 | 50 | 172 | 234 |

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

DED Kawatachi noted that 80% of the cases in investigation were 1 year old or less, from time of complaint filing.

Chair Krieger asked about the 2 cases filed in 2013 that remained in response monitoring. She wondered what the cause was for the lack of a complete response in those cases, and whether it could be addressed through subpoena enforcement.

The report included year to date data for the past five fiscal years:

| Category | 7/1/12 – 10/11/12 | 7/1/13 – 10/11/13 | 7/1/14 – 10/11/14 | 7/1/15 – 10/11/15 | 7/1/16 – 10/11/16 |
|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|
| PCQ Received | 213 | 229 | 190 | 223 | 186 |
| Intake Decision | 215 | 199 | 192 | 196 | 196 |
| Complaint Filed | 94 | 85 | 81 | 98 | 108 |
| Investigation Closed | 116 | 140 | 94 | 133 | 138 |
| Notice of Cause | 3 | 0 | 2 | 5 | 5 |
| Enforcement Closure | 2 | 1 | 4 | 8 | 4 |

DED Kawatachi noted that staff was working on the HCRC FY 2016 annual report for submission to the legislature prior to the 2017 session, so he would have an FY 2016 data report for the November Commission meeting.

Executive Director (ED) Bill Hoshijo reported on the planned remobilization of roofing work on the Ke‘elikolani Building roof above the HCRC’s 4th floor office, scheduled for October 17, 2016, through February 2017. Before work was interrupted at the end of May 2016, the roofing work had been done on the mauka side of the building. At the end of May, the HCRC had reported health and safety concerns about strong chemical fumes from bonding adhesive leaking into the HCRC office over four days, causing adverse reactions for no fewer than nine HCRC employees, including eye irritation, blurry vision, respiratory irritation, coughing, light headedness, dizziness, headaches, nausea, ill feeling, and hives. Several employees were released to leave early on at least one day and at least three employees lost two days of work each. ED Hoshijo reported that the HCRC was raising health and safety considerations regarding the planned remobilization, seeking advance notice of when the bonding adhesive would be used; possible alternative work site, and authority to release adversely affected employees. ED Hoshijo said he would report regularly on the situation and health and safety concerns.

Chief Counsel’s Report

Chief Counsel (CC) Livia Wang gave a brief update report on two cases on appeal.

In the *Bate* appeal, the application for transfer of the appeal from the Intermediate Court of Appeals to the Supreme Court was granted. No oral argument had been scheduled.

In the *Elento* appeal, oral argument was held on Thursday, September 1, 2016, and the case was pending decision.

2017 Legislation

ED Hoshijo and CC Wang reported on the two HCRC bills proposed for inclusion in the administration package, one to amend HRS §489-5 to remove conspiracy as a required element of prohibited retaliation in public accommodations, and the other to amend HRS §368-1.5 to add a prohibition against retaliation in state and state-funded services. Draft bills had been submitted for Attorney General review and markups.

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. Chair Krieger wondered if the ED would consider requesting a transfer of the case from the ICA to the Supreme Court, as the Commission had done in the *Elento* and *Bate* cases. ED Hoshijo noted that the decision whether to make such a request was not solely in the ED's control, because the ED was an intervenor in the circuit court case brought by plaintiffs Cervelli and Bufford.

On the subject of the implementation of Act 135, ED Hoshijo reported that communication had been initiated with the Insurance Commissioner through the Department of Commerce and Consumer Affairs (DCCA), and that the Department of Labor and Industrial Relations (DLIR) might be interested in the discussion, because of their jurisdiction and role under the state prepaid health law.

On rulemaking, Chair Krieger reported that her rulemaking seminar students were working on research papers in the fall on selected subjects, and would work on draft rules in the spring. Topics of interest included arrest & court record, service and assistance animals, employer grooming codes, English-only and accent discrimination, LGBT health care, disparate impact, and discrimination in jails and prisons.

Announcements

ED Hoshijo reminded everyone that the HCRC would again have a contingent in the 2016 Pride Parade, scheduled for October 22, 2016, with an 11 a.m. parade start time. Staff was collecting contributions to cover the parade fee and a car rental for those who could not walk the route.

Next Meeting

The next meeting of the Commission was tentatively scheduled for November 22, 2016, at 2:00 p.m., subject to polling of and confirmation by the Commissioners.

Adjournment