



# HAWAII CIVIL RIGHTS COMMISSION

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## MINUTES

Hawai'i Civil Rights Commission Office

November 22, 2016

2:00 p.m.

Present: Linda Krieger, Kim Coco Iwamoto, Liann Ebesugawa, and Artemio Baxa, Commissioners; Livia Wang, Bill Hoshijo, and Marcus Kawatachi, Staff.

Chair Linda Krieger called the meeting to order.

### Approval of Minutes

The minutes of the October 11, 2016, meeting were approved. (m/s/p Ebesugawa / Iwamoto; all in favor).

### 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 11/22/16)**

Referrals:	14
Dispositions:	18
Settlements:	12
Non-agreements:	6
Settlement Rate:	66.7 %
Employment cases settled:	12
Non-employment cases settled:	0
Dual-filed (EEOC/HCRC) settlements:	8
State-only settlements	4

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

Sex	3 (2 pregnancy)
Ancestry	3
Disability	2
Race	2
Arrest and Court Record	1
Color	1

#### **Dispositions by Mediation Center**

Mediation Center of the Pacific	8/10	(settlement rate 80 %)
Mediation Services of Maui	1/2	(settlement rate 50%)
Private Mediators	1/1	(settlement rate 100%)
Ku'ikahi Mediation Services (Hilo)	2/4	(settlement rate 50 %)
West Hawaii Mediation Center	0/1	(settlement rate 0%)
Kauai Economic Opportunity, Inc.	0	
<b>OVERALL</b>	<b>12/18</b>	<b>(settlement rate 66.7%)</b>

DED Kawatachi reported that the HCRC team working on the fair housing mediation pilot program visited its counterparts in Arizona and California, the Arizona Office of the Attorney General (AG) and the California Department of Fair Employment and Housing (DFEH), to learn about their fair housing mediation programs. Both Arizona and California agencies were very open, hospitable, and helpful, with all parties expressing interest in future collaborative efforts.

Chair Krieger asked if the HCRC's counterparts in Arizona and California had other insights to offer, beyond the mediation program experience that they shared. DED Kawatachi said that the Arizona AG is similar to the HCRC in size and scale, more so than the California DFEH, and that he was favorably impressed by aspects of the Arizona investigation, case processing, and enforcement process.

Chair Krieger asked specifically about the use of technology in support of litigation, and the use of litigation and discovery case management software.

Commissioner Kim Coco Iwamoto wondered whether the Hawai'i Office of the Attorney General uses litigation case management software that could be used by HCRC attorneys. Executive Director (ED) Bill Hoshijo said he would explore that subject with the Deputy AG who supervises the labor section of the Office of the AG.

Chair Krieger emphasized the importance of capacity to manage and search evidence obtained through electronic discovery. Chief Counsel (CC) Livia Wang mentioned that Kapiolani Community College offered a course on eDiscovery in its paralegal program.

DED Kawatachi also presented a data and production report showing caseload data through November 22, 2016.

As of November 22, 2016, the report showed 212 open cases, a decrease of 22 cases from the number reported as of October 11, 2016. Of those, 2 (0.9%) were filed in 2012, 3 (1.4%) in 2013, 4 (1.9%) in 2014, 33 (15.6%) in 2015, and 170 (80.2%) in 2016.

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

	2012	2013	2014	2015	2016	Total
Housing Cases	1	0	0	4	17	22
Response Monitoring	0	1	3	10	95	109
Mediation	1	1	1	7	18	28
Pending Assignment	0	0	0	2	9	11
Active Investigation	0	1	0	10	31	42
<b>TOTAL</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>33</b>	<b>170</b>	<b>212</b>

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

Commissioner Iwamoto asked whether the HCRC has looked into other state agency response times, noting that consumer protection complaints are often made and resolved very quickly. ED Hoshijo suggested that those complaint processes might be different in kind from the HCRC complaint and investigation process. Chair Krieger suggested that even within the HCRC process, there were ways to expedite investigations, including more aggressive use of subpoenas and subpoena enforcement.

DED Kawatachi distributed fiscal year comparison data for fiscal years 2007-2016. He noted that the FY 2016 data reflected higher numbers of investigations closed (473), mediation settlements (30), pre-determination settlements (28), notices of cause (22), and enforcement (conciliation) closures (25) than in recent preceding years.

CC Wang distributed the HCRC FY 2016 Annual Report, noting that it will be posted and publicly available once it is transmitted and submitted to the legislature.

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

Category	7/1/12 – 11/22/12	7/1/13 – 11/22/13	7/1/14 – 11/22/14	7/1/15 – 11/22/15	7/1/16 – 11/22/16
PCQ Received	305	312	280	282	254
Intake Decision	329	283	278	281	248
Complaint Filed	139	122	124	148	149
Investigation Closed	150	173	126	167	177
Notice of Cause	4	0	4	7	8
Enforcement Closure	3	2	7	8	6

ED Hoshijo reported on a memo opinion issued on November 21, 2016, by the Office of Information Practices (OIP), in response to an December 3, 2013, HCRC ED request for an opinion. The OIP opinion stated that under the open meeting law (“Sunshine Law”), building security cannot require members of the public to show identification before attending public meetings held in secure buildings.

The OIP opinion offered three options that comply with the Sunshine Law:

1. The HCRC can hold its public meetings at another, non-secured site. OR,
2. The HCRC can hold its public meetings in a non-secured portion of the Ke`elikolani Building. (there are no non-secured portions of the building). OR,
3. “[F]or a meeting held in the secured area, the HCRC could inform building security guards when a public meeting will be held and instruct the guards to admit anyone who says he or she is going to the public meeting and declines to show identification, or alternatively to escort those who decline to show identification to the meeting room. So long as the guard admits those who say they are going to the public meeting without requiring them to show identification, OIP dos not believe that a security guard’s initial request for identification, by itself, would violate the Sunshine Law.”

ED Hoshijo reported that the Office of the Attorney General was reviewing the OIP opinion, which affects all public meetings held in secure buildings.

## **Chief Counsel's Report**

Chief Counsel (CC) Livia Wang reported that there was nothing new to report on the *Bate* appeal or the *Elento* appeal.

## **2017 Legislation**

ED Hoshijo and CC Wang reported on status of 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. CC Wang was engaged in discussion over Attorney General comments and recommendations on the draft bills.

Chair Krieger asked if the HCRC needed to propose amendment of HRS §378-2 to expressly require reasonable accommodation for victims of domestic violence and sexual violence. ED Hoshijo indicated that the ED's enforcement position was that the statutory prohibition against discrimination based on domestic and sexual violence included and covered claims of denial of reasonable accommodation. He drew an analogy to the statutory protections against discrimination based on disability, sex (pregnancy), and religion, which include reasonable accommodation requirements.

## **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.

On the subject of the implementation of Act 135, ED Hoshijo and Chair Krieger reported on an initial meeting with the Insurance Commissioner.

On rulemaking, Chair Krieger reported on the fall semester progress of her rulemaking seminar students, with work on draft rules scheduled for the spring semester.

ED Hoshijo reported that the University of Hawai'i at Mānoa had been authorized to fill its faculty position dedicated to African American history and contemporary issues. He noted that the HCRC had submitted a letter of support and legislative testimony in support of the request to fill this position.

## **New Business**

ED Hoshijo offered a draft HCRC statement urging the people of Hawai'i to stand against the national trend and reported rise in discriminatory harassment and hate crimes, calling on Hawai'i to fight discrimination and harassment.

**The ED was authorized to finalize the statement for posting and issuance of a press release, and to issue follow-up statements. (m/s/p Ebesugawa/Iwamoto; all).**

## **Next Meeting**

The next meeting of the Commission was tentatively scheduled for December 15, 2016, at 1:00 p.m., subject to polling of and confirmation by the Commissioners.

**CLOSED EXECUTIVE SESSION**

**The Commissioners voted to go into closed executive session to discuss a personnel matter. (m/s/p Ebesugawa/Iwamoto; all).**

The Commissioners went into closed executive session.

The Commissioners came out of closed executive session.

**Adjournment**