



HAWAII CIVIL RIGHTS COMMISSION

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MINUTES

Hawai'i Civil Rights Commission Office

June 23, 2017

1:30 p.m.

Present: Artemio Baxa, Liann Ebesugawa, Joan Lewis, Commissioners; Livia Wang, Bill Hoshijo, and Marcus Kawatachi staff.

Excused: Linda Krieger, Chair

In Chair Linda Krieger's absence, Commissioner Liann Ebesugawa called the meeting to order.

Approval of Minutes

The minutes of the May 17, 2017, meeting were approved. (m/s/p Lewis/Baxa; all).

It was noted that this would be Commissioner Artemio Baxa's last Commission meeting, as his term would expire at the end of June 2017. Commissioners and staff expressed appreciation for his service and the experience and perspective he brought to the Commission. Commissioner Baxa gave a heartfelt farewell message.

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 6/23/17)

Referrals:	37
Dispositions:	37
Settlements:	25
Non-agreements:	12
Settlement Rate:	67.6 %
Employment cases settled:	24
Non-employment cases settled:	1
Dual-filed (EEOC/HCRC) settlements:	16
State-only settlements	9

Primary Bases for Complaints Settled in Mediation

Disability	6
Sex	5 (3 pregnancy)
Ancestry	4
Arrest and Court Record	3
Age	2

Race	2
Retaliation	2
Color	1

Dispositions by Mediation Center

Mediation Center of the Pacific	17/22	(settlement rate 77.3 %)
Mediation Services of Maui	2/3	(settlement rate 66.7%)
Private Mediators	2/2	(settlement rate 100%)
Ku'ikahi Mediation Services (Hilo)	2/5	(settlement rate 40 %)
West Hawaii Mediation Center	0/2	(settlement rate 0%)
Kauai Economic Opportunity, Inc.	1/1	(settlement rate 100%)
Hawai'i Civil Rights Commission	1/2	(settlement rate 50%)

OVERALL 25/37 (settlement rate 67.6%)

DED Kawatachi also presented a data and production report showing caseload data through June 23, 2017.

As of June 23, 2017 the report showed 134 open cases, a decrease of 1 case from the number reported as of May 11, 2017. Of those, 1 (0.7%) was filed in 2012, 0 (0%) in 2013, 1 (0.7%) in 2014, 8 (6.0%) in 2015, 43 (32.1%) in 2016, and 81 (60.4%) in 2017.

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

	2012	2013	2014	2015	2016	2017	Total
Housing Cases	1	0	0	1	6	10	18
Response Monitoring	0	0	1	2	10	41	54
Mediation	0	0	0	1	8	9	18
Pending Assignment	0	0	0	0	1	0	1
Active Investigation	0	0	0	4	18	21	43
TOTAL	1	0	1	8	43	81	134

Commissioner Joan Lewis asked about the two outliers, oldest cases in investigation.

DED Kawatachi said that he had reviewed the status of the two cases, and both involved unusual circumstances; the 2012 case was a complex fair housing case, and the 2015 case involved an unresponsive respondent.

DED Kawatachi went over the year-to-date data for the past five fiscal years:

Category	7/1/12 – 6/23/13	7/1/13 – 6/23/14	7/1/14 – 6/23/15	7/1/15 – 6/23/16	7/1/16 – 6/23/17
PCQ Received	681	685	673	664	588
Intake Decision	740	645	658	686	587
Complaint Filed	319	287	331	389	316
Investigation Closed	345	361	325	464	467
Notice of Cause	5	6	15	21	16
Enforcement Closure	6	7	14	25	16

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

Chief Counsel’s Report

Chief Counsel (CC) Livia Wang reported that after the Hawai’i Supreme Court issued its decision in the *Bate* appeal, the case was remanded to the Circuit Court for jury trial on appeal on only those claims on which the Commission ordered legal relief, and limiting discovery to the deposition of one witness, if the HCRC and/or complainant Bate intend to call that witness to testify. The parties were waiting for Circuit Court action on the case on remand.

The *Elento* appeal remained pending.

Legislation -2017 Session

Chief Counsel Livia Wang reported on the status of six bills that were passed by the legislature and sent to the Governor for approval (signature or enactment without signature, or veto):

Bills Enacted

HB 942 HD1 SD1 CD1

Relating to Filipino Veterans

Appropriates funds for the Hawaii State Foundation on Culture and the Arts to commission an artist to design and build a monument at the Filipino community Center in Waipahu that honors Filipino WWII veterans.

Status: Enacted as Act 35, with signing ceremony.

HB 1534 HD1 SD2 Relating to residence requirements for appointed officers
Waives the one year residency requirement for officers who are heads of a county police department, amends HRS § 78-1(b)((1) to include state residents who are eligible under federal law for unrestricted employment to be appointed to serve in government.

Status: Enacted as Act 36, with signing ceremony.

HB 552 HD1 SD2 CD1 Relating to Health Insurance
Ensures that certain benefits (including contraception and breastfeeding coverage) under the federal ACA are preserved under Hawaii law. Prohibits health insurance entities from using an individual's gender to determine premiums or contributions.

Status: HB 552 ref. to HLT/CPC, FIN; hrg before HLT/CPC on 2/8, passed with same amendments as SB 403 SD1; hrg. before FIN on 2/23, passed unamended; crossed 3/7; ref. to CPH, WAM; hrg. before CPH on 3/14, 3/22, passed w/ amendments regarding exceptions for essential coverage and establishes an Affordable Health Insurance Working Group; hrg. before WAM on 4/3, passed w/ amendments to change effective date to 2050; conf. mtg. on 4/28, passed w/ amendments establishing an Affordable Health Insurance Working Group effective 7/1/17; transmitted to governor on 5/3/17. Enacted as Act 35.

Bills Pending Approval or Veto

HB 1033 HD1 SD1 CD1 Relating to Administrative Procedure
Amends HRS § 91-1 to include agencies as "persons" eligible to file declaratory relief petitions under HRS § 91-8. Addresses Hawai'i Supreme Court decision in RGIS Inventory Specialist v. HCRC, 104 Hawai'i 158 (2004) in which the Court held that HAR § 12-46-61, which allowed the Executive Director to file declaratory relief petitions was invalid pursuant to HRS §§ 91-1 and 91-8 because the ED was an agency, not a person, and agencies were excluded from definition of "persons" who could file declaratory relief petitions.

Status: Transmitted to governor on 5/3/17.

HCRC position: Support. This would allow the ED to file petitions for declaratory relief to the Commission and other agencies to clarify statutes and rules.

HB 1031 HD1 SD1 CD1

Relating to criminal history record checks

Authorizes the Child Support Enforcement Agency and the Depts. of Taxation, Labor and Human Services to conduct criminal history record checks for employees, applicants and contractors who will have access to federal tax information.

Status: Transmitted to governor on 5/3/17

HCRC position: Monitor – required under federal law, still subject to § 378-2.5.

HB 475 HD1 SD2 CD1

SB-1156

Relating to Movie Theatres

Eliminates sunset provision and makes permanent the requirements that a motion picture theater in more than two locations in the state must provide: 1) open movie captioning; and 2) audio description upon request or any picture that is produced and offered with audio description.

Status: HB 475 ref. to EDB, FIN; hrg. before EDB on 2/15, passed 2/ amendments extending sunset to 2020 and requiring DBEDT to conduct a survey on practical and financial impact Act 19 on movie theaters; hrg. before FIN on 3/1, passed unamended; crossed 3/7; ref. to ETT, CPH/JDL ; hrg. before ETT on 3/13, passed w/ amendments back to original bill; hrg. Before CPH/JDL on 3/29; passed w/ amendments adding that theaters are also required to provide closed captioning devices; conf. mtg. on 4/28, passed w/ amendments allowing theaters to provide one open caption showing per week or provide closed captioning devices, move sunset date to 2020 and require DBEDT to conduct a survey on the financial impact of these requirements on theaters; transmitted to governor on 5/3/17

HCRC position: Supported initial draft of bill. The HCRC supported Act 39, which created these requirements. We are the first state to require this for the hearing and sight impaired community. The CD1 eliminates the open captioning requirement gained under Act 39 (theaters can alternatively provide closed captioning devices, which is already required under federal law). Initial inclination was to raise concerns to Governor but not recommend veto, but after meeting with DCAB, HCRC raised concerns and recommended veto.

Old Business

Executive Director Bill 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 implementation of Act 135, ED Hoshijo had nothing new to report.

In Chair Krieger's absence, there was nothing new to report on rulemaking.

New Business

ED Hoshijo reported that the HCRC had been invited by the Council on American-Islamic Relations to co-sponsor a Creative Conference on American Muslims and Civil Rights, to be scheduled and held in Honolulu in August 2017. He said the invitation indicated that co-sponsors would be expected to participate, by attending and possibly providing a speaker, and that there was no expectation of monetary support from local co-sponsors.

The Commissioners approved co-sponsorship of the August CAIR conference. (m/s/p Lewis/Baxa; all).

Discussion of HRS § 368-1.5 jurisdiction was deferred.

Announcements

There were no announcements.

Next Meeting

The next meeting of the Commission was scheduled, for August 4, 2017, at 1:30 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 personnel matters. (m/s/p Lewis/Baxa; all).

The Commissioners went into closed executive session.

The Commissioners came out of closed executive session.

Adjournment