



# HAWAII CIVIL RIGHTS COMMISSION

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## MINUTES

Hawai'i Civil Rights Commission Office

August 11, 2017

1:30 p.m.

Present: Linda Krieger, Liann Ebesugawa, Joan Lewis, Commissioners; Robin Wurtzel, Bill Hoshijo, and Marcus Kawatachi staff.

Chair Linda Krieger called the meeting to order.

### Approval of Minutes

The agenda was corrected to reflect that the meeting minutes to be reviewed for approval were for the June 23, 2017, meeting.

**The minutes of the June 23, 2017, meeting were approved. (m/s/p Ebesugawa/Lewis; all).**

### Executive Director's Report

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

#### **Summary & Details (7/1/16 through 6/30/17)**

Referrals:	37
Dispositions:	38
Settlements:	25
Non-agreements:	12
Settlement Rate:	65.8 %
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	17/23	(settlement rate 73.9 %)
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** 25/38 (settlement rate 65.8%)

DED Marcus Kawatachi also presented a FY 2018 HCRC Mediation Program year-to-date summary.

### Summary & Details (7/1/17 through 8/11/17)

Referrals:	2
Dispositions:	2
Settlements:	1
Non-agreements:	1
Settlement Rate:	50%
Employment cases settled:	1
Non-employment cases settled:	0
Dual-filed (EEOC/HCRC) settlements:	1
State-only settlements	0

### Primary Bases for Complaints Settled in Mediation

Disability	1
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### Dispositions by Mediation Center

Mediation Center of the Pacific	1/2	(settlement rate 50%)
Mediation Services of Maui		
Private Mediators		
Ku'ikahi Mediation Services (Hilo)		
West Hawaii Mediation Center		
Kauai Economic Opportunity, Inc.		
Hawai'i Civil Rights Commission		

**OVERALL** 1/2 (settlement rate 50%)

DED Kawatachi also presented a data and production report showing caseload data through August 11, 2017.

As of August 11, 2017 the report showed 140 open cases, an increase of 6 cases from the number reported as of June 23, 2017. Of those, 0 (0%) were filed in 2012, 0 (0%) in 2013, 1 (0.7%) in 2014, 6 (4.3%) in 2015, 35 (25%) in 2016, and 98 (70%) 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	0	0	0	1	3	14	18
Response Monitoring	0	0	1	1	11	55	68
Mediation	0	0	0	1	5	12	18
Pending Assignment	0	0	0	0	3	1	5
Active Investigation	0	0	0	2	13	16	31
<b>TOTAL</b>	0	0	1	6	35	98	140

ED Kawatachi noted that the investigation had been completed in the last the 2015 case involved an unresponsive respondent.

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

Category	7/1/13 – 8/11/13	7/1/14 – 8/11/14	7/1/15 – 8/11/15	7/1/16 – 8/11/16	7/1/17 – 8/11/17
PCQ Received	99	91	86	87	53
Intake Decision	71	47	70	66	74
Complaint Filed	28	28	43	50	34
Investigation Closed	45	38	49	56	24
Notice of Cause	0	0	2	4	1
Enforcement Closure	0	2	2	2	2

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

### **Extension of Time to Investigate**

Chair Krieger reviewed the enforcement structure and the need for extensions of time to investigate pursuant to the statute. Executive Director (ED) Hoshijo added that the length of extensions of time approved were determined by the Commission.

**The Commission approved a request for extension of time to investigate all cases, from September 30, 2017, through March 31, 2018. (m/s/p Ebesugawa/Lewis; all).**

**survey on the financial impact of these requirements on theaters; transmitted to governor on 5/3/17. Enacted as Act 211, without Governor's signature.**

### **Legislation -2017 Special Session**

ED Hoshijo reported that the special session was scheduled for the week of August 28 – September 1, 2017. It was anticipated that the nomination of Joakim “JoJo” Peter to the HCRC would be submitted for Senate confirmation during the special session.

### **2018 Proposed Legislation**

ED Hoshijo identified four potential proposals for inclusion in the administration package:

1. A bill to correct flaws in Act 211, relating to movie theaters, removing the option of providing “lightweight eyewear” to the exclusion of open-captioned showings, and removing the sunset provision. It was noted that the Disability Communication Access Board (DCAB) was taking the lead on this bill, so the HCRC would not have to submit a proposal if the Department of Health agree to submit the bill for inclusion in the administration package.
2. A bill to provide Executive Director the discretion, when conciliation does not result in a settlement, to issue a final demand and docket the case for a contested case hearing, or dismiss and issue a notice of right to sue. The current law mandating final demand and docketing would not be changed with respect to fair housing cases. This bill was included in the administrative package in 2016.
3. A bill to prohibit retaliation for engaging in protected activity relating to HRS § 368-1.5.
4. A bill to remove the conspiracy requirement for prohibited retaliation under HRS chapter 489.

**Commissioner Liann Ebesugawa moved that the four proposed bills be approved for submission for inclusion in the administration package. Chair Krieger made a friendly amendment, suggesting that bills 3 and 4 be removed from the motion, to allow prioritization of bills 1 and 2. Commissioner Ebesugawa agreed. The Commission approved the motion. (m/s/p Ebesugawa/Lewis; all).**

### **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.

On rulemaking, CC Wurtzel suggested that the Commission consider rulemaking in three areas: public accommodations, race-based discrimination, and updating procedural rules. Commissioner Ebesugawa emphasized that it was important to provide guidance for businesses

through rulemaking.

ED Hoshijo reported that he had not heard anything more on the proposed August 2017 Conference on American Muslims and Civil Rights.

### **New Business**

Chair Krieger led off the discussion of HRS § 368-1.5, starting with the proposal to amend § 368-1.5 to include a state equivalent to Title IX's protection against sex discrimination in education, which did not pass in the 2017 legislative session. She reported that the Legislative Women's Caucus was interested in renewing the state Title IX bill proposal, and possibly expand it to include protected bases in addition to sex.

Before moving forward, Chair Krieger wanted to engage in discussion about staff concerns, including concerns over the addition of race and ancestry as protected bases. She added that she would like to see a broad civil rights discussion at the Commission level, looking not just at expansion of HCRC coverage, but whether new civil rights protections could be enforced through enforcement models other than agency enforcement, such as private causes of action, with attorney fee provisions, and agency authority to intervene.

Commissioner Joan Lewis suggested that the discussion should explore why HCRC jurisdiction should be limited or expanded.

Chair Krieger suggested a broad discussion of the future of civil rights in Hawai'i.

ED Hoshijo suggested that the Commission could convene a roundtable discussion or hearing, with invited speakers to address the questions posed by the Commission.

Chair Krieger suggested alternating between policy development and planning meetings every other month and regular meetings in between.

The next Commission meeting in September could be a regular meeting, used to plan for an October meeting dedicated to policy discussion.

Commissioner Lewis suggested that policy meetings could be educational, inviting different communities to focus on issues that need to be addressed.

CC Wurtzel pointed out that the suggestions seemed to focus on two separate and distinct purposes, broad policy discussion and targeted community outreach.

It was agreed that the Commissioners and staff would give some thought to the structure and focus of the HCRC initiated civil rights policy discussion, and discuss it further at the next Commission meeting

### **Announcements**

There were no announcements.

### **Next Meeting**

The next meeting of the Commission was scheduled, for September 8 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 adjudication matters and for attorney-client communication. (m/s/p Lewis/Ebesugawa; all).**

The Commissioners went into closed executive session.

The Commissioners came out of closed executive session.

### **Adjournment**