



# HAWAI'I CIVIL RIGHTS COMMISSION

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## MINUTES

Hawai'i Civil Rights Commission Office  
September 8, 2017  
1:30 p.m.

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

Chair Linda Krieger called the meeting to order.

### Approval of Minutes

The minutes of the August 11, 2017, meeting were approved. (m/s/p Ebesugawa/Peter; all).

### Executive Director's Report

Deputy Executive Director (DED) Marcus Kawatachi presented a data and production report showing caseload data through September 8, 2017.

As of September 8, 2017, the report showed 140 open cases, no change from the number reported as of August 11, 2017. Of those, 1 (0.7%) was filed in 2014, 5 (3.6%) in 2015, 27 (19.3%) in 2016, and 107 (76.4%) in 2017.

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

|                      | 2014     | 2015     | 2016      | 2017       | Total      |
|----------------------|----------|----------|-----------|------------|------------|
| Housing Cases        | 0        | 0        | 2         | 15         | 17         |
| Response Monitoring  | 1        | 1        | 7         | 65         | 74         |
| Mediation            | 0        | 1        | 3         | 11         | 15         |
| Pending Assignment   | 0        | 1        | 3         | 2          | 6          |
| Active Investigation | 0        | 2        | 12        | 14         | 28         |
| <b>TOTAL</b>         | <b>1</b> | <b>5</b> | <b>27</b> | <b>104</b> | <b>140</b> |

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

Chair Krieger suggested that the Executive Director should consider aggressive subpoena enforcement in older cases in response monitoring. In addition to compelling responses to requests for information, such proceedings would provide for development of caselaw on relevance of information requests. Another approach might be to address these issues through rulemaking.

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

| Category             | 7/1/13 –<br>9/8/13 | 7/1/14 –<br>9/8/14 | 7/1/15 –<br>9/8/15 | 7/1/16 –<br>9/8/16 | 7/1/17 –<br>9/8/17 |
|----------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| PCQ Received         | 145                | 140                | 147                | 140                | 101                |
| Intake Decision      | 143                | 101                | 118                | 143                | 110                |
| Complaint Filed      | 52                 | 47                 | 63                 | 87                 | 54                 |
| Investigation Closed | 104                | 61                 | 85                 | 82                 | 44                 |
| Notice of Cause      | 0                  | 0                  | 3                  | 4                  | 1                  |
| Enforcement Closure  | 0                  | 4                  | 4                  | 2                  | 5                  |

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

**Summary & Details (7/1/17 through 9/8/17)**

|                                     |        |
|-------------------------------------|--------|
| Referrals:                          | 4      |
| Dispositions:                       | 6      |
| Settlements:                        | 4      |
| Non-agreements:                     | 2      |
| Settlement Rate:                    | 66.7 % |
| Employment cases settled:           | 3      |
| Non-employment cases settled:       | 1      |
| Dual-filed (EEOC/HCRC) settlements: | 3      |
| State-only settlements              | 1      |

**Primary Bases for Complaints Settled in Mediation**

|                         |                 |
|-------------------------|-----------------|
| Sex                     | 2 (1 pregnancy) |
| Disability              | 1               |
| Arrest and Court Record | 1               |

**Dispositions by Mediation Center**

|                                    |     |                        |
|------------------------------------|-----|------------------------|
| Mediation Center of the Pacific    | 3/4 | (settlement rate 75 %) |
| Mediation Services of Maui         |     |                        |
| Private Mediators                  | 0/1 | (settlement rate 0%)   |
| Ku'ikahi Mediation Services (Hilo) |     |                        |
| West Hawaii Mediation Center       |     |                        |

|   |            |                                |
|---|------------|--------------------------------|
| Kauai Economic Opportunity, Inc.<br>Hawai'i Civil Rights Commission | 1/1        | (settlement rate 100%)         |
| <b>OVERALL</b>  | <b>4/6</b> | <b>(settlement rate 66.7%)</b> |

**Chief Counsel's Report**

Chief Counsel (CC) Robin Wurtzel presented her report.

She noted no change in the *Elento* appeal pending in the Hawai'i Supreme Court.

CC Wurtzel reported on the status of the *Bate* case. A status conference before Circuit Court Judge Ashcroft was scheduled for September 26, 2017.

**Legislation -2017 Special Session**

Executive Director (ED) Bill Hoshijo reported that Joakim "JoJo" Peter's nomination to the HCRC was confirmed by the Senate during the recent special session, as anticipated.

**2018 Proposed Legislation**

ED Hoshijo reported that one bill had been submitted for inclusion in the administration package, the bill to provide for Executive Director 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 bill was under review.

A second bill to correct flaws in Act 211, relating to movie theaters, was submitted by the Disability Communication Access Board (DCAB) for inclusion in the Department of Health administration package, so the HCRC would not have to submit a proposal

**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.

CC Wurtzel had nothing new to report on rulemaking.

ED Hoshijo reported that he had been contacted by the Council for American-Islamic Rights, and was informed that the proposed Conference on American Muslims and Civil Rights had been rescheduled from August 2017 to February 2018, with the possibility of a pre-conference preview event in September 2017.

**Commission Discussion on Civil Rights in Hawai'i**

ED Hoshijo suggested possible models for a structured Commission discussion of Civil Rights in Hawai'i. He noted that two federal commissions, the EEOC and the USCCR State Advisory

Committee, have held hearings on focused subject matter, inviting expert testifiers to present testimony. If the HCRC convened such a hearing or meeting, it would be an open meeting; the Commission would notice the meeting and set the agenda, could invite presenters, and members of the public could comment on any agenda item. The Commission would have to set the agenda with a purpose, planning for what would come out of the meeting, whether it be report, recommendations, or other work product or policy action.

CC Wurtzel suggested that testifiers could be asked to identify civil rights issues that are not being addressed, gaps where there are no recourse or remedy, and what they would like to see.

Chair Krieger asked if HCRC staff would be interested in participating in this kind of discussion. DED Kawatachi said they would be interested, and might have good ideas.

Commissioner Joan Lewis suggested that it might be worth engaging in community outreach to find out what areas need to be addressed.

Chair Krieger posed the question of what the next steps should be.

Commissioner Liann Ebesugawa suggested that the Commission should frame the discussion around what is happening in civil rights, and where people need support.

ED Hoshijo offered to continue the discussion with a brief presentation at the next Commission meeting, introducing the history of civil rights in Hawai'i.

### **New Business**

There was no new business.

### **Announcements**

ED Hoshijo announced that the HCRC would have a contingent in the 2017 Pride Parade, scheduled for October 21, 2017.

### **Next Meeting**

The next meeting of the Commission was scheduled for October 6, 2017, at 2:30 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**