



# HAWAI'I CIVIL RIGHTS COMMISSION

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## MINUTES

Hawai'i Civil Rights Commission Office

December 12, 2017

1:30 p.m.

Present: Linda Krieger, Liann Ebesugawa, Joan Lewis, Commissioners; Robin Wurtzel, Bill Hoshijo, and Marcus Kawatachi, staff; Doris Dvonch, Deputy Attorneys General; Lowell Chun-Hoon, Attorney.

Excused: Joakim Peter, Commissioner.

Chair Linda Krieger called the meeting to order.

### Approval of Minutes

The minutes of the October 6, 2017, meeting were approved. (m/s/p Ebesugawa/Lewis; 3-0).

### CLOSED EXECUTIVE SESSION

The Commissioners voted to go into closed executive session to discuss an adjudication matter. (m/s/p Lewis/Ebesugawa; all).

The Commissioners went into closed executive session.

On one adjudication matter, the Commissioners were advised by Chief Counsel Robin Wurtzel.

On a second adjudication matter, Chief Counsel Wurtzel was excused and did not participate, because she was recused from the case adjudication. The Commission was advised by Deputy Attorney General Doris Dvonch.

The Commissioners came out of closed executive session.

### Executive Director's Report

Deputy Executive Director (DED) Marcus Kawatachi presented a FY 2018 HCRC Mediation Program year-to-date summary.

#### **Summary & Details (7/1/17 through 12/12/17)**

Referrals:	22	
Dispositions:	23	
Settlements:	15	
Non-agreements:	8	
Settlement Rate:	65.2 %	
Employment cases settled:		11
Non-employment cases settled:		4

Pending Assignment	0	0	3	6	9
Active Investigation	0	2	12	21	35
<b>TOTAL</b>	<b>0</b>	<b>3</b>	<b>21</b>	<b>127</b>	<b>151</b>

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

DED Kawatachi went over fiscal year comparison of case data for the past ten fiscal years, which included:

Category	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
PCQ Received	691	699	692	678	610
Intake Decision	708	655	661	709	596
Complaint Filed-HCRC	338	303	359	394	323
Complaint Filed-EEOC/HUD	277	290	239	258	239
Investigation Closed	355	370	332	473	480
No Cause	214	238	234	286	331
Mediation settlement	41	17	15	30	25
Other settlements	21	15	10	15	16
PDS settlements	19	17	10	28	32
Notice of Cause	8	6	15	22	16
Enforcement Closure	22	6	14	25	17

Chair Krieger asked if there was any explanation for the higher number of no cause closures in FY 2017, compared to earlier years. DED Kawatachi responded that it was difficult to tell from the data presented, but that the more detailed data in the HCRC Annual Report might be informative. It was noted that there were more “merit” closures in FY 2017 and fewer administrative closures than in previous years, and with fewer complaints being screened out in intake, more cases would be dismissed in investigation.

### **Chief Counsel’s Report**

Chief Counsel (CC) Robin Wurtzel presented her report.

CC Wurtzel reported that the *Elento* appeal was decided by the Hawai‘i Supreme Court, with a decision issued on December 5, 2017. Attorney for the Commission Lowell Chun-Hoon reported that the Court decided that the HCRC does not have jurisdiction over HRS § 368-1.5 complaints. The Court held that the statute was not intended to provide a state corollary to the federal law, Section 504 of the Rehabilitation Act of 1974, but was only meant to cover state-funded programs and activities that did not receive any federal funds, so were not covered by Section 504. The decision severely restricted HRS §

Executive Director (ED) Bill Hoshijo presented a staff request for a motion:

**On bills introduced through the bill introduction cut-off on January 24, 2018, which the Commission has not had the opportunity to review and take action on, staff is authorized to identify bills set for hearing before the meeting scheduled for January 21 and continued to January 26, 2018, which are similar to bills introduced during the 2016 or 2017 sessions, which the Commissioners have acted on, and to submit testimonies consistent with those positions. Any such testimony will be reported to the Commission at its meeting on January 21 and continued to January 26, 2018, and the position will be subject to Commission review and action at that time.**

**The motion was approved. (m/s/p Ebesugawa/ Lewis; all).**

**Adjournment**