



HAWAI'I CIVIL RIGHTS COMMISSION

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MINUTES*

Hawai'i Civil Rights Commission Office
February 16, 2018
2:30 p.m.

Present: Linda Krieger, Joan Lewis, and Joakim Peter, Commissioners; Robin Wurtzel, Bill Hoshijo, and Marcus Kawatachi, Staff; Peter Fritz, member of the public.

Excused: Liann Ebesugawa, Commissioner

Chair Linda Krieger called the meeting to order.

Approval of Minutes

The Commissioners reviewed the draft minutes of the January 22, 2018, meeting, continued on January 26, 2018. **A correction was made on page 4 of the draft minutes of the January 22, 2018, meeting, to reflect that when the Commission went into closed executive session to confer with counsel, Deputy Attorney General Frances Lum, "... Commissioner Ebesugawa was present for the first ten minutes of the closed session, then excused herself and left the room, to allow the remaining commissioners to confer with counsel in her absence."** (m/s/p Krieger/Peter; 3-0).

The minutes of the January 22, 2018, meeting, continued on January 26, 2018, were approved, with that correction. (m/s/p Peter/Lewis; 3-0).

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 2/16/18)

| | | |
|-------------------------------------|--------|----|
| Referrals: | 28 | |
| Dispositions: | 27 | |
| Settlements: | 18 | |
| Non-agreements: | 9 | |
| Settlement Rate: | 66.7 % | |
| Employment cases settled: | | 13 |
| Non-employment cases settled: | | 5 |
| Dual-filed (EEOC/HCRC) settlements: | | 16 |

* as corrected and approved on April 27, 2018.

State-only settlements

2

Primary Bases for Complaints Settled in Mediation

| | |
|--------------------------|-----------------|
| Disability | 6 |
| Ancestry/National Origin | 3 |
| Retaliation | 3 |
| Arrest and Court Record | 3 |
| Sex | 2 (1 pregnancy) |
| Familial Status | 1 |

Dispositions by Mediation Center

| | | |
|------------------------------------|------|-----------------------|
| Mediation Center of the Pacific | 8/10 | (settlement rate 80%) |
| Mediation Services of Maui | | |
| Private Mediators | 3/4 | (settlement rate 75%) |
| Ku'ikahi Mediation Services (Hilo) | 0/2 | (settlement rate 0%) |
| West Hawaii Mediation Center | | |
| Kauai Economic Opportunity, Inc. | 0/1 | |
| Hawai'i Civil Rights Commission | 7/10 | (settlement rate 70%) |

OVERALL

18/27 (settlement rate 66.7%)

DED Kawatachi also presented a data and production report showing caseload data through February 16, 2018.

As of February 16, 2018, the report showed 158 open cases, an increase of 5 cases from the number reported as of January 22, 2018. Of those, 2 (1.3%) were filed in 2015, 15 (9.5%) in 2016, 109 (69.0%) in 2017, and 32 (20.3%) in 2018.

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

| | 2015 | 2016 | 2017 | 2018 | Total |
|----------------------|----------|-----------|------------|-----------|------------|
| Housing Cases | 0 | 1 | 12 | 5 | 18 |
| Response Monitoring | 0 | 4 | 53 | 24 | 81 |
| Mediation | 0 | 1 | 11 | 3 | 15 |
| Pending Assignment | 0 | 4 | 14 | 0 | 18 |
| Active Investigation | 2 | 5 | 19 | 0 | 26 |
| TOTAL | 2 | 15 | 109 | 32 | 158 |

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

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

| Category | 7/1/13 – 2/16/14 | 7/1/14 – 2/16/15 | 7/1/15 – 2/16/16 | 7/1/16 – 2/16/17 | 7/1/17 – 2/16/18 |
|----------------------|---------------------|---------------------|---------------------|---------------------|---------------------|
| PCQ Received | 454 | 421 | 434 | 409 | 366 |
| Intake Decision | 432 | 417 | 471 | 410 | 346 |
| Complaint Filed | 196 | 193 | 264 | 232 | 164 |
| Investigation Closed | 245 | 206 | 289 | 278 | 172 |
| Notice of Cause | 0 | 7 | 12 | 10 | 23 |
| Enforcement Closure | 4 | 7 | 16 | 9 | 13 |

DED Kawatachi reported that he had checked with EEOC Honolulu Local Office Director Glory Gervacio Saure, who confirmed that the number of EEOC charge filings was also down. The decrease in EEOC filings might possibly be partially attributed to the initiation of the use of a new portal for online initiation of the intake process.

Extension of Time to Investigate

Chair Krieger explained that 180 days is not enough time to complete investigations, especially complex investigations. Executive Director (ED) Bill Hoshijo noted that weaker, likely no cause cases can be closed more quickly, but more meritorious complaints or those with disputed facts or complex issues take longer to investigate.

The Commission approved a request for extension of time to investigate all cases, from March 31, 2018, through March 31, 2019. (m/s/p Lewis/Peter; all).

2018 Legislation

The Commissioners reviewed Legislative Summary 2, which included HCRC position, bill status, and staff recommendations on new bills, discussed and decided on HCRC positions on the following bills:

**SB 2351
HB 2137, H.D. 1**

Relating to Equal Pay

Prohibits prospective employers from requesting or considering a job applicant's wage or salary history as part of an employment application process or compensation offer; also prohibits wage secrecy and retaliation or discrimination against employees who disclose, discuss, or inquire about their own or coworkers' wages.

Status: SB ref. to: LBR/JDC, WAM. Labor and Judiciary heard on February 1, 2018 and passed unamended.

Status: HB ref to: LAB, JUD: Labor heard on February 6, 2018 and passed H.D. 1

Discussion: Staff recommended strong support, noting testimony in support was submitted based on testimony on similar bill in 2017. Chair Krieger raised serious concerns about Section 2 of the bills, which prohibited inquiry into or consideration of wage or salary history, unless voluntarily disclosed by an applicant. She cited concern over impact on competitiveness of UH when recruiting with other national employers, as well as negative impact on women applicants who might be less likely to voluntarily disclose past salary information and viewed negatively if and when they voluntarily disclose that information. Chair Krieger suggested that it would be better to require disclosure of comparable salaries, more transparency.

HCRC position: Support intent, with language expressing Chair Krieger's concerns about Section 2 of the bill. (m/s/p Lewis/Peter; 3-0).

HB 1943, H.D. 2 Relating to Language Access

Appropriates funds for the establishment of two full-time equivalent (2.00 FTE) permanent program specialist positions within the office of language access to assist state agencies and state-funded agencies in implementing the requirements of Hawaii's language access law.

Status: ref to:, HHS, FIN

Discussion: HCRC sits on the Language Access Advisory Committee, by statute. This is a non-administration bill. Staff recommended strong support, with required limiting language: "The HCRC strongly supports H.B. No. 1943, H.D.1, provided it does not impact the priorities detailed in the Governor's Executive Budget."

HCRC position: Support, based on staff recommendation. (m/s/p Peter/Lewis; 3-0).

HB 1529, HD1

Relating to Housing

Prohibits discrimination in the rental of real property based on a veteran's use of HUD-VASH vouchers

NOTE: This bill was not discussed at the January meeting. It is a 2017 bill

Status: ref to: VMI, HSG, FIN. VMI heard on 2/1/ 2018 and passed; HSG heard on February 8, 2018. Waiting for Finance hearing

HCRC Position: No position taken.

Chief Counsel's Report

CC Wurtzel reported that there was nothing new to report on the status of the *Bate* case. Jury trial was still set for October 15, 2018.

CC Wurtzel reported that a notice of appeal was filed by Respondent in the *Kyi-Yim* case.

Old Business

CC Wurtzel reported that there was nothing new on the status *Cervelli v. Aloha Bed & Breakfast*, pending before the Intermediate Court of Appeals.

ED Hoshijo said there was no follow-up communication from the Council for American-Islamic Rights (CAIR) Conference on American Muslims and Civil Rights, so he assumed that it would not be held in February 2018 as CAIR had proposed.

There was nothing new to report on the proposal for a forum on sexual harassment.

New Business

There was no new business.

Announcements

There were no announcements.

Next Meeting

The next meeting of the Commission was scheduled, for March 30, 2018, at 2:30 p.m., subject to polling of and confirmation by the Commissioners.

Adjournment