

MINUTES

Hawai'i Civil Rights Commission Office  
April 27, 2018  
2:30 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 Commissioners reviewed the draft minutes of the February 16, 2018, meeting. Corrections were made on page 1 of the draft minutes, to reflect the correct date of the meeting and the correct attendees present. With those corrections, the minutes were approved. (m/s/p Peter/Ebesugawa; 3-0, Lewis not yet present).

**Executive Director's Report**

Commissioner Joan Lewis joined the meeting during the 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 4/27/18)**

Referrals:	33
Dispositions:	31
Settlements:	21
Non-agreements:	10
Settlement Rate:	67.7 %
Employment cases settled:	15
Non-employment cases settled:	6
Dual-filed (EEOC/HCRC) settlements:	18
State-only settlements	3

**Primary Bases for Complaints Settled in Mediation**

Disability	7
Retaliation	4
Ancestry/National Origin	3
Arrest and Court Record	3
Sex	2 (1 pregnancy)
Age	1
Familial Status	1

**Dispositions by Mediation Center**

Mediation Center of the Pacific	9/11	(settlement rate 81.8%)
Mediation Services of Maui		
Private Mediators	3/4	(settlement rate 75%)
Ku‘ikahi Mediation Services (Hilo)	1/3	(settlement rate 33.3%)
West Hawaii Mediation Center		
Kauai Economic Opportunity, Inc.	0/2	(settlement rate 0%)
Hawai‘i Civil Rights Commission	8/11	(settlement rate 72.7%)

**OVERALL 21/31 (settlement rate 67.7%)**

DED Kawatachi noted that the 21 mediated settlements in FY 2018 to date compared favorably to the 25 mediated settlements in FY 2017.

DED Kawatachi also presented a data and production report showing caseload data through April 27, 2018.

As of April 27, 2018, the report showed 191 open cases, an increase of 33 cases from the number reported as of February 16, 2018. Of those, 2 (1.0%) were filed in 2015, 12 (6.3%) in 2016, 90 (47.1%) in 2017, and 87 (45.5%) 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	13	14	28
Response Monitoring	0	3	35	59	97
Mediation	0	1	7	11	19
Pending Assignment	0	4	20	0	24
Active Investigation	2	3	15	3	23
<b>TOTAL</b>	<b>2</b>	<b>12</b>	<b>90</b>	<b>87</b>	<b>191</b>

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 – 4/27/14	7/1/14 – 4/27/15	7/1/15 – 4/27/16	7/1/16 – 4/27/17	7/1/17 – 4/27/18
PCQ Received	578	554	561	508	481
Intake Decision	563	557	591	519	458
Complaint Filed	251	272	331	284	229
Investigation Closed	299	255	404	394	215
Notice of Cause	2	12	17	13	27
Enforcement Closure	6	8	21	11	26

Executive Director (ED) Bill Hoshijo reported that a summary of sexual harassment settlements was being prepared and would be presented at a future meeting.

**2018 Legislation**

The Commissioners reviewed Legislative Summary 3, prepared by Chief Counsel (CC) Robin Wurtzel, which included HCRC positions and bill status on the following bills:

HOUSE BILLS - 2018		
1.	HB 1489, HD 1, SD 1 CD1 proposed	Relating to Civil Rights Title IX Conference Draft passed
2.	HB 1943, HD 1	<i>Relating to Language Access; OLA Staffing Referred to: CPH, WAM – CPH passed, WAM hearing 4/4</i>
3.	HB 2729 HD2,SD2	Relating to Cannabis for Medical Use Insertion of HB 2200 Conference Draft passed
SENATE BILLS		
4.	SB 270, SD 1	Conversion Therapy Conference Draft passed
5.	SB 2351, SD 1, HD1, CD1	Equal Pay Conference draft passed
6.	SB 2461 SD1, HD1 CD1	Relating to Service Animals Conference passed with House amendments and Senate fines Decked

**~~HB 2139, HD1~~ Relating to Discrimination in Education - state Title IX Act**

**~~SB 2353, SD1~~**

**HB 1489, HD 1, SD1, CD 1 Relating to Civil Rights**

Adds a new section to Chapter 368 to prohibit discrimination in State educational programs and activities based on sex, including gender identity and expression and sexual orientation. Allows a civil suit, and defines the terms “educational program or activity.” Provides for a delayed effective date and an LRB study.

HCRC Position: Support

Status: HB 1489, CD 1, to be decked for floor vote.

**HB 1943, HD1, SD1 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.

HCRC position: Support, with limiting language.

Status: HB 1943, HD1, SD1, in Conference Committee.

**~~SB 2220, SD 1~~ Relating to Employment Practices – Medical Cannabis**

**~~HB 1753~~ Discriminatory practices based on employee’s status as a qualified patient under the medical use of cannabis**

**HB 2729, HD 2, SD2, CD1, Relating to Cannabis for Medical Use**

Prohibits an employer from suspending, discharging or discriminating against an employee for testing positive for cannabis, if employee is registered medical user.

HB 2729 was amended by Senate CPH on 3/21 to include protections for positive drug test for those with medical marijuana card. Amendments prohibit an employer from suspending, discharging, or discriminating against an employee for testing positive for cannabis if the employee is a registered qualifying patient who is authorized for the medical use of cannabis, with certain exceptions.

HCRC Position: Support, noting narrow interest in the rights of persons with disabilities to reasonable accommodation.

Status: HB 2729, CD1, to be decked for floor vote; not sure of substance of CD1.

**HB 2148 Relating to Minors: Conversion Therapy**

**SB 270, HD1, SD1, CD1 Relating to Minors**

Prohibits teachers and persons who are licensed to provide professional counseling from engaging in or advertising sexual orientation change efforts on students and persons under eighteen years of age.

HCRC Position: HCRC did not take a position on these bills.

Status: SB 270, CD 1, to be decked for floor vote.

**SB 2351 Relating to Equal Pay**

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

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.

HCRC Position: Support Intent. Urge to delete Section 2, and retain Section 3

Status: SB 2351, CD 1, to be decked for floor vote.

**SB 2461, SD1, HD1, CD1 Relating to Service Animals**

**HB 1823**

Establishes civil penalties for misrepresentation of a service animal. Changes the term "service dog" to "service animal" and amends the definition of that term to conform with the Americans with Disabilities Act of 1990.

HCRC Position: Oppose.

Status: SB 2461, CD 1, to be decked for floor vote.

**Chief Counsel's Report**

CC Wurtzel reported on the status of several pending cases.

In the *Bate* case, a settlement conference was held on April 25, 2018. Respondent-Appellant Haig filed a motion for partial summary judgment on the alter ego issue. Haig also requested mediation, which could be set for the first week in June 2018.

In the *Morning Hill Foods (Kyi-Yim)* case, on appeal to the Circuit Court, oral argument was set for May 31, 2018. On argument, the HCRC would be represented by Deputy Attorney General Frances Lum.

In *Cervelli/Buford v. Aloha Bed & Breakfast*, the Intermediate Court of Appeals issued a decision on February 23, 2018, affirming the Circuit Court decision that the Defendant bed and breakfast was a place of public accommodation, and therefore discrimination based on sexual orientation was prohibited. Defendant-Appellant requested a 15 day extension to file a petition for certiorari.

In the *Shavelson* case, oral argument before the Ninth Circuit Court of Appeals was set for June 11, 2018, in Honolulu.

### **Old Business**

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

### **Rulemaking Discussion**

Initially, the Commissioners engaged in discussion about how to frame the rulemaking discussion. It was agreed that the discussion should address the criteria for engaging in rulemaking: Under what circumstances would the Commission want to promulgate rules, and how would priorities be set?

There was a brief discussion of examples of potential subjects for rulemaking that the Commission might want to consider and discuss.

ED Hoshijo suggested that the Commission could consider promulgation of rules on reasonable accommodation in employment for persons with a disability who use medical cannabis (off the job) to alleviate a symptom of the disability and tested positive on a laboratory drug test.

On the issue of assistance animals in public places, the Commissioners were not inclined to promulgate rules. It was noted that under Title III of the ADA, as interpreted by the USDOJ, federal law required accommodation for persons with a disability who used a service dog (trained to perform a task related to the disability), but did not require accommodation of non-service assistance animals (e.g., emotional support animals), and that neither the Commission nor any court had decided whether state public accommodations law would adopt that federal standard. Commissioner Joan Lewis, noting that attitudes and norms regarding animals in public places and the legal requirement of reasonable accommodations for persons with a disability have changed over time, suggested that a public conversation was needed. Rather than rulemaking, the Commissioners discussed the possibility of a public informational hearing, perhaps working with DCAB to convene the discussion.

### **New Business**

There was no new business.

### **Announcements**

There were no announcements.

**Next Meeting**

The next meeting of the Commission was scheduled, for May 31, 2018, at 2:30 p.m., subject to polling of and confirmation by the Commissioners.

**Adjournment**