

## MINUTES

Hawai`i Civil Rights Commission Office  
September 14, 2018  
10:00 a.m.

Present: Linda Krieger, Liann Ebesugawa, Joan Lewis, and Joakim Peter, Commissioners; Robin Wurtzel, Bill Hoshijo, Marcus Kawatachi, Staff; Kirby Shaw, Peter Fritz, and Francine Wai, Guests.

Chair Linda Krieger called the meeting to order.

Initially, quorum of three, Commissioners Krieger, Ebesugawa, and Peter. Commissioner Lewis would join the meeting later.

### Approval of Minutes

**The Commissioners reviewed the draft minutes of the July 19, 2018, meeting. The minutes were approved. (m/s/p Ebesugawa/Peter; 3-0).**

### Executive Director's Report

Deputy Executive Director (DED) Marcus Kawatachi presented a FY 2019 HCRC Mediation Program year-to-date summary.

#### **Summary & Details (7/1/18 through 9/13/18)**

Referrals:	12
Dispositions:	9
Settlements:	6
Non-agreements:	3
Settlement Rate:	66.7 %
Employment cases settled:	1
Housing cases settled:	6
Dual-filed (EEOC/HCRC) settlements:	6
State-only settlements	0

#### **Primary Bases for Complaints Settled in Mediation**

Disability	4
Age	1
Retaliation	1

**Dispositions by Mediation Center**

Mediation Center of the Pacific Mediation Services of Maui Private Mediators Ku‘ikahi Mediation Services (Hilo)	0/0	(settlement rate 0%)
West Hawaii Mediation Center	1/1	(settlement rate 100%)
Kauai Economic Opportunity, Inc.	0/1	(settlement rate 0%)
Hawai‘i Civil Rights Commission	5/6	(settlement rate 100%)

**OVERALL 6/9 (settlement rate 66.7%)**

DED Kawatachi also presented a data and production report showing caseload data through September 13, 2018.

As of September 13, 2018, the report showed 193 open cases, no change from the number reported as of June 30, 2018. Of those, 1 (0.5%) were filed in 2015, 4 (2.1%) in 2016, 57 (29.5%) in 2017, and 131 (67.9%) 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	0	10	21	31
Response Monitoring	0	1	9	68	78
Mediation	0	1	5	16	22
Pending Assignment	0	0	6	10	16
Active Investigation	1	2	27	16	46
<b>TOTAL</b>	<b>1</b>	<b>4</b>	<b>57</b>	<b>131</b>	<b>193</b>

DED Kawatachi reported that in one case an enforcement attorney was pursuing subpoena enforcement to compel a response to a complaint.

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

<b>Category</b>	<b>7/1/14 – 9/13/14</b>	<b>7/1/15 – 9/13/15</b>	<b>7/1/16 – 9/13/16</b>	<b>7/1/17 – 9/13/17</b>	<b>7/1/18 – 9/13/18</b>
PCQ Received	146	162	152	117	124
Intake Decision	114	126	147	122	106
Complaint Filed	50	63	90	64	54
Investigation Closed	62	88	84	51	72
Notice of Cause	0	3	4	1	2
Enforcement Closure	4	4	3	5	6

### **2019 Legislation**

Chief Counsel (CC) Robin Wurtzel reported that the HCRC submitted a bill to be considered for inclusion in the administration package, which would clarify HCRC HRS § 368-1.5 jurisdiction over complaints against state agencies and state funded programs based on disability, regardless of whether they also receive federal funds, and exempt K-12 DOE schools.

### **Chief Counsel’s Report**

CC Wurtzel reported on the status of four cases.

*Shavelson v. Hawai‘i Civil Rights Commission, Constance DeMartino, William Hoshijo and Marcus Kawatachi*, 15-16525 9<sup>th</sup> Cir.-

The Ninth Circuit Court of Appeals issued its decision on July 3, 2018, remanding the case to the District Court solely for the purpose of giving the plaintiff the opportunity to amend her complaint to cure deficiencies in her equal protection complaint. Ms. Shavelson amended her complaint. Trial is set for September 2019.

In *Cervelli/Buford v. Aloha Bed & Breakfast*, the Defendant/ Appellant, Aloha Bed & Breakfast, petitioned for certiorari from the Hawai‘i Supreme Court, and it was denied on July 10, 2018. Aloha Bed & Breakfast intends to file a petition for certiorari to the U.S. Supreme Court. The Solicitor General will represent the HCRC in the case before the Supreme Court.

In *Morning Hill Foods, LLC, dba Mana Bu’s vs. HCRC (Kyi-Yim)*, Morning Hill Foods appealed to the ICA. Appellant’s brief is due on October 15, 2018. The HCRC continues to be represented by the Attorney General on appeal.

CC Wurtzel also reported on *Boyd vs. Primack*, providing the Commissioners with a Proposed Findings of Fact and Conclusions of Law issued by the Hearings Examiner after an administrative hearing on June 27, 2018, with exhibits and an expert's report. She briefly reviewed the proposed findings of fact and conclusions of law, which are public record.

Adjudication matters would be discussed in closed session later in the meeting.

### **Old Business**

Executive Director (ED) Bill Hoshijo reported that two outreach events that were being planned for Fall 2018 were being rescheduled to Spring 2019, to allow more time for planning and organizing:

An HCRC forum, in partnership with invited agencies and organization, on sexual harassment.

And, an HCRC public training originally scheduled for October 24, 2018.

ED Hoshijo discussed a change of focus for the public training. In recent years much of the focus of training has been on employer liability for workplace discrimination and best practices to prevent unlawful discrimination, for audiences largely comprised of HR and EEO professionals and managers. In planning for the next public training, there will be an effort to expand the scope of the focus of the training to include employee rights, for an expanded audience that includes workers and their representatives.

ED Hoshijo discussed challenges presented when trying to reach audiences of workers or small business operators, particularly immigrant community small businesses, because many or most of them are working during regular work days and hours. It might, it had been suggested, be better to offer an evening or weekend training to effectively reach this audience.

On the subject of expanding the audience for HCRC outreach, Chair Krieger offered a suggestion for future discussion. She suggested a new initiative, reaching out to high school students to educate them about employment rights, as future workers and future managers.

Commissioner Joan Lewis suggested that it was an opportune time to work on such a project, with a current emphasis on college readiness and workplace readiness, perhaps with a "train the trainer" workshop to give educators the information or tools they can use.

Commissioner Lewis also suggested that the outreach to educators could be done by creating coursework for teachers, as continuing education, aligned with the state strategic plan, coursework that teachers could get credit for, towards achieving higher pay. Participation in such a course could help to meet the goal of making gains in student success, teaching a portfolio of skills, how to make a plan, carry out the plan, and reflect on it. This could be done in an online format. Commissioner Lewis suggested videotaping a facilitated course unit.

Chair Krieger suggested that the outreach to students could include how to increase opportunities

for girls in STEM and the building trades, as well as other non-traditional employment. Training could include how to do a job interview, and how to bargain for a wage.

It was agreed that this discussion should be taken up again in the future.

### **New Business**

The Commissioners initially reviewed a Department of Education (DOE) recommendation to the Board of Education, (BOE) dated September 6, 2018, for repeal of HAR Chapter 8-41, Civil Rights Policy and Complaint Procedure, and adoption of a new HAR Chapter 8-89, Civil Rights Policy and Complaint Procedures for Student(s) Complaints Against Adult(s). It was noted that the proposed procedures were being promulgated to implement fair procedures for the prompt and equitable resolution of harassment complaints, pursuant to a resolution agreement with the US Department of Education Office of Civil Rights (OCR). Discussion followed on whether the HCRC should submit testimony or comments on the proposed changes.

Commissioner Liann Ebesugawa reported that at its September meeting, the BOE had deferred the matter to October 4, 2018.

The Commissioners agreed that the HCRC might have useful suggestions for the BOE, based on experience with civil rights complaint processes and procedures. For example, it was noted that under state and federal fair employment law, a harassment complaint does not have to be in writing to trigger an employer obligation to investigate and take effective corrective action.

**The Commission authorized HCRC staff to prepare an submit testimony to the BOE on its proposed new rules, offering suggestions based on HCRC experience with civil rights complaint processes. (m/s/p Lewis/Ebesugawa; 4-0).**

### **Announcements**

ED Hoshijo announced that the HCRC planned to have a contingent march in the Honolulu Pride Parade, scheduled for October 20, 2018.

### **CLOSED EXECUTIVE SESSION**

**The Commissioners voted to go into closed executive session for an adjudication matter. (m/s/p Ebesugawa/Peter; 4-0).**

The Commissioners went into closed executive session.

**The Commissioners came out of closed executive session.**

### **Next Meeting**

The next meeting of the Commission was scheduled for October 26, 2018, at 1:00 p.m., subject to polling of and confirmation by the Commissioners.

### **Adjournment**