



# HAWAI'I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 • HONOLULU, HI 96813-5095 • PHONE: (808) 586-8636 • FAX: (808) 586-8655 • TTY: (808) 586-8692

## MINUTES

Hawai'i Civil Rights Commission Office  
November 30, 2018  
1:00 p.m.

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

Chair Linda Krieger called the meeting to order.

### Approval of Minutes

The Commissioners reviewed the draft minutes of the October 26, 2018, meeting. Corrections were made on page 4 of the draft minutes, to reflect the correct date of the next meeting. With this correction, 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 2019 HCRC Mediation Program year-to-date summary.

#### **Summary & Details (7/1/18 through 11/30/18)**

Referrals:	16
Dispositions:	24
Settlements:	17
Non-agreements:	7
Settlement Rate:	70.8 %

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	5
Age	3

Sex	3 (1 pregnancy and 2 sexual harassment)
Race	2
Arrest & Court Record	1
National Origin	1
Retaliation	1
Sexual Orientation	1

**Dispositions by Mediation Center**

Mediation Center of the Pacific	6/8	(settlement rate 75%)
Mediation Services of Maui	0/1	(settlement rate 0%)
Private Mediators	1/1	(settlement rate 100%)
Ku'ikahi Mediation Services (Hilo)	0/1	(settlement rate 0%)
West Hawaii Mediation Center	2/2	(settlement rate 100%)
Kauai Economic Opportunity, Inc.	0/2	(settlement rate 0%)
Hawai'i Civil Rights Commission	8/9	(settlement rate 88.9%)

**OVERALL 17/24 (settlement rate 70.8%)**

DED Kawatachi presented a data and production report showing caseload data through November 30, 2018.

As of, November 30 2018, the report showed 187 open cases, a decrease of 8 cases from the number reported as of October 26, 2018. Of those, 0 (0%) were filed in 2015, 3 (1.6%) in 2016, 34 (18.2%) in 2017, and 150 (80.2%) in 2018.

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

	2015	2016	2017	2018	Total
Housing Cases	0	0	6	19	25
Response Monitoring	0	1	6	79	86
Mediation	0	0	2	9	11
Pending Assignment	0	0	3	22	25
Active Investigation	0	2	17	21	40
<b>TOTAL</b>	<b>0</b>	<b>3</b>	<b>34</b>	<b>150</b>	<b>187</b>

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

DED Kawatachi went over fiscal year data for the past ten fiscal years:

**Fiscal Year Comparison**

Category	FY2009 (7/1/08- 6/30/09)	FY2010 (7/1/09- 6/30/10)	FY2011 (7/1/10- 6/30/11)	FY2012 (7/1/11- 6/30/12)	FY2013 (7/1/12- 6/30/13)	FY2014 (7/1/13- 6/30/14)	FY2015 (7/1/14- 6/30/15)	FY2016 (7/1/15- 6/30/16)	FY2017 (7/1/16- 6/30/17)	FY2018 (7/1/17- 6/30/18)
PCQ Received	933	874	778	774	691	699	692	678	610	587
Intake Decision	934	800	786	684	708	655	661	709	596	557
Cpt Filed – HCRC	439	469	365	398	338	303	359	394	323	290
Cpt Filed-EEOC/HUD	279	245	266	241	277	290	239	258	239	251
Cpt Filed – EEOC			255	234				244	231	251
Cpt Filed – HUD			11	7				14	8	0
Investigation Closed	401	431	372	344	355	370	332	473	480	258
No Cause	238	298	258	242	214	238	234	286	331	139
Mediation Settle.	27	25	20	14	41	17	15	30	25	28
Other Settlements	18	26	22	20	21	15	10	15	16	10
PDS Settlements	13	12	9	5	19	17	10	28	32	21
Elect Court Action	43	36	23	21	30	27	28	33	20	13
Cpt Withdrawn	6	3	6	4	2	9	8	8	7	4
Cp Not Available	8	2	4	2	3	23	5	10	3	2
Fail to Cooperate	7	8	12	11	12	11	11	27	17	6
No Jurisdiction	3	4	1	3	2	3	1	5	6	4
No Relief Available	6	3	2	0	4	1	1	4	1	2
Notice of Cause	21	16	10	10	6	8	6	15	22	29
Enforcement Closure	20	15	31	20	22	22	6	14	25	29

Chair Krieger noted and complimented the higher FY 2018 numbers of notices of cause issued and enforcement (post-cause settlement) closures. DED Kawatachi explained that the number of cause cases reflected an unusually high number of cause determination in arrest and court record cases, but that the numbers would have been higher, but for a number of enforcement staff vacancies during the fiscal year.

Chair Krieger asked how many vacancies the HCRC was currently looking to fill. DED Kawatachi responded that there were four vacancies to be filled: staff attorney, investigator, legal clerk, and office assistant.

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

Category	7/1/14 – 11/30/14	7/1/15 – 11/30/15	7/1/16 – 11/30/16	7/1/17 – 11/30/17	7/1/18 – 11/30/18
PCQ Received	300	293	283	253	273
Intake Decision	300	303	251	220	232
Complaint Filed	136	159	156	114	110
Investigation Closed	127	168	181	124	138
Notice of Cause	4	8	8	5	6
Enforcement Closure	7	8	6	10	7

### **Chief Counsel's Report**

Chief Counsel (CC) Robin Wurtzel reported that the HCRC annual report had been finalized and submitted, and would be a public document once transmitted to the legislature.

CC Wurtzel reported on the status of two cases.

In *Morning Hill Foods, LLC, dba Mana Bu's vs. HCRC (Kyi-Yim)*, CAAP-18-0000573 (Civil No. 18-100034-01 KKH), Morning Hill Foods filed its opening brief with the ICA. The HCRC answering brief was due on December 26, 2018/.

In *Cervelli/Buford v. Aloha Bed & Breakfast*, No. 11-1-3103-12 ECN. the Defendant/ Appellant, Aloha Bed & Breakfast, petitioned for certiorari from the United States Supreme Court, and the Court requested a response to the petition. It was anticipated that an extension of time to file a response would be requested.

### **2019 Legislation**

CC Wurtzel reported that the University of Hawai'i objected to the HCRC bill submitted to be considered for inclusion in the administration package. The bill 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. UH requested that it also be provided a statutory exemption, and the HCRC opposed that request.

On the agenda topic of 2019 legislative issues, DCAB Executive Director (ED) Francine Wai explained a bill that DCAB would be supporting, which provide for enforcement of prohibition against counterfeit or unlawfully obtained disabled parking decals or placards, and would also repeal statutory provision for free metered parking, with a special decal exception. She noted that the primary reason for the provision for free unmetered parking was that parking meters

were not accessible, but that the accessibility concern was being addressed by new design and technology, so requiring payment for metered parking was no longer discriminatory.

Chair Krieger expressed concern that such a change could harm persons with mobility impairments, in the context of a shortage of accessible public parking.

DCAB ED Wai also reported on a legislature pilot program allowing Neighbor Island testifiers to offer oral testimony remotely via telephone. ED Wai shared that there were some questions about how to ensure accessibility for persons with disability.

Executive Director (ED) Bill Hoshijo and CC Wurtzel presented a staff request for Commission authorization to prepare and submit HCRC testimony on bills that were similar to bills that the HCRC had taken a position on for the 2017 or 2018 legislative session, to be reported at the next Commission meeting for review and action.

**The Commissioners reviewed the staff request, made a friendly amendment and approved the following motion. (m/s/p Ebesugawa/ Peter; all in favor).**

During the early days of the 2019 session, from opening day through the date of the February 2019 Commission meeting, on bills and resolutions that are substantially similar to bills or resolutions introduced during the 2017 or 2018 sessions, that the Commission reviewed and acted on, staff is authorized to identify bills or resolutions which are similar to those 2017 or 2018 session bills or resolutions, and, after consultation with the Chair, to submit testimonies consistent with the positions taken on those bills or resolutions. Any such testimony will be reported to the Commission at its February 2019 meeting, and the position will be subject to Commission review and action at that time.

### **Old Business**

There was no old business.

### **New Business**

There was no new business.

### **Announcements**

ED Hoshijo announced that the HCRC would have a contingent in the Martin Luther King, Jr. Parade on January 21, 2019, details to follow.

### **Next Meeting**

The next meeting of the Commission was scheduled for January 18, 2019, at 12:30 p.m., followed by continuation on January 25, 2019, at 12:30 p.m., subject to polling and confirmation by the Commissioners.

### **CLOSED EXECUTIVE SESSION**

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

The Commissioners went into closed executive session.

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

### **Adjournment**