



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
March 6, 2019
11:30 a.m.

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

Chair Linda Krieger called the meeting to order. At the outset, there was a quorum of three members, Chair Kreiger and Commissioners Liann Ebesugawa and Joakim Peter.

Approval of Minutes

The Commissioners deferred review and approval of the draft minutes of the January 23, 2019, meeting.

The Commissioners reviewed the draft minutes of the February 1, 2019, meeting. With corrections on pages 4, 6, and 7, to reflect that Commission actions were taken by votes of "all" (4-0), rather than "3-0," and several non-substantive corrections, the minutes were approved. (m/s/p Peter/Ebesugawa; 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 3/5/19)

Referrals:	21
Dispositions:	36
Settlements:	23
Non-agreements:	13
Settlement Rate:	63.9 %

Employment cases settled:	14
Housing cases settled:	9
Dual-filed (EEOC/HCRC and HUD/HCRC) settlements:	21
State-only settlements:	2

Primary Bases for Complaints Settled in Mediation

Disability	7
Age	4
Sex	4 (includes 1 pregnancy and 2 sexual harassment)
Race	2
Retaliation	2
Arrest & Court Record	1
Color	1
National Origin	1
Sexual Orientation	1

Dispositions by Mediation Center

Mediation Center of the Pacific	8/14	(settlement rate 57.1%)
Mediation Services of Maui	0/1	(settlement rate 0%)
Private Mediators	2/3	(settlement rate 66.7%)
Ku‘ikahi Mediation Services (Hilo)	0/1	(settlement rate 0%)
West Hawaii Mediation Center	3/3	(settlement rate 100%)
Kauai Economic Opportunity, Inc.	1/3	(settlement rate 33.3%)
Hawai‘i Civil Rights Commission	9/11	(settlement rate 81.8%)
OVERALL	23/36	(settlement rate 63.9%)

DED Kawatachi presented a data and production report showing caseload data through March 5, 2019.

As of, March 5, 2019, the report showed 217 open cases, an increase of 12 cases from the number reported as of January 22, 2019. Of those, 1 (0.5%) was filed in 2016, 31 (14.3%) in 2017, 148 (68.2%) in 2018, and 37 (17.1%) in 2019.

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

	2016	2017	2018	2019	Total
Housing Cases	0	6	13	2	21
Response Monitoring	1	6	77	31	115
Mediation	0	1	5	3	9
Pending Assignment	0	8	29	0	37

Active Investigation	0	10	24	1	35
TOTAL	1	31	148	37	217

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 the year-to-date data for the past five fiscal years:

Category	7/1/14 – 3/5/15	7/1/15 – 3/5/16	7/1/16 – 3/5/17	7/1/17 – 3/5/18	7/1/18 – 3/5/19
PCQ Received	452	460	426	394	435
Intake Decision	460	506	433	373	339
Complaint Filed	208	287	247	186	189
Investigation Closed	215	315	301	185	204
Notice of Cause	7	13	12	23	7
Enforcement Closure	7	17	9	14	13

Chief Counsel's Report

Chief Counsel (CC) Robin Wurtzel reported on the status of two cases.

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, with a decision expected in March 2019.

In *Boyd vs. Primack*, a circuit court complaint for a judgment for enforcement would be prepared and filed.

Approval of Minutes

Commissioner Joan Lewis joined the meeting.

The Commissioners reviewed the draft minutes of the January 23, 2019, meeting. With a non-substantive correction, the minutes were approved. (m/s/p Ebesugawa/Lewis; all).

2019 Legislation

The Commissioners reviewed Legislative Summary 2, reporting on the status of bills which the HCRC had reviewed and taken positions on, or was tracking.

There was a discussion on SB 569, SD2:

SB 569, SD2 Relating to Civil Rights

Amends § 368-1.5 to include state agencies which receive federal funds

Amends HRS §368-1.5 to clarify legislative intent. The statute prohibits discrimination based on disability by state agencies, or programs and activities receiving state financial assistance. This bill amends the statute to clarify that agency and programs which receive state assistance includes programs which also receive federal assistance.

Discussion: SD1 eliminated exemption for DOE programs and activities. SD2 provided a more narrowly tailored exemption for claims cognizable under the Individuals with Disabilities Act (IDEA).

Commissioner Ebesugawa asked what would happen in cases that raised claims under both the IDEA and Section 504. CC Wurtzel responded that there would be concurrent jurisdiction, requiring sorting out the claims. Chair Krieger noted that while the IDEA required exhaustion of administrative remedies, the DOE process in Section 504 cases needed clarification.

Staff reviewed HCRC testimony presented on **SCR 9 and SR 8**, which would require the Department of Human Services (DHS), in consultation with the HCRC and DCAB, to examine and report on the implementation of Act 217, Leg. 218, and for DHS to “issue guidance about misrepresentation of a service animal for use by law enforcement and the business community.”

Staff discussed the HCRC’s concerns over enforcement and enforceability of Act 217, which created a substantial and uncapped civil penalty for “misrepresentation of a service animal.” The HCRC testimony on SCR 9 and SR 8 stated concerns over the potential chilling effect of Act 217 on the rights of persons with disabilities.

Chair Krieger asked about proposing a state registry for service animals. CC Wurtzel noted that DCAB had taken the position that such a registry would have to be addressed at the federal level. Commissioner Ebesugawa wondered if the HCRC should suggest that federal requirement.

Staff requested approval and reaffirmation of testimony offered on SCR 9 and SR 8, consistent with concerns raised over Act 217, and the Commissioners approved. (Peter/Ebesugawa; all).

Old Business

There was no old business.

New Business

There was no new business.

Announcements

Commissioner Peter announced that he had been invited to sit on a DOE Advisory Committee on Civil Rights.

Commissioner Lewis noted that the DOE had recently updated its Chapter 19 policies.

Next Meeting

The next meeting of the Commission was scheduled for April 3, 2019, at 11:30 a.m., subject to polling and confirmation by the Commissioners.

Adjournment.