

MINUTES

Hawai'i Civil Rights Commission Office
April 3, 2019
11:30 a.m.

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

Chair Linda Krieger called the meeting to order.

Approval of Minutes

The Commissioners reviewed the draft minutes of the March 6, 2019, meeting. The minutes were approved. (m/s/p Lewis/Ebesugawa; all).

The Commissioners reviewed the draft minutes of the March 20, 2019, meeting. The minutes were approved. (m/s/p Ebesugawa/ Lewis; all).

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 4/3/19)

Referrals:	21
Dispositions:	38
Settlements:	25
Non-agreements:	13
Settlement Rate:	65.8 %

Employment cases settled:	15
Housing cases settled:	10
Dual-filed (EEOC/HCRC and HUD/HCRC) settlements:	23
State-only settlements:	2

Primary Bases for Complaints Settled in Mediation

Disability	9
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	9/15	(settlement rate 60.1%)
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	0/12	(settlement rate 83.3%)

OVERALL 25/38 (settlement rate 65.8%)

DED Kawatachi presented a data and production report showing caseload data through April 3, 2019.

As of, April 3, 2019, the report showed 234 open cases, an increase of 5 cases from the number reported as of March 20, 2019. Of those, 1 (0.4%) was filed in 2016, 29 (12.4%) in 2017, 143 (61.1%) in 2018, and 61 (27.5%) 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	12	3	21
Response Monitoring	1	6	76	49	132
Mediation	0	1	2	6	9
Pending Assignment	0	8	29	0	37

Active Investigation	0	8	24	3	35
TOTAL	1	29	143	61	234

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 – 4/3/15	7/1/15 – 4/3/16	7/1/16 – 4/3/17	7/1/17 – 4/3/18	7/1/18 – 4/3/19
PCQ Received	512	514	474	447	495
Intake Decision	515	553	481	416	389
Complaint Filed	239	314	271	220	215
Investigation Closed	238	374	342	194	221
Notice of Cause	10	15	12	27	11
Enforcement Closure	7	20	10	25	13

Chief Counsel's Report

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

In *Boyd vs. Primack*, a complaint for a judgment for enforcement of the Commission final decision was filed in the Third Circuit Court, Civ. No. 19-1-0068, and respondent Primack was personally served.

In *Cervelli/Buford v. Aloha Bed & Breakfast*, No. 11-1-3103-12 ECN. petition for certiorari to the United States Supreme Court was denied and the case remanded for a trial on damages. Next steps were being considered.

Morning Hill Foods, LLC dba Mana Bu's v. The Hawaii Civil Rights Commission, Civil No. 18-100034-01 KKH, was fully briefed and would remain pending in the ICA for an indeterminate period, likely several years.

In *Shavelson*, the Deputy Attorney General will be filing a Motion to Dismiss

In *Young v Pomokai Holdings et al.*, the HCRC and Executive Director Hoshijo are named defendants in a complaint filed in state circuit court, but the complaint has not been served on the HCRC or ED Hoshijo.

2019 Legislation

The Commissioners reviewed Legislative Summary 4, 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, SD 2 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).

SB 569, SD 2, had a triple referral in the House, and was not given a hearing within the short time frame for triple referrals. In order to keep the bill alive, the lead committees appeared willing to waive referral and agree to re-referral, but the House leadership approvals required were not given.

CC Wurtzel suggested that after the conclusion of the 2019 session, the HCRC should request a meeting with the House Speaker to address any concerns House leadership might have with the bill to restore HRS § 368-1.5 jurisdiction, in order to prepare for future consideration.

CC Wurtzel provided a short list of fourteen bills that the HCRC was tracking that appeared likely to go to conference during the last month of the legislative session, nine House bills and five Senate bills.

Peter Fritz, the proponent of **SB 335, Relating to Public Meetings**, expressed his appreciation for HCRC support for proposed requirement that public meeting notices include instructions regarding requests for provision of an auxiliary aid or service or an accommodations for persons with disabilities, with a reasonable deadline. CC Wurtzel briefly discussed the HCRC's position and testimony. Chair Krieger wondered whether there have been any ADA Title II or Section 504 claims brought for failure to provide auxiliary aid or service or other accommodation required to provide access and participation in public meetings in Hawai'i.

Old Business

There was no old business.

New Business

There was no new business.

Announcements

Executive Director Bill Hoshijo shared that he was to be recognized as an honoree at MCP's 40th Anniversary Celebration on April 13, 2019, for the work of the HCRC on its mediation program, now in its 20th year.

Next Meeting

The next meeting of the Commission was scheduled for May 1, 2019, at 11:00 a.m., subject to polling and confirmation by the Commissioners.

Adjournment.