



HAWAI'I CIVIL RIGHTS COMMISSION

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MINUTES

Hawai'i Civil Rights Commission Office

July 19, 2019

1:00 p.m.

Present: Liann Ebesugawa, Joan Lewis, William Puette, and Jon Matsuoka,
Commissioners; Robin Wurtzel, Bill Hoshijo, Marcus Kawatachi, Staff.

Chair Liann Ebesugawa called the meeting to order.

Approval of Minutes

The Commissioners reviewed the draft minutes of the June 12, 2019, meeting. The minutes were approved.

Introduction of New Commissioner Jon Matsuoka

Newly appointed, confirmed, and sworn Commissioner Jon Matsuoka introduced himself and was welcomed to the Commission.

Introduction and Overview of the HCRC

Deputy Executive Director (DED) Marcus Kawatachi presented an overview of the HCRC for the newly appointed commissioners, addressing the HCRC's mission, jurisdiction, basic concepts and process.

Executive Director (ED) Bill Hoshijo distributed a narrative description of the HCRC administrative process, excerpted from the FY 2018 annual report. He went over the division between the Commission's adjudication role and the Executive Director's enforcement role, and the H.A.R. § 12-46-40 prohibitions against ex parte communications.

Chief Counsel (CC) Robin Wurtzel distributed a Hawaii State Ethics Commission Quick Guide for New Employees and Board/Commission Members, and briefly discussed the section on conflicts of interest. She indicated that she would provide information on upcoming ethics training opportunities.

Executive Director's Report

DED Kawatachi presented a data and production report showing caseload data through July 19, 2019.

As of, July 19, 2019, the report showed 247 open cases, a decrease of 1 case from the number reported as of June 12, 2019. Of those, 1 (0.4%) was filed in 2016, 23 (9.3%) in 2017, 116 (47.0%) in 2018, and 107 (43.3%) 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	4	9	13	26
Response Monitoring	0	2	49	70	121
Mediation	0	0	1	6	7
Pending Assignment	0	8	33	6	47
Active Investigation	0	9	24	12	46
TOTAL	1	23	116	107	247

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 noted that the fiscal year data comparison for the past ten fiscal years, FY 2009 through FY 2018, was unchanged, and that FY 2019 data would be added when it was prepared for the FY 2019 annual report.

Commissioner Matsuoka asked what the large difference in the number of pre-complaint questionnaires (PCQs) received in FY 2009 (933) and FY 2018 (587) could be attributed to. ED Hoshijo noted that FY 2009 marked a high point in complaints filed, with lower numbers filed in the years before and after, in somewhat of a bell-shaped curve. This was largely attributed to the great recession of 2008-2009, which caused an increase dislocations, reductions in force, and adverse employment actions, and an increase in the number of complaints filed.

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

Category	7/1/15 – 7/9/15	7/1/16 – 7/9/16	7/1/17 – 7/9/17	7/1/18 – 7/9/18	7/1/19 – 7/9/19
PCQ Received	38	35	27	32	31
Intake Decision	37	25	30	28	26
Complaint Filed	16	16	11	12	3
Investigation Closed	20	25	11	17	9
Notice of Cause	1	1	1	0	0
Enforcement Closure	0	1	1	2	1

DED Kawatachi presented an FY 2019 HCRC Mediation Program year-end summary.

Summary & Details (7/1/18 through 6/30/19)

Referrals	30
Dispositions:	45
Settlements:	30
Non-agreements:	15
Settlement Rate:	66.7 %

Employment cases settled:	19
Non-employment cases settled:	11
Dual-filed (EEOC/HCRC and HUD/HCRC) settlements:	27
State-only settlements:	3

Primary Bases for Complaints Settled in Mediation

Disability	12
Sex	5 (includes 1 pregnancy and 2 sexual harassment)
Age	4
Race	3
Retaliation	2
Arrest & Court Record	1

Color	1
National Origin	1
Sexual Orientation	1

Dispositions by Mediation Center

Mediation Center of the Pacific	12/18	(settlement rate 66.7%)
Mediation Services of Maui	0/1	(settlement rate 0%)
Private Mediators	2/3	(settlement rate 66.7%)
Ku'ikahi Mediation Services (Hilo)	1/3	(settlement rate 33.3%)
West Hawaii Mediation Center	3/4	(settlement rate 75%)
Kauai Economic Opportunity, Inc.	1/3	(settlement rate 33.3%)
Hawai'i Civil Rights Commission	11/13	(settlement rate 84.6%)
OVERALL	30/45	(settlement rate 66.7%)

Chief Counsel's Report

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

In *Young v Pomokai Holdings et al.*, the case was dismissed and the matter was closed.

In *Shavelson*, the hearing that was set on a motion to dismiss was vacated, after a motion for judgment on the pleadings. An order granting the motion for judgment on the pleadings was issued, with leave for plaintiff to file an amended complaint within one month. If amended complaint is not filed within that time, case will be dismissed.

In *Boyd vs. Primack*, an order against the respondent was issued on the complaint for a judgment for enforcement of the Commission final decision in the Third Circuit Court.

In *Cervelli/Buford v. Aloha Bed & Breakfast*, No. 11-1-3103-12 ECN, the case was remanded for a trial on damages. The only remaining issue was damages, and the parties were in discussion. HCRC and the plaintiffs won the Motion for Summary Judgment, so were satisfied with the resolution of the legal issues.

Goals for 2020 Legislative Session

ED Hoshijo briefly discussed the two issues that had been identified at the June 12, 2019, meeting as certain to arise in 2020:

Legislation to restore HRS § 368-1.5 jurisdiction to cover state and state-funded services, regardless of whether those programs also receive federal funds.

And, legislation to provide for enforcement of the State Title IX law, HRS chapter 368D.

ED Hoshijo and CC Wurtzel recommended that the HCRC should offer testimony on bills addressing these issues, but not submit proposed bills for inclusion in the administration package.

Unfinished Business

There was no unfinished business to discuss.

New Business

There was no new business.

Announcements

ED Hoshijo announced that the HCRC was planning to have a contingent march in the 2019 Honolulu Pride Parade, scheduled for October 19, 2019.

Chair Ebesugawa announced that she would be attending the International Association of Official Human Rights Organizations (IAOHRA) 2019 Conference, and would report back at the next Commission meeting.

Next Meeting

The next meeting of the Commission was scheduled for September 13, 2019, at noon, subject to polling and confirmation by the Commissioners.

Adjournment.