MINUTES

Hawai`i Civil Rights Commission Office

# September 13, 2019

12:00 p.m.

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

Excused: Jon Matsuoka, Commissioner.

##### Chair Liann Ebesugawa called the meeting to order.

**Approval of Minutes**

**The Commissioners reviewed the draft minutes of the July 19, 2019, meeting. The minutes were approved.**

**Introduction of HCRC Mediation Program Specialist**

HCRC Mediation Program Specialist (MPS) Sharon Ferguson-Quick was introduced to the Commissioners. MPS Ferguson-Quick would be coordinating the planning for a November Public Training.

**Chair’s Report**

Chair Ebesugawa reported that she had attended the International Association of Official Human Rights Organizations (IAOHRA) 2019 Conference, held August 18-22 in Orlando, Florida. The conference audience included 150-200 participants from state and local civil rights and human rights agencies.

Conference participants were introduced to the civil rights history of Central Florida. Highlights included visits to the Pulse Nightclub Memorial, at the site of the horrible 2016 mass shooting attack, and the Harry T. & Harriette V. Moore Cultural Park & Museum, dedicated to civil rights giants who were slain in a 1951 bombing.

Chair Ebesugawa reported that the conference program was inspirational and meaningful, including: a presentation by Leilani Farha, United Nation’s Special Rapporteur on Right to Adequate Housing, on the need to shift from viewing housing as a commodity to housing as a human right/social good; civil rights legal updates; and a presentation on implicit bias, race and equity, by Dr. Bryant Marks, Founding Director and Principal Trainer, The Nat'l Training Institute on Race & Equity.

Chair Ebesugawa recommended that the HCRC consider working in partnership with other state and community entities to bring Dr. Marks to Hawaiʻi to do several trainings.

She also recommended that the HCRC send several staff and commissioners to the 2020 IAOHRA Conference, scheduled to be held in Los Angeles.

**Executive Director’s Report**

Deputy Executive Director (DED) Marcus Kawatachi presented a FY 2020 HCRC Mediation Program year-to-date summary.

**Summary & Details (7/1/19 through 9/13/19)**

Referrals 6

Dispositions: 6

Settlements: 3

Non-agreements: 3

Settlement Rate: 50 %

Employment cases settled: 2

Non-employment cases settled: 1

Dual-filed (EEOC/HCRC and HUD/HCRC) settlements: 2

State-only settlements: 1

**Primary Bases for Complaints Settled in Mediation**

Disability 1

Retaliation 2

**Dispositions by Mediation Center**

Mediation Center of the Pacific

Mediation Services of Maui 0/1 (settlement rate 0%)

Private Mediators 2/2 (settlement rate 100%)

Kuʻikahi Mediation Services (Hilo)

West Hawaii Mediation Center

Kauai Economic Opportunity, Inc.

Hawaiʻi Civil Rights Commission 1/3 (settlement rate 33.3%)

**OVERALL3/6 (settlement rate 50%)**

DED Kawatachi presented a data and production report showing caseload data through September 13, 2019.

As of, September 13, 2019, the report showed 248 open cases, a decrease of 1 case from the number reported as of July 19, 2019. Of those, 1 (0.4%) was filed in 2016, 18 (7.3%) in 2017, 94 (37.9%) in 2018, and 135 (54.4%) 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 | 7 | 17 |  | 28 |
|  |  |  |  |  |  |  |  |
| Response  Monitoring |  | 0 | 2 | 33 | 88 |  | 123 |
| Mediation |  | 0 | 0 | 0 | 9 |  | 9 |
| Pending  Assignment |  | 0 | 6 | 39 | 10 |  | 55 |
| Active  Investigation |  | 1 | 6 | 15 | 11 |  | 33 |
| **TOTAL** |  | 1 | 18 | 94 | 135 |  | 248 |

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.

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

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Category** | **7/1/15 –**  **9/13/15** | **7/1/16 –**  **9/13/16** | **7/1/17 –**  **9/13/17** | **7/1/18 –**  **7/9/18** | **7/1/19 –**  **7/9/19** |
|  |  |  |  |  |  |
|  |  |  |  |  |  | |
| PCQ Received | 162 | 152 | 117 | 122 | 140 | |
| Intake Decision | 126 | 147 | 122 | 103 | 119 | |
| Complaint Filed | 63 | 90 | 64 | 54 | 43 | |
|  |  |  |  |  |  | |
| Investigation Closed | 88 | 84 | 51 | 71 | 59 | |
| Notice of Cause | 3 | 4 | 1 | 2 | 1 | |
| Enforcement Closure | 4 | 3 | 5 | 6 | 2 | |

Executive Director (ED) Bill Hoshijo reported that the HCRC, in collaboration with the EEOC, was planning a public training, “Civil Rights at Work: Worker Rights & Employer Best Practices,” for November at Consolidated Ward Theaters.

**Chief Counsel’s Report**

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

In *Shavelson*, the case was dismissed in August and the matter was closed.

In *Boyd vs. Primack*, on the complaint for a judgment for enforcement of the Commission final decision in the Third Circuit Court, a motion to set aside the order against the respondent was filed and was pending.

In *Cervelli/Bufford 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.

CC Wurtzel reported that she was working on draft rules for proposed rulemaking. Most of the proposed changes will be minor, technical, or housekeeping, except for proposed adoption of a three-factor test, or “ABC test”, to determine who is an “employer” under HRS chapter 378, part I. CC Wurtzel said she would provide draft language at the next meeting.

ED Hoshijo noted that three DLIR divisions use a three-factor test, one pursuant to statute and two pursuant to rule. He suggested that CC Wurtzel could prepare a brief memorandum comparing the simpler three factor test to the complex multi-factor test that the Commission adopted in its 1993 *Santiago* decision.

**Public Comment**

Member of the public Robert Perry asked to offer comments. He said he was present to observe and suggest changes. He said that the HCRC does not have integrity, because he attempted to file multiple complaints, but HCRC staff did not investigate. He felt this was disrespectful and rude.

**Unfinished Business**

There was no unfinished business to discuss.

**New Business**

There was no new business.

**Announcements**

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

**Next Meeting**

The next meeting of the Commission was scheduled for October 25, 2019, at noon, subject to polling and confirmation by the Commissioners.

**Adjournment.**