

MINUTES

Hawai'i Civil Rights Commission Office

October 25 2019

12:00 p.m.

Present: Liann Ebesugawa, William Puette, and Jon Matsuoka, Commissioners; Robin Wurtzel and Bill Hoshijo, Staff; Kirby Shaw, DCAB Executive Director, and Robert Perry, Guests.

Excused: Joan Lewis, Commissioner.

Chair Liann Ebesugawa called the meeting to order.

Approval of Minutes

The Commissioners reviewed the draft minutes of the September 13, 2019, meeting. The minutes were approved.

Introduction of DCAB Executive Director Kirby Shaw

The Commissioners met Kirby Shaw, the newly appointed Executive Director of the Disability Communication Access Board (DCAB).

Executive Director's Report

In Deputy Executive Director (DED) Marcus Kawatachi's absence, his FY 2020 HCRC Mediation Program year-to-date written summary was presented.

The written summary reflected mediation data through "4/3/19," but Executive Director (ED) Bill Hoshijo said that it must have been mistakenly labeled, and was probably a year to date summary through a date in October 2019.

DED Kawatachi's absence, a data and production written report was presented, showing caseload data through October 14, 2019.

As of October 14, 2019, the written report showed 261 open cases, an increase of 13 cases from the number reported as of September 13, 2019. Of those, none were filed in 2016, 17 (6.5%) in 2017, 93 (35.6%) in 2018, and 150 (57.5%) in 2019.

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

2016	2017	2018	2019	Total
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Housing Cases	0	4	7	15	26
Response Monitoring	0	2	33	112	147
Mediation	0	0	0	5	5
Pending Assignment	0	6	36	9	51
Active Investigation	1	5	17	9	32
TOTAL	1	17	93	150	261

The written report indicated that in one employment case and one housing case an enforcement attorney was pursuing subpoena enforcement to compel a response to a complaint.

The written report covered the year-to-date data for the past five fiscal years:

Category	7/1/15 – 10/14/15	7/1/16 – 10/14/16	7/1/17 – 10/14/17	7/1/18 – 10/14/18	7/1/19 – 10/14/19
PCQ Received	227	200	177	179	185
Intake Decision	206	198	158	151	177
Complaint Filed	100	118	80	75	65
Investigation Closed	137	141	93	101	87
Notice of Cause	5	5	4	5	3
Enforcement Closure	8	4	6	6	2

Executive Director (ED) Bill Hoshijo reported that all speakers were confirmed for the public training, “Civil Rights at Work: Worker Rights & Employer Best Practices,” scheduled for November 20, 2019, at Consolidated Ward Theaters.

Chief Counsel's Report

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

In *Camacho*, the complainant filed an agency appeal from a dismissal based on a no cause determination, characterizing the dismissal as a final decision. An HCRC motion to dismiss was scheduled for hearing on November 24, 2019.

In *Cabral*, a civil action was filed by a party who attempted to file a complaint with the HCRC, which was rejected for lack of jurisdiction.

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/Buford v. Aloha Bed & Breakfast*, No. 11-1-3103-12 ECN, the case was settled on remand and dismissed by stipulation. Case closed.

CC Wurtzel distributed a short summary of draft rules she was working on 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 explained that three DLIR divisions use a three-factor test, Unemployment Insurance (UI) pursuant to statute, and Temporary Disability Insurance (TDI) and Prepaid Health Care (PHC) pursuant to rule. CC Wurtzel contrasted the simpler three factor test to the complex twenty-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 wanted his comments to be in the minutes, and wanted to be educated on policy and procedure for how to request that he be put on the agenda.

Closed Session

The Commissioners went into an emergency closed session to address an unanticipated event, in order to consult with their attorney, CC Wurtzel.

The commissioners came out of closed session.

Unfinished Business

There was no unfinished business to discuss.

New Business

There was no new business.

Announcements

There were no announcements.

Next Meeting

The next meeting of the Commission was scheduled for November 22, 2019, at 2 p.m., subject to polling and confirmation by the Commissioners.

Adjournment.