

## MINUTES\*

Hawai`i Civil Rights Commission Office  
August 11, 2020  
4:00 p.m.

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

Chair Liann Ebesugawa called the meeting to order.

### Approval of Minutes

**The Commissioners reviewed the draft minutes of the February 21, 2020, meeting. The minutes were approved.**

### Executive Director's Report

Deputy Executive Director (DED) Marcus Kawatachi deferred the report on HCRC Mediation. He explained that entry of mediation data had to be worked out, with the HCRC mediation coordinator teleworking. DED Kawatachi reported that a case had been successfully via Zoom.

DED Kawatachi presented a data and production report showing caseload data through August 10, 2020.

As of August 10, 2020, the written report showed 340 open cases, an increase of 29 cases from the number reported as of February 21, 2020.

Of the 340 open investigation cases, 1 (0.3%) was filed in 2016, 7 (2.1%) in 2017, 59 (17.4%) in 2018, 151 (44.4%) in 2019, and 122 (35.9%) in 2020.

DED Kawatachi reported a breakdown of the status of the open cases by type of case and investigation stage.

	2016	2017	2018	2019	2020	Total
Housing Cases	0	0	3	15	22	40

---

\*\* as corrected and approved on October 6, 2020.

Response Monitoring	0	1	14	69	73	157
Mediation	0	0	0	17	15	32
Pending Assignment	0	0	29	42	10	81
Active Investigation	1	6	13	8	2	30
<b>TOTAL</b>	<b>1</b>	<b>7</b>	<b>59</b>	<b>151</b>	<b>122</b>	<b>340</b>

The report indicated no new subpoena enforcement litigation.

Rather than reporting July 1 to August 10, year-to-date data for the past five fiscal years, DED Kawatachi presented two complimentary reports designed to capture the impact of the stay-at-home directive that effectively closed HCRC operations from March 18 to April 27, 2020, and the subsequent hiring freeze: a report on the thirteen-month period leading up to August 10 for each of the past five years; and, a report on the period between March 18 (the start of the stay-at-home directive) and August 10 for each of the past five years.

<b>Category</b>	<b>7/1/15 – 8/10/16</b>	<b>7/1/16 – 8/10/17</b>	<b>7/1/17 – 8/10/18</b>	<b>7/1/18 – 8/10/19</b>	<b>7/1/19– 8/10/20</b>
PCQ Received	747	664	664	730	560
Intake Decision	778	681	627	562	691
Complaint Filed	444	358	316	322	305
Investigation Closed	529	498	302	280	231
Notice of Cause	26	17	27	13	13
Enforcement Closure	27	19	32	15	7

**\*3/18/20 = Start of “Stay at Home” Order**

<b>3/18/16 – 8/10/16</b>	<b>3/18/17 – 8/10/17</b>	<b>3/18/18 – 8/10/18</b>	<b>3/18/19 – 8/10/19</b>	<b>*3/18/20– 8/10/20</b>
--------------------------	--------------------------	--------------------------	--------------------------	--------------------------

### Category

PCQ Received	268	219	246	269	134
Intake Decision	244	213	237	199	207
Complaint Filed	147	104	113	112	71
Investigation Closed	188	189	112	67	62
Notice of Cause	12	5	3	4	3
Enforcement Closure	7	10	18	2	3

DED Kawatachi noted the marked impact of the COVID-19 pandemic emergency on all aspects of the enforcement process.

Chair Ebesugawa asked about the possibility of the HCRC catching up post-pandemic, to get back to normal. DED Kawatachi cautioned that it would be challenging, given the loss of capacity due to vacant investigator positions being frozen. Chair Ebesugawa suggested that cases would have to be triaged and prioritized.

Commissioner Jon Matsuoka asked if there was an increase in complaints of discrimination based on race, correlating with the Black Lives Matter movement. Staff reported no apparent increase in race complaints at this point. Commissioner Matsuoka wondered if there was an increase in COVID-related complaints, or if there might be reluctance to file complaints for fear of losing employment. Executive Director (ED) Bill Hoshijo said that there weren't a large number of COVID-related complaints yet, but that historically there have been increases in complaint filings during recessions and accompanying lay-offs, RIFs, and reorganizations.

ED Hoshijo presented a report on COVID-19 status, staffing and budget, safety measures, and continuity of operations, in the event of a stay-at-home directive II:

#### Overview

The HCRC office was closed due to Governor Ige's emergency stay-at-home directive, from March 18 to April 27, 2020. Six HCRC investigators were redeployed to assist with processing of Unemployment Insurance ("UI") claims: three returned to the HCRC effective June 1, 2020; two returned by June 16, 2020; and one remained out on FMLA through the end of July 2020 and is scheduled to return in August. In addition, two of eight permanent investigator positions are vacant and frozen due to pandemic-related budget cuts.

Within these constraints, HCRC staff are working in the office, with two teleworking from home, and management is planning for continuity of operations in the event of a second stay-at-home directive or furloughs, with safety measures in place.

#### Background

On the afternoon of March 17, 2020, DLIR division and attached agency administrators were called to a meeting and briefed on a DHRD "Slow the Spread of COVID-19" directive issued that day, to be implemented after the Governor

announced the directive later that afternoon. Under the directive, all government employees were to be designated as falling into one of three categories:

Category 1. Essential-function employees

Category 2. Non-essential employees able to work remotely

Category 3. Non-essential employees not able to work remotely by telework or otherwise

Category 3 employees were to be directed to stay at home and to practice social distancing for the next 15 days, subject to reassignment of other duties.

The HCRC took the March 17 directive seriously and designated HCRC employees as nonessential workers directed to stay at home for 15 days starting on March 18, 2020. In doing so, we drew a distinction between the important civil rights work of the HCRC and the essential health, safety, welfare, fiscal, and safety net functions of other departments, divisions, and agencies. We took note that even the state legislature had recessed the 2020 legislative session for an indefinite period on March 16 to limit the spread of COVID-19.

With the extension of the original 15 day stay at home directive through April 30, 2020, the HCRC reassessed its initial determination of essential/nonessential status, being mindful of the overarching public health purpose of the stay at home directive.

The HCRC did not anticipate being out of the office for longer than the initial 15 day stay at home period starting on March 18. With the extension of the stay at home directive, the HCRC reassessed its course going forward, and recognizing the urgent need for restoration of mission critical services recalled staff and reopened on April 27, 2020, in order to effect the compelling state interest in civil rights law enforcement.

### **Staffing & Budget**

Current staffing (21): Executive Director, Deputy Executive Director, Chief Counsel, Secretary (2), Mediation Program Specialist, Office Assistants (3), Investigators (6), Legal Clerk, Enforcement Attorneys (5)

Vacant/frozen (3): Investigators (2), Office Assistant

The HCRC FY 2020 total personnel budget was \$1,918,929. The FY 2020 General Fund (State) personnel budget was \$1,682,736, or 88% of the total personnel budget. The FY 2020 Federal Fund personnel budget allocation was \$236,193, or 12% of the total personnel budget. In FY 2020, federal funds were the means of funding for 0.5 of 24 permanent positions (one position 50% federal funded); GF (State) funds were the means of funding for 23.5 of 24 permanent positions. Note: The federal fund budget allocation is a spending ceiling, rather than an appropriation.

In addition to the 24 permanent positions in the HCRC budget, the HCRC also can fill several temporary positions, based on need and available funding. The HCRC has applied for and been awarded CARES Act funding from HUD to hire a temporary investigator for a one-year term; recruitment is posted on DHRD website.

Note: Due to the COVID-19 Pandemic Emergency, a 10% restriction was imposed on the FY 2020 state GF budget, and three vacant permanent positions (two investigator positions and a office assistant position) were frozen. These frozen vacant positions are unfunded in the FY 2021 budget, but were not deleted.

Furloughs, RIFs, and pay cuts are not ruled out, though we have not received any direct communication about any of those cost-cutting measures.

ED Hoshijo reviewed a number of safety measures that had been implemented by the HCRC:

- Social distancing and other recommended practices (sanitizing surfaces, hand sanitizing and washing, mandatory wearing of non-medical masks, avoiding in-person meetings and congregating in groups, staying home if sick)
- Building and office remain closed to the public
- Services provided via telephone, fax, e-mail, and in writing; no in-person public contact
- Ensuring safe spacing between work stations (8 have offices with doors, and others are spaced with at least 6' between work stations or 7' tall partitions between work stations)
- Meetings in the conference room eliminated, with the stated intent to use of MS TEAMS as a platform for remote meetings (pending hardware procurement); purchase of portable plexiglass partitions pending
- Kitchen no longer used for eating meals

ED Hoshijo summarized ongoing discussions on how to plan for safe continuity of operations, including expansion of telework pilot programs, in context of several challenges, primarily statutory confidentiality and security, which weigh against 100% telework.

Chair Ebesugawa and Commissioner William Puette strongly recommended that the HCRC should explore an IT solution that balances confidentiality and security with worker safety, embracing the future. Commissioner Puette pointed out that financial transactions like loan applications, that are both common and complex, are now completed and signed online.

### **Chief Counsel's Report**

Chief Counsel (CC) Robin Wurtzel thanked Chair Ebesugawa and Commissioner Joan Lewis for agreeing to serve another term, and coming in during the pandemic to sign the oath of office.

CC Wurtzel reported that *Morning Hill Foods, LLC dba Mana Bu's v. The Hawaii Civil Rights Commission*, Civil No. 18-100034-01 KKH, remained pending in the ICA.

### **2020 Legislation**

The Commissioners reviewed Legislative Summary 3.

CC Wurtzel reviewed the unusual chronology of the 2020 legislative session, closing in March 2020 due to the COVID-19 pandemic, reconvening twice and adjourning in July. She reported that HB 2420, which would have amended HRS § 368-1.5 to restore HCRC jurisdiction to pre-*Hawaii Technology Academy and the Department of Education v. L.E. and Hawaii Civil Rights Commission* scope, was momentarily revived, but eventually died.

Two bills affecting the HCRC and the laws under its jurisdiction were passed and transmitted to the Governor for signature, enactment without signature, or veto:

**HB 2054, HD1, SD1 Relating to Employment Practices**

Prohibits an employer from requiring an employee to enter into a nondisclosure agreement pertaining to sexual harassment or sexual assault as a condition of employment. Confidential settlement agreements are still permitted. Also prohibits an employer from retaliating against an employee for disclosing or discussing sexual harassment or sexual assault..

**SB 2193, HD2 Relating to Employment Discrimination**

Amends HRS § 378-2.5 to limit the convictions that may be used in employment decisions. The law changed from all convictions in the most recent ten years to felony convictions that occurred in the most recent seven years and misdemeanor convictions that occurred in the most recent five years.

**Comments on the Commission on Professionalism’s Proposal to amend the court rules**

The Commission reviewed a Hawai‘i Supreme Court Rule request for public comment on proposals to amend Rule 22 of the Rules of the Supreme Court and to amend Rule 8.4 of the Hawai‘i Rules of Professional Conduct to address harassment or discrimination within the practice of law. CC Wurtzel noted that the proposed rule amendments affected attorneys and the practice of law, and did not directly affect the HCRC and the laws it enforces.

**The Commissioners approved a motion to allow staff to work with the Chair on draft comments in support of the proposed amendment to Rule 8.4, and to present the draft comments to the Commissioners for approval if the Commission next met before the September 23, 2020, deadline for submission of comments. And, the Commission did not meet again before that date, the motion authorized the Chair to approve the comments for submission.**

**Time limit for oral testimony**

The Commission approved a motion establishing a time limit for oral testimony on agenda items:

**Oral testimony can be presented on an agenda item for no more than three minutes per person, but the Chair may waive this if time allows.**

### **Unfinished Business**

There was no unfinished business to discuss.

### **New Business**

The Commission discussed the HPHA “Emergency Rules Relating to COVID-19 Emergency,” imposing penalties for non-compliance with COVID-19-related restrictions. There were concerns that the emergency rules could contribute to an atmosphere of blaming Pacific Islanders for the spread of COVID-19. Chair Ebesugawa suggested that the HCRC monitor the impact of the rule, whether there are complaints regarding disparate enforcement or chilling effect. Commissioner Joan Lewis added that if there is no support for affected communities it is unfair to single them out. Commissioner Matsuoka agreed, noting that data can be valuable if used to support, not to stigmatize.

### **Announcements**

There were no announcements.

### **Adjournment**