



# **HAWAI‘I CIVIL RIGHTS COMMISSION**

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 • FAX: 586-8655 • TDD: 568-8692

## MINUTES

Hawai‘i Civil Rights Commission Office

October 6, 2020

1:00 p.m.

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

Excused: Joan Lewis, Commissioner

Chair Liann Ebesugawa called the meeting to order.

### **Approval of Minutes**

The Commissioners reviewed the draft minutes of the August 11, 2020, meeting. A correction was made on page 7, under new business. The minutes were approved as corrected.

Commissioner William Puette pointed out that the remote meeting is electronic, not virtual, because “virtual” implies that it is not real.

### **Executive Director’s Report**

Deputy Executive Director (DED) Marcus Kawatachi presented a FY 2021 HCRC Mediation Program year-to-date summary. He explained that the mediation data might not be 100% accurate, due to the effects of telework on entry of mediation data as the process was being worked out. DED Kawatachi noted that the HCRC Mediation Program Specialist had, while teleworking, adapted the HCRC mediation process to a remote or virtual online platform. Chair Ebesugawa said it was wonderful that the HCRC Mediation Program Specialist was able to telework and mediate cases on a remote or virtual basis.

**Summary & Details (7/1/20 through 10/6/20)**

Referrals 11  
Dispositions: 4  
Settlements: 2  
Non-agreements: 2  
Settlement Rate: 50 %

Employment cases settled: 1  
Housing cases settled: 1  
Dual-filed (EEOC/HCRC and HUD/HCRC) settlements: 1  
State-only settlements: 1

**Primary Bases for Complaints Settled in Mediation**

Age 1  
Disability 1

**Dispositions by Mediation Center**

Mediation Center of the Pacific 1/1 (settlement rate 100%)  
Mediation Services of Maui  
Private Mediators  
Ku‘ikahi Mediation Services (Hilo)  
West Hawaii Mediation Center  
Kauai Economic Opportunity, Inc.  
Hawai‘i Civil Rights Commission 1/3 (settlement rate 33.3%)

**OVERALL 2/4 (settlement rate 50%)**

DED Kawatachi presented a data and production report showing caseload data through October 5, 2020.

As of October 5, 2020, the written report showed 344 open cases, an increase of 4 cases from the number reported as of August 10, 2020.

Of the 344 open investigation cases, 1 (0.3%) was filed in 2016, 7 (2.1%) in 2017, 56 (16.3%) in 2018, 134 (39.0%) in 2019, and 146 (42.4%) 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	2	14	31	47
Response Monitoring	0	1	13	62	85	161
Mediation	0	0	0	15	18	33
Pending Assignment	0	0	31	38	8	77
Active Investigation	1	6	10	5	4	26
<b>TOTAL</b>	<b>1</b>	<b>7</b>	<b>56</b>	<b>134</b>	<b>146</b>	<b>344</b>

The report indicated no new subpoena enforcement litigation.

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

<b>Category</b>	<b>7/1/16 – 10/5/16</b>	<b>7/1/17 – 10/5/17</b>	<b>7/1/18 – 10/5/18</b>	<b>7/1/19 – 10/5/19</b>	<b>7/1/20 – 10/5/20</b>
PCQ Received	181	158	167	173	112
Intake Decision	186	157	141	164	112
Complaint Filed	109	77	69	68	51
Investigation Closed	134	74	95	80	63
Notice of Cause	5	4	5	3	3
Enforcement Closure	4	5	6	2	0

DED Kawatachi noted that the data reflected the impact of the COVID-19 pandemic emergency and loss of enforcement capacity, with the aging of the caseload. Chair Ebesugawa suggested that the impact of COVID-19 should be included as an important part of the narrative in the FY 2020 HCRC annual report.

Commissioner Puette, noting the growing number of fair housing complaints, wondered if that was attributable to COVID-related housing impacts and evictions. DED Kawatachi thought the increase was not due to COVID-related impacts at this point, because most of the claims predated the COVID-19 pandemic emergency.

Executive Director (ED) Bill Hoshijo reviewed Executive Order 20-09, Attachment A Article 51, ordering pay adjustments for all EMCP civil service and exempt excluded employees, to match the pay adjustments provided under collective bargaining agreements with HGEA BU 13. The Executive Order mandates a 2.15% pay increase effective July 1, 2019, and a 2.03% pay increase effective July 1, 2020. In the alternative, it allows for adjustment at the discretion of the appointing authority.

**The Commissioners recommended that the pay adjustments be allocated as mandated by the Executive Order, choosing not to re-adjust as an exercise of discretion. The recommendation was adopted without objection.**

**ED Hoshijo reported on the impact of the pandemic emergency on the FY 2021 and FY 2022 state budget.**

Without any “inside” information other than what was available to the public, he reported, things looked grim. The Council on Revenues projected a budget shortfall of \$ 2.3 billion for FY 2020 and FY 2021, requiring state general fund budget cuts, which could include furloughs, reductions in force (RIFs), and targeted vertical cuts to state programs.

In this calculus, ED Hoshijo reported, each department would be required to cut a certain amount of its general fund budget, and the total of all the cuts would have to add up to the sum required to balance the budget, as the state was not allowed to run a deficit. Although departments and programs could advocate for smaller cuts, it was a zero-sum calculation – if one was spared, that amount would have to be taken somewhere else.

For the HCRC, Hoshijo reported, the situation was dire, in that staffing reductions dating back to 2009-2010 in response to the Great Recession had not been restored, so additional cuts would have a crippling cumulative effect on capacity. Specifically, he reported that in 2010 the HCRC lost 3 of 11 state general funded permanent investigator positions, a loss of 27% of investigator capacity that had never been restored. Of the remaining 8 permanent investigator positions, 2 were vacant in mid-March 2020, and were frozen and defunded, leaving the HCRC with only 6 funded, filled permanent investigator positions, or 55% of investigator capacity in 2009. Additional staffing cuts, ED Hoshijo warned, would gut the HCRC’s civil rights law enforcement capacity.

ED Hoshijo said it was still unclear how the executive budget would be developed out of the range of budget cutting measures being discussed, but that in the budget process the HCRC would have to emphasize the state's compelling interest in civil rights and civil rights law enforcement.

Commissioner Puette suggested that the Commission should adopt a resolution highlighting the importance of civil rights and the work of the HCRC. He said that if staff did an initial draft, he volunteered to assist with finalizing a draft resolution for Commission discussion and consideration.

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

Chief Counsel (CC) Robin Wurtzel reported no change on *Morning Hill Foods, LLC dba Mana Bu's v. The Hawaii Civil Rights Commission*, Civil No. 18-100034-01 KKH, pending in the ICA.

CC Wurtzel reported that the HCRC received a letter from the Civil Beat Law Center for the Public Interest requesting HCRC compliance with the Sunshine Law requirement that Commission meeting minutes be timely posted within 40 days after a meeting. She said she would respond to the request, check on the postings, and bring the HCRC posting of minutes into compliance.

### **2021 Legislation**

Nothing to discuss yet.

### **Unfinished Business**

There was no unfinished business to discuss.

### **New Business**

There was no new business.

### **Announcements**

There were no announcements.

The next meeting of the Commission was scheduled for November 12, 2020, at 2:00 p.m., subject to polling and confirmation by the Commissioners.

### **Adjournment**