



HAWAI‘I CIVIL RIGHTS COMMISSION

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MINUTES

Hawai‘i Civil Rights Commission Office
November 12, 2020
1:00 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 October 6, 2020, meeting. The minutes were approved.

Executive Director’s Report

Deputy Executive Director (DED) Marcus Kawatachi presented a FY 2021 HCRC Mediation Program year-to-date summary.

Summary & Details (7/1/20 through 11/10/20)

Referrals 11+3= 14

Dispositions: 4+5= 9

Settlements: 2+1= 3

Non-agreements: 2+4= 6

Settlement Rate: 33.3 %

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

State-only settlements: 1

Employment cases settled:	1
Housing cases settled:	2

Primary Bases for Complaints Settled in Mediation

Disability	2
Age	1

Dispositions by Mediation Center

Mediation Center of the Pacific	1/3	(settlement rate 33.3%)
Mediation Services of Maui		
Private Mediators		
Ku‘ikahi Mediation Services (Hilo)		
West Hawaii Mediation Center		
Kauai Economic Opportunity, Inc.		
Hawai‘i Civil Rights Commission	2/6	(settlement rate 33.3%)

OVERALL 3/9 (settlement rate 33.3%)

DED Kawatachi explained that the lower than usual mediation success rate was attributable to the COVID-19 safety measures, conducting mediation remotely rather than in-person. This required a learning curve for mediators and parties. Per DED Kawatachi, the HCRC mediation program specialist reported that the transition affected mediations, with parties participating remotely showing less urgency and preparation than parties did for in-person mediation.

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

As of November 10, 2020, the written report showed 339 open cases, a decrease of 4 cases from the number reported as of October 5, 2020.

Of the 339 open investigation cases, 1 (0.3%) was filed in 2016, 6 (1.8%) in 2017, 49 (14.5%) in 2018, 129 (38.1%) in 2019, and 154 (45.4%) 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	30	46
Response Monitoring	0	1	12	62	88	163
Mediation	0	0	0	14	18	32
Pending Assignment	0	0	21	34	14	69
Active Investigation	1	5	14	5	4	29
TOTAL	1	6	49	129	154	339

The report indicated no new subpoena enforcement litigation.

DED Kawatachi reported that the HCRC FY 2020 annual report was being prepared for submission, and that once it was finalized and submitted to the legislature, the fiscal year data would be reported to the Commission for comparison purposes.

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

Category	7/1/16 – 11/10/16	7/1/17 – 11/10/17	7/1/18 – 11/10/18	7/1/19 – 11/10/19	7/1/20 – 11/10/20
PCQ Received	254	225	243	231	153
Intake Decision	238	195	198	263	137
Complaint Filed	144	103	108	109	65
Investigation Closed	159	95	126	90	74
Notice of Cause	8	5	5	3	5
Enforcement Closure	6	9	6	2	0

DED Kawatachi noted that the number of complaints filed to date continued to be lower than in previous fiscal years, consistent with the lower number of pre-complaint questionnaires (PCQs) received.

Chair Ebesugawa wondered if limited public access due to closure of the Ke‘elikolani Building to the public, limiting telephone access to staffing four hours a day, and the office closing for a month due to the Governor’s March stay-at-home COVID-19 pandemic emergency proclamation explained the drop in complaint filings, or if others factors were involved. For example, she asked if unprecedented high unemployment might directly impact the number of employment discrimination complaints, because such large numbers of people don’t have jobs and are prioritizing food and shelter and getting UI and CARES Act benefits to survive.

Executive Director (ED) Bill Hoshijo agreed that higher unemployment and fewer people working could translate into fewer employment discrimination complaints, and added that this effect could be compounded because those who still had jobs might be afraid to file complaints and risk their jobs.

DED Kawatachi said that it would be interesting to see if the HCRC’s federal counterparts are being impacted in a similar way.

Commissioner Jon Matsuoka suggested that other government agencies must be affected by the correlation between pandemic emergency restrictions on public access and diminished numbers of filings and services sought and provided. He wondered if there was data showing a national trend, which would show that the HCRC is not an outlier in this respect.

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.

2021 Legislation

CC Wurtzel reported on two bills being drafted by other agencies for proposed inclusion in the Executive Package.

The Commission on the Status of Women and the Department of Human Services (DHS) were drafting a bill to prohibit rental discrimination based on source of income, to be placed in a new HRS chapter and enforced by direct cause of action in state district court. The draft bill is at least partly based on bill language suggested and supported by the HCRC in the 2019 and 2020 legislative sessions.

CC Wurtzel discussed a draft proposed bill being circulated by the Office of Information Practices (OIP), relating to Sunshine Law Boards, amending the current law that allows for remote meetings, HRS § 92-3.5. Commissioner William Puette pointed out that these meetings are "remote," rather than "virtual," as described in the draft bill, as "virtual" connotes something that is not real.

CC Wurtzel reported that the OIP draft proposed bill added to these statutory requirements for remote board meetings:

- Board members be visible and audible
 - Names of participating members be announced
 - Votes be conducted by roll call unless unanimous
 - All meetings be recorded
 - Board notices must include the URL invite to the meeting
 - Protocols for failure of audio-visual communication
 - Provision of the board's electronic and postal contact information for submission of testimony
- And,
- A public meeting location must be provided by each board, and oral testimony be accepted

CC Wurtzel provided draft HCRC comments on the OIP draft bill, expressing concerns over the proposed requirements that boards conducting remote meetings provide a public meeting location and provide for oral testimonies, as well as the mandate that all remote meetings be recorded. Commissioner Matsuoka noted the distinction between the ideal versus the practical. **The Commission endorsed and approved the draft HCRC comments for submission to OIP.**

Unfinished Business

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

As requested by the Commission at its October 6, 2020, meeting ED Hoshijo presented a draft HCRC resolution, **“URGING THE STATE OF HAWAI‘I TO DEMONSTRATE ITS HISTORICAL AND CONTINUING COMMITMENT TO CIVIL RIGHTS, GIVING MEANING TO STRONG STATE CIVIL RIGHTS LAWS BY REBUILDING CAPACITY, MAINTAINING AND RESTORING RESOURCES FOR STATE CIVIL RIGHTS LAW ENFORCEMENT.”**

ED Hoshijo noted that Commissioner Puette had edited and re-formatted the draft resolution to conform with Robert’s Rules. In addition to transmittal to the Governor, key Directors in the Administration, and House and Senate leadership, the Commission resolution would be used to educate and inform the public on the history of civil rights in Hawai‘i, the State’s compelling state interest in elimination of discrimination, the importance of the HCRC’s civil rights enforcement mandate, and the impact of targeted budget cuts on the HCRC’s capacity to effectively enforce state civil rights laws.

The Commission adopted the resolution as presented.

New Business

There was no new business.

Announcements

There were no announcements.

The next meeting of the Commission was scheduled for December 17, 2020, at 2:00 p.m., subject to polling and confirmation by the Commissioners.

Adjournment