



HAWAI‘I CIVIL RIGHTS COMMISSION

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MINUTES

Hawai‘i Civil Rights Commission Office
via MS TEAMS
May 21, 2021
2:00 p.m.

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

Chair Liann Ebesugawa called the meeting to order.

Approval of Minutes

Commissioner William Puette noted that draft minutes should be labeled as “presented” if presented at the Commission meeting, “circulated” if transmitted in advance to the Commissioners for review, or “posted” if posted on the HCRC webpage.

The Commissioners reviewed the draft minutes of the April 9, 2021, meeting, which had been circulated and posted. A non-substantive punctuation correction was made on page 6.

The minutes were approved as corrected.

Chair Ebesugawa asked whether minutes should reflect when members join, leave, or rejoin a meeting. Commissioner Puette said it was sufficient to record presence at the top of the minutes, as long as there is a quorum.

SCR 66 Request for the HCRC to Analyze and Report on Anti-Asian Sentiment and Acts in the State

The Commissioners took this agenda item out of order, moving this new business up for discussion earlier in the meeting: S.C.R 66, S.D.1, H.D.1, “CONDEMNING AND DENOUNCING ALL FORMS OF ANTI-ASIAN SENTIMENT AND ALL ACTS OF RACISM, XENOPHOBIA, INTOLERANCE, DISCRIMINATION, HATE CRIME, AND HATE SPEECH AGAINST ASIAN AMERICANS AND ASIAN INDIVIDUALS IN THE

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UNITED STATES AND REQUESTING THE HAWAII CIVIL RIGHTS COMMISSION TO ANALYZE AND REPORT ON ANTI-ASIAN SENTIMENT AND ACTS IN THE STATE.”

Executive Director (ED) Bill Hoshijo reviewed the “be it resolved” clauses of the resolution requesting the HCRC to report on incidents of anti-Asian discrimination, hate crimes, and hate speech in Hawai‘i since March 2020, and to report findings and recommendations to the Legislature:

BE IT FURTHER RESOLVED that the Hawaii Civil Rights Commission is requested to identify and analyze incidents based on anti-Asian sentiment that have occurred in Hawaii since March 2020, including incidents of racism, discrimination, hate crimes, and hate speech; and

BE IT FURTHER RESOLVED that the Hawaii Civil Rights Commission is requested to submit a report of its findings and recommendations, including any proposed legislation and any other actions the Legislature could take to address and prevent actions based on anti-Asian sentiment, to the Legislature no later than forty days prior to the convening of the Regular Session of 2022

ED Hoshijo noted that SCR 66 gives broad guidance as to what is requested and expected, leaving it to the HCRC decide on the specific scope, parameters framing, focus, methodology, findings, and recommendations. He added that there was a strong likelihood that the initial inquiry into anti-Asian incidents, discrimination, hate crimes, and hate speech in Hawai‘i since March 2020 will not yield much in the way of cases or data. (citing the most recent Attorney General Criminal Justice Data Report 2019 annual report of statewide hate crime statistics). He suggested that the HCRC can check with the Attorney General and the county prosecutors, as well as civil rights advocacy organizations (Stop AAPI Hate, Southern Poverty Law Center, ACLU, JACL, etc.), but wouldn’t expect much data on Hawai‘i anti-Asian hate incidents.

ED Hoshijo suggested that the Commissioner had the experience and knowledge to help frame the issues, plan the methodology and structure of the inquiry and report, and assist with the writing and editing of the report. He shared that the HCRC would be able to secure the services of an independent contractor to assist with data gathering, research, and drafting of the report and recommendations. And, he presented a suggested timeframe for planning and completion of the SCR 66 work.

Commissioner Jon Matsuoka raised a fundamental threshold issue, noting that there was a question about whether the focus was to be narrowly drawn on “Asian Americans (AA),” or more broadly on Asians and Pacific Islanders (API) or Asian and Pacific Islander Americans (APIA). He suggested that it would be better to include all Asians and Pacific Islanders, as that would allow the HCRC to look at discrimination in Hawai‘i against Pacific Islanders, including Micronesians and Native Hawaiians.

Commissioner Puette suggested that the terminology “Asian Americans” should be avoided in this context, as Asians (and Pacific Islanders) in America face racism and discrimination regardless of whether their status as visitors, students, residents, immigrants, citizens, or indigenous people.

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Commissioner Joan Lewis pointed out that putting Asians and Pacific Islanders together requires recognition of differences between the treatment and experiences that they have encountered – there are similarities and overlap, but important differences as well.

ED Hoshijo noted that there is no Pan Asian identity or movement outside of the US – it was created as a political construct by minority communities who united to fight racism in America.

Commissioner Matsuoka added that there are important differences between anti-API racism on the continent versus Hawai‘i.

Chair Ebesugawa emphasized that it doesn’t mean there is no discrimination in Hawai‘i, but that racism here is different and sometimes difficult to tease out, identify, and understand.

Commissioner Lewis added that if you go deeper, there are vulnerable children who are “thrown away” by the system, disparately impacted.

Commissioner Puette added that Asian visitors have been targeted for thefts and other crimes because they are viewed as being vulnerable.

Commissioner Matsuoka added that the discussion of racism in Hawai‘i must include the question of who’s in (economic and political power), because the Hawai‘i dynamic is different from the rest of the country.

Chair Ebesugawa urged that as the HCRC considers possible recommendations to the legislature, it keep an open mind, not to rule out anti-bias training for all government employees. Could also target education for students/young people, or targeting a broader audience beyond government workers or students.

Commissioner Lewis shared that DOE has mandated that every teacher working with English language learner (ELL) students has to complete 6 college units on teaching ELL students, including modules on policy, teaching strategies, and culturally responsive teaching. She suggested that a legislative anti-bias training mandate could be coordinated with DOE 3 year mandate.

There was a suggestion that the scope of the inquiry, report, and recommendations could be broad enough to include the impact of laws that have disparate impact on the basis of race – like the War on Drugs distinction between crack cocaine and powder cocaine resulted in disparate numbers of arrests and convictions, harsher sentences, and mass incarceration of Black people. Commissioner Puette added that there was a historical analog, of anti-opium laws that were anti-Chinese racist acts.

Commissioner Matsuoka advised that anecdotal or qualitative data are more effective when backed up by empirical data. Commissioner Puette suggested that consulates of various countries might have useful data.

ED Hoshijo suggested that staff present a proposed plan for discussion and approval at the next Commission meeting. It was generally agreed that the plan should reflect what is doable in the time frame and with HCRC resources. Commissioner Matsuoka volunteered that he would be willing to help if needed.

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DED Kawatachi noted that the overall settlement rate continued to be lower than pre-pandemic, possibly reflecting lower levels of commitment from the parties in a remote mediation process.

DED Kawatachi presented a data and production report showing caseload data through May 21, 2021.

As of May 21, 2021, the written report showed 355 open cases, an increase of 19 cases from the number reported as of April 9, 2021.

Of the 355 open investigation cases, 2 (0.6%) were filed in 2017, 38 (10.7%) in 2018, 97 (27.3%) in 2019, 134 (37.7%) in 2020, and 84 (23.7%) in 2021.

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

	2017	2018	2019	2020	2021	Total
Housing Cases	0	1	8	25	13	47
Response Monitoring	0	5	29	71	60	165
Mediation	0	0	7	23	8	38
Pending Assignment	0	15	39	10	1	65
Active Investigation	2	17	14	5	2	40
TOTAL	2	38	97	134	84	355

The report indicated no new subpoena enforcement litigation.

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DED Kawatachi reported a continuing concern over an aging caseload. He also noted a trend of increasing complaint filings, with 38 complaints filed during the period from April 9 through May 21, 2021.

Case Aging (Last report – 4/9/21)

19.4 % of all cases are 2 years or older (18.2%)

14.6 % of all cases are over 18 months, but less than 2 years old (11.9 %)

16.1 % of all cases are over 12 months, but less than 18 months old (24.1%)

22.8 % of all cases are over 6 months but less than 12 months (21.7 %)

27.0 % of all cases are 6 months or less (24.1 %)

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

Category	7/1/16 – 5/21/17	7/1/17 – 5/21/18	7/1/18 – 5/21/19	7/1/19 – 5/21/20	7/1/20 – 5/21/21
PCQ Received	536	524	576	467	415
Intake Decision	545	493	448	548	371
Complaint Filed	296	256	266	251	185
Investigation Closed	430	231	240	188	191
Notice of Cause	15	27	12	9	9
Enforcement Closure	12	29	13	7	12

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. CAAP-18-0000573, filed in the ICA 1/19/18.

CC Wurtzel reported on litigation in *Van Putten v. City and County of Honolulu, and State of Hawai’i, Hawai’i Civil Rights Commission, and William Hoshijo, in his Official Capacity as Executive Director*; Civil No. 21-0000006. In a civil action framed as agency appeal from a notice of dismissal and right to sue, the Respondent City and County of Honolulu was dismissed from the case. The HCRC motion to dismiss was denied and a motion for reconsideration was also denied. The case will be docketed for trial.

2021 Legislation

The Commissioners reviewed 2021 Legislative Summary End of Session.

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CC Wurtzel presented the Legislative Summary, but her discussion focused on 5 bills which the Legislature passed and that awaited Governor's signature, veto, or enactment without Governor's signature.

S.B. 538, H.D. 1, C.D. 1

S.B. 538 directly affects the HCRC, with a delayed effective date of July 1, 2022. The bill clarifies that HCRC has jurisdiction over denial of state and state funded services based on disability, regardless of whether an agency receives federal funds. The clarification will also provide jurisdiction over schools for complaints by both public school students and college students. Prior to the declaratory relief that was reversed on appeal in *Matter of E*, HCRC did not exercise jurisdiction over complaints by students based on disability, so this will be a new expansion of jurisdiction.

The bill amends HRS § 368-1.5, which was written as a state corollary to Section 504 of the Rehabilitation Act, allowing for local filing and remedies.

Students with disabilities are covered by several laws including Individuals with Disabilities Education Act (IDEA), Section 504, the ADA, and now state law. HCRC will be researching how the new law fits into the current scheme.

S.B. 939, H.D. 2, C.D. 1

Hawai'i will now recognize Juneteenth Day, the day when the last state – Texas - was informed of the Emancipation proclamation, over 2 years after it was issued. Juneteenth is a historical day for both African Americans and the country as a whole. Recognizing and commemorating Juneteenth in Hawai'i law will highlight the history of struggle against slavery and racism in the nation, and the continuing challenges we face in striving for racial justice and equality.

S.B. 1034, S.D. 1, H.D. 2, C.D. 1 - Additions to OIP summary

This bill amends the Sunshine Law, authorizing boards to use interactive conference technology to remotely conduct meetings. OIP has provided a summary. Most of the requirements of SB 1034 refer to notice requirements, which must be listed on the agenda. In addition, the following changes affect actual meetings.

- At the start of the meeting the presiding officer shall announce the names of the participating members;
- All votes shall be conducted by roll call unless unanimous; and
- All meetings must be recorded.

The measure addresses what occurs when there are problems with internet connectivity. A meeting held by interactive conference technology shall be automatically recessed for up to thirty minutes to restore communication when audiovisual communication cannot be maintained with all members participating in the meeting or with the public location identified in the board's notice pursuant to subsection (a)(1) or with the remote public broadcast identified in the board's notice pursuant to subsection (a)(2)(A).

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If audio-only communication is established, then each speaker shall be required to state their name before making their remarks.

SB 873, S.D. 1, H.D. 1, C.D. 1

The bill authorizes contested case hearings to be conducted through the use of interactive conference technology. The bill does not mandate it. It will make hearings involving parties and witnesses who are not on Oahu easier and less costly for HCRC.

H.B. 125, H.D. 2, S.D. 2

This bill establishes protections based on the Uniform Employee and Student Online Privacy Protection Act, protecting from employers and educational institutions, online accounts maintained by employees, unpaid interns, independent contractors, prospective employees, students, prospective students, and parents or legal guardians of students under the age of eighteen years. HCRC has testified for several years to confirm that nothing in the bill would diminish the obligation and authority of employers to investigate and take corrective action when notified of harassment in the workplace.

The measure does not directly affect HCRC.

FB 2021-2023 Budget.

ED Hoshijo reported that review of the Budget, HB 200, HD1, SD1, CD1, budget worksheets confirmed that the HCRC's base budget was restored, including all six of the positions targeted in the Executive Budget (2 Investigator IVs, 2 Staff Attorneys, 1 Secretary II, and 1 Program Specialist IV).

In addition, the two other vacant, frozen, and de-funded Investigator IV positions were re-funded in the budget.

Going forward, the key would be getting authorization to fill vacant, frozen positions.

Unfinished Business

There was no unfinished business.

New Business

SCR 66 was discussed earlier.

Announcements

There were no announcements.

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Next meeting.

Going forward, the Chair suggested that regular meetings be scheduled on a recurring basis, for the third Friday of each month if possible. The next meeting of the Commission was tentatively scheduled for June 18, 2021, contingent on progress made on an SCR 66 plan for discussion.

Adjournment

Draft minutes circulated and posted by William D. Hoshijo, Executive Director.

Approved by Commission, as circulated, on August 6, 2021.