



# **HAWAI‘I CIVIL RIGHTS COMMISSION**

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## MINUTES

Hawai‘i Civil Rights Commission Office  
via MS TEAMS  
August 6, 2021  
2:00 p.m.

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

Chair Liann Ebesugawa called the meeting to order.

### **Approval of Minutes**

The Commissioners reviewed the draft minutes of the May 21, 2021, meeting, which had been circulated and posted.

The minutes were approved as circulated and posted.

### **Executive Director’s Report**

Deputy Executive Director (DED) Marcus Kawatachi presented an FY 2021 HCRC **Mediation Program Year-End Summary**.

#### **Summary & Details (7/1/20 through 6/30/21)**

Referrals	22
Dispositions:	29
Settlements:	8
Non-agreements:	21
Settlement Rate:	27.6%

Dual-filed (EEOC/HCRC and HUD/HCRC) settlements:	7
State-only settlements:	1
Employment cases settled:	5
Housing cases settled:	3

**Primary Bases for Complaints Settled in Mediation**

Disability	6
Age	2

**Dispositions by Mediation Center**

Mediation Center of the Pacific	4/11	(settlement rate 36.4%)
Mediation Services of Maui		
Private Mediators		
Ku‘ikahi Mediation Services (Hilo)	1/3	(settlement rate 33.3%)
West Hawaii Mediation Center	0/1	(settlement rate 0%)
Kauai Economic Opportunity, Inc.	0/2	(settlement rate 0%)
Hawai‘i Civil Rights Commission	3/12	(settlement rate 25%)

**OVERALL 8/29 (settlement rate 27.6%)**

DED Kawatachi noted that the overall settlement rate for FY 2021 was down, with only 8 of 29 dispositions resulting in mediated settlements. As reported earlier, the low numbers directly correlated with the COVID-19 pandemic.

DED Kawatachi presented a **data and production report** showing caseload data through August 6, 2021.

As of August 6, 2021, the written report showed 364 open cases, an increase of 9 cases from the number reported as of May 21, 2021.

Of the 364 open investigation cases, 2 (0.5%) were filed in 2017, 36 (9.9%) in 2018, 92 (25.3%) in 2019, 119 (32.7%) in 2020, and 115 (31.6%) 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	6	22	19	48
Response Monitoring	0	5	25	52	74	156
Mediation	0	0	7	21	19	47
Pending Assignment	0	11	38	17	1	67
Active Investigation	2	19	16	7	2	46
<b>TOTAL</b>	<b>2</b>	<b>36</b>	<b>92</b>	<b>119</b>	<b>115</b>	<b>364</b>

The report indicated no new subpoena enforcement litigation.

DED Kawatachi noted the continuing trend of the caseload getting older, which should be addressed by filling investigator vacancies and restoring capacity.

**Case Aging** (Last report – 5/21/21)

20.6 % of all cases are 2 years or older (19.4 %)

17.3 % of all cases are over 18 months, but less than 2 years old (14.6 %)

18.1 % of all cases are over 12 months, but less than 18 months old (16.1 %)

17.6 % of all cases are over 6 months but less than 12 months (22.8 %)

26.4 % of all cases are 6 months or less (27.0 %)

DED Kawatachi noted that the FY 2021 year-end caseload and data report would be reported when the FY 2021 Annual Report was done. He reported on the year-to-date data for the past five fiscal years:

<b>Category</b>	<b>7/1/17 – 8/6/17</b>	<b>7/1/18 – 8/6/18</b>	<b>7/1/19 – 8/6/19</b>	<b>7/1/20 – 8/6/20</b>	<b>7/1/20 – 8/6/21</b>
PCQ Received	51	64	77	48	30
Intake Decision	64	58	63	47	34
Complaint Filed	30	26	22	27	9
Investigation Closed	19	41	21	24	14
Notice of Cause	1	0	1	2	1
Enforcement Closure	1	3	2	0	1

### **Update on SCR 66**

Executive Director (ED) Bill Hoshijo introduced Catherine Chen, an attorney who had been retained to spearhead the HCRC’s work on the SCR 66 Report and Recommendations for submission to the legislature.

Catherine Chen presented a draft outline for the report, covering: Introduction; Background, History, and terminology; Hate crime legislation in Hawai‘i; Data on hate Crimes / discrimination since March 2020 nationally and in Hawai‘i; Barriers to reporting, language access, definition of “Hate Crime,” and fear of reporting; Systemic issues of structural racism and discrimination; and Recommendations for trainings, listening session, data gathering, disaggregation, and transparency, and lowering language access barriers to reporting; and, Conclusion.

Commissioner Jon Matsuoka raised concern that definition of “hate crime” is limiting, does not address “desecration” and disregard of Hawaiian culture, sacred sites, and burial grounds. Lumping together Asians, Pacific Islanders, and Hawaiians disregards something important – that Hawai‘i is different, that in many ways Asians are part of the power structure in Hawai‘i. Racism manifests itself not just in hate incidents, but in a variety of different things – overrepresentation in imprisonment, health indicators, and in issues that won’t show up in statistics.

Commissioner Joan Lewis suggested that the inquiry had to be reframed, redefining the grouping of Asians and Pacific Islanders, because the mainland construct doesn’t work in Hawai‘i. For example, consider whether Pacific Islanders from Hawai‘i and Polynesia should be grouped with Pacific Islanders from Micronesia.

Chair Ebesugawa suggested that the comments from Commissioner Matsuoka and Commissioner Lewis could be worked into the report outline.

Commissioner William Puette raised the issue of “hate crime” being defined as being both motivated by hostility and a crime, suggesting that it should also contemplate victims targeted because of vulnerability.

Commissioner Matsuoka contrasted acts that were treated differently. In the first instance, headstones in a Japanese cemetery were toppled. It was an act of hatred, and the community banded together to fix it, a healing gesture. In contrast, we have a history of desecration of Hawaiian sacred sites for development, not considered an act of hatred. Overt acts of hatred may be rare here, but it manifests itself differently.

Chair Ebesugawa noted that discussion of hate crimes focuses on acts or action, but that when you step back there is a need to address systemic racism and how it is perpetrated – the harm of racism and how to remedy that.

ED Hoshijo said that he thought Commissioner Matsuoka suggested that structural racism issues have to be reframed to focus on healing and reconciliation, with discussion of the role of government. He noted that over time, Hawaiians had not availed themselves of civil rights protections, because civil rights rhetoric has been used against Hawaiians (attacks on Hawaiian programs). It's important to acknowledge that and reframe the inquiry, not supplanting the focus of the inquiry but expanding it.

DED Kawatachi expressed an interest in the disparity between the disparity between police data and what the Attorney General considers and reports as hate crimes.

Catherine Chen noted that Hawai'i uses hate crime prosecution data, not police level data, so there may be underreporting. It will be interesting to look at both and the disparity between the data.

ED Hoshijo suggested that bias in policing and selective enforcement has to be examined, noting the overrepresentation of Micronesians in the numbers arrested or cited for drinking in public and COVID mask violations.

Catherine Chen discussed the characteristics of hate crimes, as defined, not limited to or requiring oral comments. Commissioner Matsuoka noted that a hate crime perpetrator and victim could be of the same race. Commissioner Puette added that there were other bases for bias-motivated crimes besides race, reiterating his concern that groups were targeted as victims.

Catherine Chen said that she would request data from police departments about complaints against officers, bias complaints and resolutions, and wondered what should be included in the report if only one or some respond. Commission Lewis thought it should be included, with a note that all were requested to provide the data and had the opportunity to respond.

Commissioner Lewis said that in Hawai'i a lot of horrible things are done, and not just because of race. Chair Ebesugawa noted that when people stand up against hate crimes, saying this is not right, not seeing people as the "other," and protecting people against hate crimes, it creates a safer community.

Commissioner Matsuoka commented that it would be a disservice to focus specifically on hate crimes against Asian Americans, and that the HCRC has to look broadly at issues of race and discrimination in Hawai'i.

**The Commissioners approved a motion to authorize Catherine Chen to move forward with drafting the SCR 66 report as outlined and discussed.**

### **Next meeting.**

**The next meeting of the Commission was scheduled for October 1, 2021.**

### **Executive Director's Report (Continued)**

ED Hoshijo reported that the HCRC was receiving multiple inquiries on the question of whether an employer can mandate or require employees to get COVID-19 vaccination under state and federal fair employment laws. He provided a draft Q&A based on an EEOC guidance, "What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws," *Technical Assistance Questions and Answers - Updated on June 28, 2021*.

ED Hoshijo also reported that pursuant to Governor Ige's August 5, 2021 Emergency Proclamation, effective August 16, 2021, all state employees who are not fully vaccinated would be subject to a regular COVID-19 testing requirement.

ED Hoshijo reported that in Budget Execution Memorandum, MEMO NO. 21-04, dated July 30, 2021, Governor Ige lifted the hiring freeze, stating, "In view of the improvement to the State's fiscal condition, we have lifted the hiring freeze and, to facilitate the efficiency of State operations, these policies continue to delegate many responsibilities to the departmental level and return the authority to fill budgeted and funded civil service positions to department heads." Pursuant to this budget execution policy lifting the hiring freeze, the HCRC had initiated the process for securing authorization to fill vacant positions.

ED Hoshijo reported that the Ke'elikolani Building was scheduled to reopen on September 7, 2021, for DLIR, October 4 for DoTax.

And, ED Hoshijo reported that in a collaborative effort, DCAB-HCRC produced a series of informational ASL videos on civil rights, for posting on both DCAB and HCRC webpages. HCRC Investigator Mary Harman suggested the project more than two years ago, spear-headed the project and brought it to fruition.

A total of five videos were produced. Four videos cover individual rights, communication access discrimination, employment discrimination, and housing discrimination. The fifth video explains the process of filing a complaint with the HCRC if an individual believes they have been discriminated against. Posting to be scheduled.

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

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. Civil action framed as agency appeal from a notice of dismissal and right to sue, is moving forward in the circuit court.

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.

Governor Ige's August 5, 2021 Emergency Proclamation extended the authorization for remote board and commission meetings through October 4, 2021, without violation of the Sunshine Law.

**Unfinished Business**

SCR 66 was discussed earlier, in the Executive Director's Report.

**Announcements**

There were no announcements.

**Adjournment**

**Draft minutes circulated by William D. Hoshijo, Executive Director.**

**Approved by Commission, as circulated, on October 1, 2021.**