



# **HAWAI‘I CIVIL RIGHTS COMMISSION**

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## MINUTES

Hawai`i Civil Rights Commission Office  
via MS TEAMS  
October 1, 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;  
Peter Fritz.

Chair Liann Ebesugawa called the meeting to order.

### **Approval of Minutes**

**The Commissioners reviewed the draft minutes of the August 6, 2021, meeting, which had been circulated.**

**The minutes were approved as circulated.**

It was noted that there were no minutes of a September 26, 2021, meeting, because the Commission convened that day in an adjudicatory function.

### **Executive Director’s Report**

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

#### **Summary & Details (7/1/21 through 10/1/21)**

Referrals	17
Dispositions:	5
Settlements:	1
Non-agreements:	4
Settlement Rate:	20%

Dual-filed (EEOC/HCRC and HUD/HCRC) settlements:	1
State-only settlements:	0
Employment cases settled:	0
Housing cases settled:	1

**Primary Bases for Complaints Settled in Mediation**

Disability	1
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**Dispositions by Mediation Center**

Mediation Center of the Pacific	0/1	(settlement rate 0%)
Mediation Services of Maui		
Private Mediators		
Ku‘ikahi Mediation Services (Hilo)		
West Hawaii Mediation Center	0/1	(settlement rate 0%)
Kauai Economic Opportunity, Inc.		
Hawai‘i Civil Rights Commission	1/3	(settlement rate 33.3%)
<b>OVERALL</b>	<b>1/5</b>	<b>(settlement rate 20%)</b>

DED Kawatachi noted an upward trend in the number of cases referred into mediation since July 1, 2021, but continuing concern that the overall settlement rate was down, with only 1 of 5 dispositions resulting in mediated settlements.

DED Kawatachi presented a data and production report showing caseload data through October 1, 2021.

As of October 1, 2021, the written report showed 343 open cases, a decrease of 21 cases from the number reported as of August 6, 2021.

Of the 343 open investigation cases, 2 (0.6%) were filed in 2017, 30 (8.7%) in 2018, 82 (23.9%) in 2019, 106 (30.9%) in 2020, and 123 (35.9%) 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	5	21	21	48
Response Monitoring	0	5	26	50	74	155
Mediation	0	0	6	19	22	47
Pending Assignment	0	12	32	9	3	56
Active Investigation	2	12	13	7	3	37
<b>TOTAL</b>	<b>2</b>	<b>30</b>	<b>82</b>	<b>106</b>	<b>123</b>	<b>343</b>

The report indicated no new subpoena enforcement litigation.

DED Kawatachi noted continuing concern over case aging. He reported that the HCRC was in the process of restoring capacity by moving to fill vacant positions (4 investigators and 1 enforcement attorney) that had been previously frozen.

**Case Aging** (Last report – 9/6/21)

23.6 % of all cases are 2 years or older (20.6 %)

16.9 % of all cases are over 18 months, but less than 2 years old (17.3 %)

16.6 % of all cases are over 12 months, but less than 18 months old (18.1 %)

17.8 % of all cases are over 6 months but less than 12 months (17.6 %)

25.1% of all cases are 6 months or less (26.4 %)

DED Kawatachi noted that the FY 2021 year-end caseload and data report would be reported when the FY 2021 Annual Report was done.

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

<b>Category</b>	<b>7/1/17 – 10/1/17</b>	<b>7/1/18 – 10/1/18</b>	<b>7/1/19 – 10/1/19</b>	<b>7/1/20 – 10/1/20</b>	<b>7/1/21 – 10/1/21</b>
PCQ Received	148	156	169	115	119
Intake Decision	142	125	153	112	99
Complaint Filed	76	66	65	60	30
Investigation Closed	68	93	80	63	63
Notice of Cause	2	3	3	3	13
Enforcement Closure	5	6	2	0	2

DED Kawatachi noted that low numbers of intake decisions and complaints filed during this period resulted from understaffing.

Commissioner William Puette asked if the numbers of complaints filed included complaints that were later withdrawn. DED Kawatachi replied yes, they did.

Chair Ebesugawa asked if the number of aged (older) cases would go down when vacancies were filled. DED Kawatachi said yes, the number of aged cases should go down when HCRC is fully staffed.

Executive Director (ED) Bill Hoshijo reported that the four vacant Investigator positions would be posted for recruitment on the DHRD recruitment site, possibly as soon as the next day, but at least within a week.

ED Hoshijo reported that there was nothing new to report on the Ke‘elikolani Building reopening, and that it remained to be scheduled.

ED Hoshijo also reported that the anticipated posting of the jointly produced DCAB-HCRC informational ASL videos remained pending, as DCAB was finalizing the videos for posting.

## 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, set for hearing on Friday, November 5, 2021 at 10 a.m.

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. It was probable that an additional proclamation would be issued

## **Update on SCR 66**

Attorney and principle researcher and writer Catherine Chen, presented an updated draft report for Commission review and discussion. She highlighted a new Recommendation 3, recommending that the Hawai'i Attorney General should conduct a "Household Survey Report, based on crime victim surveys, to capture victims' perspectives, providing a better understanding of crime-related data.

Catherine Chen noted that she explored the suggestion that the Commission could recommend changes to state hate crime statutes, but that it presented complex issues, because the efficacy of hate crime laws was debatable; it was not clear that the hate crime legislation effectively protected against hate/bias motivated violence and crimes.

Chair Ebesugawa said she appreciated the depth and breadth of draft, that it was well-researched.

Commissioner Puette said the draft was well done, and that Catherine Chen had done a good job.

Commissioner Jon Matsuoka agreed that it was well put together, thoughtful, and thorough. He expressed concern that the Commission should include and develop the "lived experience" that is not captured by data, looking at the highest numbers of "victims" and "perpetrators" in context of social shifts like dispossession and gentrification. Commissioner Matsuoka recalled reading an article that stated that the largest group of victims were White and the largest group of perpetrators were Hawaiian, but that such statements ignore the antecedents (context), which were not recorded.

ED Hoshijo said we have to consider who makes complaints, who has consciousness of their rights, and rights rhetoric.

Commissioner Joan Lewis wondered and asked how to capture what Commissioner Matsuoka described. She shared two examples of how the issue arises in education: The first where a health teacher was reported to the Principal for teaching controversial subject matter, because a parent did not think COVID was real; and, the second where a teacher covering the infamous *Massie* case (in which three White defendants were convicted of manslaughter for kidnapping and killing a Hawaiian man, but had their ten year sentences commuted to one hour each, served

in the Office of Territorial Governor Lawrence Judd) was reported by a parent for using the phrase “White privilege.”

The issue, said Commissioner Lewis, is who is a victim, that who knows their rights affects who reports violations. Local/non-White people tend not to report. Perpetrators get away with it because victims don’t say they are victims. It’s not a thing.

Chair Ebesugawa summed up, asking if anyone had ideas of how to incorporate Commissioner Matsuoka’s and Commissioner Lewis’s points, by expanding on lived experience.

Catherine Chen said she thought those points can be incorporated into the report.

Commissioner Matsuoka asked what she (and the Commission) would like to see come out of the report.

Catherine Chen said that the recommendations for household surveys and listening sessions were important, not over-criminalization of hate crimes. Most important to spark conversation, meaningful dialog.

ED Hoshijo suggested that should be in the introduction and the conclusion, and maybe in the title.

Chair Ebesugawa identified the focus should not be just hate crimes, but racism.

Commissioner Lewis compared racism to a million paper cuts, micro-offenses that collectively cause harm.

Commissioner Matsuoka compared the report to a body – the quantitative data being the bones, and the qualitative lived experience the flesh.

**The Commissioners approved a motion to authorize Catherine Chen to revise and finalize the SCR 66 report based on the draft presented and the Commission discussion, for approval at the November Commission meeting and submission to the Legislature by December 9, 2021 Or, if the Commission cannot meet in November, the Chair is authorized to approve the final report for submission to the Legislature.**

### **Next meeting.**

**The next meeting of the Commission was scheduled for November 5, 2021, at 2 p.m.**

### **Announcements**

There were no announcements.

### **Executive Session**

**There was no Executive Session.**

### **Adjournment**

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

**Approved by Commission, as circulated, on November 5, 2021, 2021.**