



# **HAWAI'I CIVIL RIGHTS COMMISSION**

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## MINUTES

Hawai'i Civil Rights Commission Office  
via MS TEAMS  
November 5, 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 October 1, 2021, meeting, which had been circulated.**

**The minutes were approved as circulated.**

### **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 11/4/21)**

Referrals	19
Dispositions:	10
Settlements:	4
Non-agreements:	6
Settlement Rate:	40%

Dual-filed (EEOC/HCRC and HUD/HCRC) settlements:	2
State-only settlements:	2
Employment cases settled:	3
Housing cases settled:	1

**Primary Bases for Complaints Settled in Mediation**

Arrest & Court Record	2
Disability	1
<b>Sex</b>	<b>1</b>

**Dispositions by Mediation Center**

Mediation Center of the Pacific	2/3	(settlement rate 66.7%)
Mediation Services of Maui	1/1	(settlement rate 100%)
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	1/5	(settlement rate 20%)

**OVERALL 4/10 (settlement rate 40%)**

DED Kawatachi noted an upward trend in the number of mediation settlements since October 1, 2021, but concern that the settlement rate in HCRC mediation dispositions was down, with only 1 of 5 dispositions resulting in mediated settlements.

DED Kawatachi presented a data and production report showing caseload data through November 4, 2021.

As of November 4, 2021, the written report showed 347 open cases, an increase of 4 cases from the number reported as of October 1, 2021.

Of the 347 open investigation cases, 2 (0.6%) were filed in 2017, 29 (8.4%) in 2018, 76 (21.9%) in 2019, 98 (28.2%) in 2020, and 142 (40.9%) 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	17	25	48
Response Monitoring	0	5	26	49	91	171
Mediation	0	0	6	18	23	47
Pending Assignment	0	11	30	7	1	49
Active Investigation	2	12	9	7	2	32
<b>TOTAL</b>	<b>2</b>	<b>29</b>	<b>78</b>	<b>106</b>	<b>142</b>	<b>347</b>

The report indicated no new subpoena enforcement litigation.

**Case Aging** (Last report – 10/1/21)

23.9 % of all cases are 2 years or older (20.6 %)

15.3 % of all cases are over 18 months, but less than 2 years old (16.9 %)

16.4 % of all cases are over 12 months, but less than 18 months old (16.6 %)

21.0 % of all cases are over 6 months but less than 12 months (17.8 %)

23.3 % of all cases are 6 months or less (25.1 %)

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 – 11/4/17</b>	<b>7/1/18 – 11/4/18</b>	<b>7/1/19 – 11/4/19</b>	<b>7/1/20 – 11/4/20</b>	<b>7/1/21 – 11/4/21</b>
PCQ Received	210	228	220	150	171
Intake Decision	189	190	249	129	152
Complaint Filed	96	97	104	78	55
Investigation Closed	95	110	89	76	88
Notice of Cause	5	5	3	4	14
Enforcement Closure	8	6	2	0	3

DED Kawatachi noted concern over low number of complaints filed (25) since October 1, 2021. This concern was being addressed by shifting resources to conduct intakes. He also noted the higher number of notices of cause (14) issued in the first four months of FY 2022, and the relatively larger number of investigations closed (88) during that period.

Chair Ebesugawa asked about the number of complaints that were filed and served, but without response. She wondered how the HCRC investigation could determine if respondents had gone out of business and how those cases would reach disposition. DED Kawatachi said the investigation would require due diligence to determine whether there was a complaint can be dismissed based on no relief available.

Executive Director (ED) Bill Hoshijo thanked everyone for condolences and expressions of sympathy offered after the passing of his brother, Leonard Hoshijo, former Director of DLIR.

ED Hoshijo reported that the Ke‘elikolani Building was scheduled for December 1, 2021

ED Hoshijo reported that the four vacant Investigator positions were posted on the DHRD recruitment site, and noted that qualified applicants were being sought and encouraged to apply.

ED Hoshijo also shared artwork sent to the HCRC by two Konawaena Middle School students on the subject of Racism and the Victims of Racism in Hawai‘i. A thank you note would be sent to the students through their teacher.

## Chief Counsel's Report

Chief Counsel (CC) Robin 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. At a hearing that day, Friday, November 5, 2021, the HCRC prevailed on the issue, the court affirming that the HCRC did not have jurisdiction over the City and County of Honolulu and that their administration of the Section 8 Program is not a “real estate transaction.”

CC 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 provided an update on the recent extension of the emergency authorization for remote board and commission meetings through the end of 2021. In 2022 the amendments to the Sunshine Law would go into effect, and the HCRC could then decide how to meet going forward.

## **Update on SCR 66**

Attorney and principle researcher and writer Catherine Chen, presented an updated 11/5/21 draft report for Commission review and discussion. She highlighted changes in the introduction, recommendations, and conclusion. There were some changes in the framing of the report, based on Commission discussion, and some additional data incorporated or requested and pending response. The report, she said, is a call to action, to start a deeper conversation.

Catherine Chen said it was important to incorporate the section on limitations of modern legal frameworks on healing and addressing the root causes of hate crime – recognizing that that bias in the criminal justice system can result in inequities that can harm the marginalized communities that hate crime laws are purported to protect.

She also noted that there was one remaining negotiation with DOE on release of data on student on student harassment, over what can be released under privacy rules. She thanked Commissioner Jon Matsuoka and ED Hoshijo for their help, noting that their input was incorporated into the updated draft.

Commissioner William Puette stated that the report was well done, and offered a technical correction to the introduction section, pointing out that the legislature “adopted” SCR 66, not “passed” it.

Commissioner Joan Lewis thanked Catherine Chen for her work.

Chair Ebesugawa concluded that the SCR 66 report was a daunting challenge, but it came together beautifully, and that the report was something the Commission could be proud of and stand behind. She hoped it would be helpful going forward.

**The Commissioners approved a motion to authorize HCRC staff to work with Catherine Chen to finalize the SCR 66 report based on draft presented and Commission discussion,**

**submission to Legislature by December 9, 2021, after review and approval by Chair Ebesugawa.**

**Next meeting.**

**With the 2022 legislative session scheduled to open on January 19, 2022, the next meeting of the Commission was scheduled for January 24, 2022, to be continued on January 28, 2022.**

**Announcements**

There were no announcements.

**Adjournment**

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

**Approved by Commission, as circulated, on January 24, 2022.**