



# **HAWAI‘I CIVIL RIGHTS COMMISSION**

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## MINUTES

Hawai`i Civil Rights Commission Office  
via MS TEAMS  
February 18, 2022  
11:00 a.m.

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

Chair Liann Ebesugawa called the meeting to order.

### **Approval of Minutes**

**The Commissioners reviewed the draft minutes of the January 24, 2022, meeting, continued on January 28, 2022, which had been circulated.**

**The minutes were approved as circulated and submitted.**

### **Executive Director’s Report**

Deputy Executive Director (DED) Marcus Kawatachi presented an FY 2022 HCRC Mediation Program year-to-date summary.

#### **Summary & Details (7/1/21 through 2/16/22)**

Referrals	25
Dispositions:	22
Settlements:	11
Non-agreements:	11
Settlement Rate:	50%

Dual-filed (EEOC/HCRC and HUD/HCRC) settlements:	8
State-only settlements:	3
Employment cases settled:	7
Housing cases settled:	4

**Primary Bases for Complaints Settled in Mediation**

Disability	3
Arrest & Court Record	2
Retaliation	2
Sex	2 (including 1 based on pregnancy)
Age	1
Race	1

**Dispositions by Mediation Center**

Mediation Center of the Pacific	4/6	(settlement rate 66.7%)
Mediation Services of Maui	1/1	(settlement rate 100%)
Private Mediators		
Ku‘ikahi Mediation Services (Hilo)	1/2	(settlement rate 50%)
West Hawaii Mediation Center	1/3	(settlement rate 33.3%)
Kauai Economic Opportunity, Inc.		
Hawai‘i Civil Rights Commission	4/10	(settlement rate 40%)

**OVERALL 11/22 (settlement rate 50%)**

Kristine Pagano from DCAB asked about disability cases settled in mediation, and whether there were barriers in the process that affected persons with disabilities. DED Kawatachi responded, indicating that reasonable accommodations were made for parties with a disability to provide access and participation in the mediation program.

DED Kawatachi presented a data and production report showing caseload data through February 16, 2022.

As of February 16, 2022, the written report showed 319 open cases, an increase of 1 case from the number reported as of January 21, 2022.

Of the 319 open investigation cases, 1 (0.3%) was filed in 2017, 25 (7.8%) in 2018, 67 (21.0%) in 2019, 80 (25.1%) in 2020, 128 (40.1%) in 2021, and 18 (5.6%) in 2022.

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

	2017	2018	2019	2020	2021	2022	Total
Housing Cases	0	0	4	14	28	4	50
Response Monitoring	0	5	22	45	74	14	160
Mediation	0	0	6	11	21	0	38
Pending Assignment	0	11	30	4	0	0	45
Active Investigation	1	9	5	6	5	0	26
<b>TOTAL</b>	<b>1</b>	<b>25</b>	<b>67</b>	<b>80</b>	<b>128</b>	<b>18</b>	<b>319</b>

The report indicated no new subpoena enforcement litigation.

**Case Aging** (Last report – 1/21/22)

31.0 % of all cases are 2 years or older (31.1 %)

15.4 % of all cases are over 18 months, but less than 2 years old (14.5 %)

13.2 % of all cases are over 12 months, but less than 18 months old (13.2 %)

15.0 % of all cases are over 6 months but less than 12 months (18.9 %)

25.4 % of all cases are 6 months or less (22.3 %)

DED Kawatachi reviewed the FY 2021 year-end caseload and data report comparison with the past ten fiscal years. He noted a lower number of pre-complaint questionnaires (PCQs) received and complaints filed, compared to FY 2020, with the number of investigations closed about the same as in FY 2020.

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

<b>Category</b>	<b>7/1/17 – 2/16/18</b>	<b>7/1/18 – 2/16/19</b>	<b>7/1/19 – 2/16/20</b>	<b>7/1/20 – 2/16/21</b>	<b>7/1/21 – 2/16/22</b>
PCQ Received	373	400	379	282	306
Intake Decision	342	325	431	238	284
Complaint Filed	170	186	209	130	113
Investigation Closed	171	195	145	128	181
Notice of Cause	23	7	5	7	14
Enforcement Closure	14	13	3	7	4

DED Kawatachi noted that the number of complaints filed during FY 2022 was still low. He also noted that the number of investigations closed and notices of cause issued in FY 2022 was higher than in past years.

Executive Director (ED) Bill Hoshijo noted that there was some qualitative discussion of national trends, with lower numbers of discrimination complaints filed during the Covid-19 pandemic, and what kinds of complaints. He could look at the number of charge filings in the EEOC Honolulu Local Office, but those numbers would be skewed by the large number of Covid-related religious accommodation cases.

Chair Ebesugawa asked if staff had looked at the experience of other states. ED Hoshijo said he had not, but would think about comparable states (size, demographics, laws and jurisdiction) that might good comparators.

## **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.

## **2022 Legislation**

Pursuant to a motion approved on January 24, 2022, ED Hoshijo and CC Wurtzel reported on two bills, HB 2491, Relating to the Hawaiian Language, and HB 2495, Relating to Employment Practices (non-disclosure agreements) that staff had identified as substantially similar to bills introduced during the 2020 or 2021 sessions that the Commission had reviewed and acted on, which staff, after consultation with Chair Ebesugawa, was authorized to submit testimonies consistent with the positions taken on those earlier bills. **The testimonies on both HB 2491 and HB 2495 were reviewed and acted upon as required by the January 24, 2022, motion, and the Commission affirmed and approved the position taken in the testimonies as submitted.**

### **RELATING TO HAWAIIAN LANGUAGE**

#### **[HB2491](#)**

Requires all letterheads, documents, symbols, and emblems of the State and other political subdivisions that include Hawaiian words or names to include accurate and appropriate Hawaiian names, spelling, and punctuation. The bill establishes references for accurate, appropriate, and authentic Hawaiian names and words, including proper Hawaiian spelling and punctuation. It also clarifies that bills and other official documents are not required to be written in Hawaiian and that incorrect Hawaiian words and names shall not invalidate the documents or render them unenforceable and no cause of action shall arise accordingly.

**Position: Support.**

### **RELATING TO EMPLOYMENT PRACTICES**

#### **[HB2495](#)**

Amends H.R.S. § 378-2.2(a), by adding language that prohibits employers from “entering into” or requiring an employee to enter into “a nondisclosure agreement that prevents the employee from disclosing or discussing sexual harassment or sexual assault occurring in the workplace, at work-related events, between employees, or between an employer and an employee.” The bill also deletes the limiting language, “as a condition of employment,” effectively broadening the scope of the prohibited practice.

**Position: Support.**

The Commissioners reviewed 2022 Legislative Summary 2.

CC Wurtzel reported that the state Title IX bills, HB 1775 and SB 2636 were still alive, amended by deletion of definitions that the bill's would have added to HRS Chapter 368D, with matching House and Senate drafts.

Chair Ebesugawa asked Kristine Pagano from DCAB what her perspective was on the bills relating to electronic information technology accessibility, HV 1419 and SB 2144, and SB 2381.

Kristine Pagano said that DCAB would need a communication access specialist to do the work required in the bill, but that the DCAB access specialist position was vacant and targeted to be abolished. For that reason, DCAB wants to partner with the Office of Enterprise Technology Services (ETS), with ETS to take the lead and DCAB to support, of developing state standards. Having a state standard for all state agencies' procurement of hardware and software could result in high cost/expense. Training on new technology will also be required, and Hawai'i can look to other states, like New York, for accessibility standards and models that work.

Ms. Pagano said that it can be overwhelming for state agencies to learn the requirements for captioning, transcripts, and recording of Sunshine Law meetings. Standards need to be clearly defined. DCAB is in support, but is unable to take the lead, so wants to partner with ETS and other agencies.

Chair Ebesugawa summed up - technology affords increased access, but there are complications, as Ms. Pagano explained. She asked for DCAB to keep the HCRC informed.

Kristine Paganao raised a question about language access in Hawaiian – She said that there are people who are deaf who understand Hawaiian. Are state agencies required by the ADA to provide captioning or transcripts in Hawaiian? She said she has been discussing that question with the Office of Language Access (OLA).

Commissioner William Puette asked how it is being done for other languages. Is there an obligation to provide services in all languages for those who are disabled?

ED Hoshijo responded that when it comes to federal funded and state and state-funded **services**, state agencies have Title VI/Executive Order 13166 and state law obligations to provide language access for persons with limited English proficiency, not just for a limited number of primary languages – have to make a good faith effort on request. An LEP person who is deaf could require both language assistance and a disability accommodation.

### **Next meeting.**

The next meeting of the Commission was scheduled for March 16, 2022, at 11:00 a.m.

**Announcements**

Chair Ebesugawa thanked HCRC staff for work on the FY 2021 Annual Report.

**Adjournment**

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

**Approved by Commission, as circulated, on March 16, 2022.**