



HAWAI‘I CIVIL RIGHTS COMMISSION

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MINUTES

Hawai`i Civil Rights Commission Office
via MS TEAMS
March 16, 2022
11:00 a.m.

Present: Liann Ebesugawa, Joan Lewis, William Puette, and Jon Matsuoka, Commissioners; Robin Wurtzel, Bill Hoshijo, and Marcus Kawatachi, Staff; Mele Moea‘I, Linda Elento, Public.

Chair Liann Ebesugawa called the meeting to order.

Approval of Minutes

The Commissioners reviewed the draft minutes of the February, 2022, meeting.

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 3/15/22)

Referrals	32
Dispositions:	23
Settlements:	11
Non-agreements:	12
Settlement Rate:	47.8%

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	4/11	(settlement rate 36.4%)

OVERALL 11/23 (settlement rate 47.8%)

DED Kawatachi presented a data and production report showing caseload data through March 15, 2022.

As of March 15, 2022, the written report showed 321 open cases, an increase of 2 cases from the number reported as of February 16, 2022.

Of the 321 319 open investigation cases, 1 (0.3%) was filed in 2017, 24 (7.5%) in 2018, 65 (22.2%) in 2019, 77 (24.0%) in 2020, 124 (38.6%) in 2021, and 30 (9.3%) 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	18	26	6	50
Response Monitoring	0	4	18	39	69	22	152
Mediation	0	0	6	10	20	0	36
Pending Assignment	0	11	30	5	2	2	50
Active Investigation	1	9	7	9	5	7	33
TOTAL	1	24	65	77	124	30	321

The report indicated no new subpoena enforcement litigation.

Case Aging (Last report – 2/16/22)

34.3 % of all cases are 2 years or older (31.0 %)

11.2 % of all cases are over 18 months, but less than 2 years old (15.4 %)

13.7 % 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 (15.0 %)

25.9 % of all cases are 6 months or less (25.4 %)

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

Category	7/1/17 – 3/15/18	7/1/18 – 3/15/19	7/1/19 – 3/15/20	7/1/20 – 3/15/21	7/1/21 – 3/15/22
PCQ Received	415	461	419	314	346
Intake Decision	389	363	480	280	326
Complaint Filed	170	186	209	130	125
Investigation Closed	188	213	168	153	186
Notice of Cause	24	9	7	7	15
Enforcement Closure	15	13	4	9	7

DED Kawatachi noted that the number of pre-complaint questionnaires (PCQs) received, intake decisions made, and complaints filed during FY 2022 was comparable to the numbers for FY 2021. He also noted that the number of investigations closed and notices of cause issued in FY 2022 were still higher than in recent past years.

Request for Extension of Time to Investigate

Executive Director (ED) Bill Hoshijo requested an extension of time to investigate all cases from March 31, 2022, through March 31, 2023.

The Commission approved the request for extension of time to investigate all cases, from March 31, 2022, through March 31, 2023.

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

The Commissioners reviewed 2022 Legislative Summary 3.

CC Wurtzel reviewed several bills the HCRC was tracking and offering testimony on, which were still alive:

RELATING TO EMPLOYMENT PRACTICES

HB 2495, HD1

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. The HCRC testified in support of the bill.

RELATING TO CIVIL RIGHTS

HB 1775, HD2

Specifies additional forms of discrimination and other prohibited conduct under Chapter 368D, HRS. Requires covered entities to adopt written policies and undertake other specified enforcement actions no later than 1/1/2023. Requires annual reports to Legislature. The HCRC testified in support of the bill, but raised concern over a blanket conflict provision mandating that federal law shall prevail in any conflict with state law. ED Hoshijo briefly discussed the reason for concern over that conflict provision, which would undermine the reason for having a state Title IX corollary.

RELATING TO THE HAWAII STATE LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUEER, PLUS COMMISSION

SB 2670, SD2

Establishes the Hawaii state lesbian, gay, bisexual, transgender, queer, plus commission. Permits each county mayor to appoint a county committee on the status of lesbian, gay, bisexual, transgender, queer, plus affairs. Appropriates funds. The HCRC testified in support of the bill.

RELATING TO FAIR HOUSING REASONABLE ACCOMMODATIONS

SB 2002, SD2

Codifies the administrative rule definition of "assistance animal". Clarifies the type of verification an individual may provide to substantiate a reasonable accommodation request for a specific assistance animal. Specifies that possession of a vest or other distinguishing animal garment, tag, or registration document commonly purchased online and purporting to identify an animal as a service animal or assistance animal does not constitute valid verification of a disability-related need for an assistance animal. The HCRC testified in support of the bill.

RELATING TO RENTAL DISCRIMINATION

SB 206, SD2

Prohibits discrimination, including in advertisements for rental property, in rental transactions based on participation in a section 8 housing choice program or any permanent supportive housing program or requirements related to participation in these housing assistance programs. This was the only one of 5 source of income rental discrimination bills that was still alive. The HCRC testified in support of the bill in the Senate (2021).

RESOLUTIONS

CC Wurtzel summarized and the Commissioners discussed several resolutions:

REQUESTING THE HAWAII CIVIL RIGHTS COMMISSION TO CLARIFY CLAIMS WITHIN THE SCOPE OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

SCR 129

SCR. 129 requests the HCRC to clarify claims within the scope of the Individuals with Disabilities Education Act, known as IDEA. Act 164, L. 2021 amended HRS. 368-1.5, over which HCR has jurisdiction. Act 164 restored jurisdiction over state and state-funded agencies regarding disability discrimination by clarifying the definition of “program or activity receiving state financial assistance” to include programs which may also receive federal funds. The definition exempted the HCRC’s jurisdiction over claims within the scope of the IDEA. Act 164 goes into effect on July 1, 2022.

Discussion: Staff recommended comments only.

The resolution asks HCRC to identify or clarify claims within the IDEA over which we will have jurisdiction. However, HCRC will reject claims covered by the IDEA as outside of our jurisdiction, pursuant to statute.

Chair Ebesugawa recognized Linda Elento, who offered comments on the resolution, which she was the leading advocate and moving force for introduction and hearing. She raised a point of emphasis, that the resolution is incorrect where it says “the Individuals with Disabilities Act does not cover *many* discrimination complaints brought by special education students;” rather, she argued, the IDEA does not cover *any* discrimination complaints.

Position: Comments only.

REQUESTING THE GOVERNOR TO ORDER EXECUTIVE AGENCIES TO REVIEW AND REVISE THEIR POLICIES AND RULES TO PROHIBIT DISCRIMINATION IN RENTAL TRANSACTIONS AND ADVERTISEMENTS FOR RENTAL

TRANSACTIONS BASED ON SOURCE OF INCOME OR PARTICIPATION IN HOUSING ASSISTANCE PROGRAMS

SCR 162 / SR 154

Resolutions would request all executive agencies to review and revise their policies and rules to prohibit discrimination in rental transactions and advertisements for rental transactions based on source of income or participation in housing assistance programs.

Discussion: Staff recommended comments only.

The legislature having considered and declined to pass numerous bills which would have established a statutory prohibition against discrimination in housing based on source of income, executive branch policies and rules that prohibit such discrimination on that basis would be invalid, beyond and outside the scope of statutory authority.

Position: Comments only.

RECOGNIZING THE HISTORIC, CULTURAL, AND STRATEGIC CONNECTIONS AMONG THE PEOPLES OF OCEANIA, OF WHICH HAWAI‘I IS A PART, AND URGING GREATER COLLABORATION WITH GOVERNMENTS OF NATIONS AND PROGRAMS AND TRAINING TO COMBAT DISCRIMINATION AGAINST PACIFIC ISLAND COMMUNITIES.

SCR 236 / SR 137

HCR 159 / HR 159

Would recognize the historic, cultural, and strategic connections among the peoples of Oceania, of which Hawai‘i is a part, and urge greater collaboration and exchange of best practices with government officials of Pacific Island nations, and implementation of programs and training to combat discrimination against Pacific Island communities.

Position: Support.

REQUESTING THE DEPARTMENT OF EDUCATION TO IMPLEMENT A CIVIL RIGHTS CURRICULUM PLAN FOR PUBLIC SCHOOL STUDENTS.

SCR 226 / SR 219

Requests the Department of Education implement a Civil Rights Curriculum for Public School Students.

Discussion: Staff recommended support, with the same comments as offered in testimony on SB 2979. Commissioner Joan Lewis a civil rights curriculum should be designed and used to share the history of the civil rights movement not just for DOE public school students, but for everyone in the State of Hawai‘i.

Position: Support, with emphasis that civil rights curriculum should be designed and used to share the history of the civil rights movement not just for DOE public school students, but for everyone in the State of Hawai‘i.

Chair Ebesugawa thanked the staff for implementing Commission positions in preparation and submission of testimonies on bills before the legislature.

Next meeting.

The next meeting of the Commission was scheduled for April 29, 2022, at 11:00 a.m.

Announcements

There were no announcements.

Chair Ebesugawa recognized Mele Moea‘i, who shared that she was a student from Laie, and appreciated the opportunity to listen and explore, especially the discussion of civil rights in schools.

Adjournment

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

Correction made on page 6 of draft minutes.

Approved by Commission, as circulated and corrected, on April 29, 2022.