



HAWAI‘I CIVIL RIGHTS COMMISSION

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MINUTES

Hawai‘i Civil Rights Commission Office
via MS TEAMS
April 29, 2022
11:00 a.m.

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

Chair Liann Ebesugawa called the meeting to order.

Approval of Minutes

The Commissioners reviewed the draft minutes of the March 16, 2022, meeting.

Executive Director (ED) Bill Hoshijo noted a correction on page 6, in the discussion of Senate Concurrent Resolution No. 129, suggesting that the last sentence of the discussion should be deleted, because it characterized the meaning of comment from a member of the public by inference, not what she actually said.

The minutes were approved as circulated and submitted, as corrected on page 6.

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 4/28/22)

Referrals	34
Dispositions:	29
Settlements:	15
Non-agreements:	14
Settlement Rate:	51.7%

DED Kawatachi noted that the settlement rate reflected an improvement over the same period last year.

Dual-filed (EEOC/HCRC and HUD/HCRC) settlements:	11
State-only settlements:	4
Employment cases settled:	9
Housing cases settled:	6

Primary Bases for Complaints Settled in Mediation

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

Dispositions by Mediation Center

Mediation Center of the Pacific	5/7	(settlement rate 71.4%)
Mediation Services of Maui	2/4	(settlement rate 50%)
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	6/13	(settlement rate 46.2%)

OVERALL 15/29 (settlement rate 51.7%)

Chair Ebesugawa asked if improvement in mediation settlement rates can be attributed to a return to in-person mediation.

DED Kawatachi responded that HCRC is still using remote mediation, and he was not sure if mediation centers are returning to in-person mediation.

Chair Ebesugawa suggested it should be monitored. DED Kawatachi said that the impact of doing mediations remotely has been mixed on a national level, based on anecdotal reports.

DED Kawatachi presented a data and production report showing caseload data through April 28, 2022.

As of April 18, 2022, the written report showed 324 open cases, an increase of 3 cases from the number reported as of March 15, 2022.

Of the 324 open investigation cases, 1 (0.3%) was filed in 2017, 22 (6.8%) in 2018, 62 (19.1%) in 2019, 71 (21.9%) in 2020, 116 (35.8%) in 2021, and 52 (16.0%) 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	13	24	13	54
Response Monitoring	0	2	20	40	64	38	164
Mediation	0	0	3	9	16	1	29
Pending Assignment	0	13	29	4	1	0	47
Active Investigation	1	7	6	5	11	0	30
TOTAL	1	22	62	71	116	52	324

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 %)

DED Kawatachi noted a slight improvement in aging of oldest cases, with hope for more with the filling of investigator vacancies.

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

Category	7/1/17 – 4/28/18	7/1/18 – 4/28/19	7/1/19 – 4/28/20	7/1/20 – 4/28/21	7/1/21 – 4/28/22
PCQ Received	482	536	449	383	409
Intake Decision	458	416	491	338	395
Complaint Filed	242	242	243	176	152
Investigation Closed	215	225	169	176	211
Notice of Cause	27	12	9	7	14
Enforcement Closure	27	13	4	11	7

DED Kawatachi noted that the number of pre-complaint questionnaires (PCQs) received and intake decisions made were up from the number in 2021, but the number of complaints filed during FY 2022 was lower than in 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.

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 4B.

CC Wurtzel reviewed the status of several bills the HCRC was tracking and offering testimony on. Bills that pass are transmitted or enrolled to the Governor for signature, veto, or enactment without signature.

RELATING TO FAIR HOUSING REASONABLE ACCOMMODATIONS

SB 2002, SD2, HD2

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. Effective date November 1, 2022.

Status: Enrolled to Governor.

RELATING TO EMPLOYMENT PRACTICES

HB 2495, HD1, SD1

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.”

Status: Transmitted to Governor.

RELATING TO CIVIL RIGHTS

HB 1775, HD2, SD3

Requires entities with state education programs or activities, or that receive state funding for educational programs or activities, to adopt written policies and undertake other specified actions no later than 1/1/2023. Requires annual reports to Legislature. Appropriates funds. 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. The Senate amended the bill to delete that conflict provision.

Status: The Conference Committee recommended that the bill be passed in a CD1. Not yet reported from Conference Committee.

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

SB 2670, SD2, HD2

Establishes the Hawaii state lesbian, gay, bisexual, transgender, queer, plus commission. Requires each county mayor to appoint a county committee on the status of lesbian, gay, bisexual, transgender, queer, plus affairs. Appropriates funds.

Status: The Conference Committee recommended that the bill be passed in a CD1. Not yet reported from Conference Committee.

RELATING TO INSURANCE

HB 2405, HD2, SD2

Prohibits health insurance companies from denying coverage on the basis of gender identity if the policy covers the treatment for purposes other than gender transition. Requires insurance companies to provide applicants and insured persons with clear information about the coverage of gender transition services, including the process for appealing a claim denied on the basis of medical necessity.

Status: The Conference Committee scheduled to reconvene.

RELATING TO RENTAL DISCRIMINATION

SB 206, SD2, HD1

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. Appropriates funds.

Status: The Conference Committee recommended that the bill be passed in a CD1. Not yet reported from Conference Committee.

RELATING TO ELECTRONIC INFORMATION TECHNOLOGY ACCESSIBILITY

SB 2144, SD1, HD1

Requires the office of enterprise technology services, in consultation with the disability and communication access board and a working group comprised of stakeholders, to develop and publish, and periodically review and update, electronic information technology accessibility standards to be implemented by all state entities.

Status: The Conference Committee recommended that the bill be passed in a CD1. Not yet reported from Conference Committee.

RELATING TO THE HAWAIIAN LANGUAGE

HB 2491, HD2, SD2

Requires all letterheads of the State and counties to include consistent Hawaiian names, spelling, and punctuation. Requires certain state officials to prominently display a Hawaiian language translation of the name of their respective office or department at least once on the main page of their official website and in the letterhead of their stationery. Requires UH to compile a full list of all dialects and other variations in the Hawaiian language currently in use and submit a report of its findings to the legislature

Status: The Conference Committee recommended that the bill be passed in a CD1. Not yet reported from Conference Committee.

RESOLUTIONS

CC Wurtzel summarized and the Commissioners discussed several resolutions:

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.

SR 154

Status: SR 154 adopted.

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.

Status: HR 159 adopted.

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

SCR 226 / SR 219

Status: To be reported at next meeting.

ED Hoshijo reported that the budget bill worksheets, HB 1600, CD1, the HCRC general fund budget was agreed upon at the base level, no change.

Chair Ebesugawa thanked the staff for its work on legislation.

Next meeting.

The next meeting of the Commission was scheduled for May 25, 2022, at 11:00 a.m.

Announcements

There were no announcements.

Adjournment

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

Approved by Commission, as circulated, on May 25, 2022.