



HAWAI‘I CIVIL RIGHTS COMMISSION

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MINUTES

Hawai‘i Civil Rights Commission Office
via MS TEAMS
May 25, 2022
11:00 a.m.

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

Chair Liann Ebesugawa called the meeting to order.

Approval of Minutes

The Commissioners reviewed the draft minutes of the April 29, 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 5/23/22)

Referrals 36

Dispositions: 32

Settlements: 16

Non-agreements: 16

Settlement Rate: 50%

Dual-filed (EEOC/HCRC and HUD/HCRC) settlements: 11

State-only settlements: 5

Employment cases settled: 10

Housing cases settled: 6

Primary Bases for Complaints Settled in Mediation

Arrest & Court Record	4
Disability	3
Familial Status	2
Race	2
Retaliation	2
Sex	2 (including 1 based on pregnancy)
Age	1

DED Kawatachi noted that the protected basis with the highest number of mediation settlements was Arrest & Court Record. A&CR is a state-only protected basis, and the strong state law provides an incentive for respondents to settle in mediation.

Dispositions by Mediation Center

Mediation Center of the Pacific	6/8	(settlement rate 75%)
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	6/15	(settlement rate 46.2%)

OVERALL 16/32 (settlement rate 50%)

DED Kawatachi responded that HCRC in-house mediations were primarily fair housing cases.

DED Kawatachi presented a data and production report showing caseload data through May 23, 2022.

As of May 23, 2022, the written report showed 318 open cases, a decrease of 6 cases from the number reported as of April 28, 2022.

Of the 318 open investigation cases, 1 (0.3%) was filed in 2017, 19 (6.0%) in 2018, 55 (17.3%) in 2019, 69 (21.7%) in 2020, 105 (33.0%) in 2021, and 69 (21.7%) 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	2	13	19	16	50
Response Monitoring	0	2	20	37	62	50	171
Mediation	0	0	3	9	13	1	26
Pending Assignment	0	10	26	4	3	1	44
Active Investigation	1	7	4	6	8	1	27
TOTAL	1	19	55	69	105	69	318

The report indicated no new subpoena enforcement litigation.

Case Aging (Last report – 4/28/22)

30.2 % of all cases are 2 years or older (32.7 %)

12.9 % of all cases are over 18 months, but less than 2 years old (11.4 %)

11.9 % of all cases are over 12 months, but less than 18 months old (13.0 %)

18.2 % of all cases are over 6 months but less than 12 months (17.3 %)

26.7 % of all cases are 6 months or less (25.6 %)

DED Kawatachi noted continuing progress in aging of oldest cases 2 years or older.

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

Category	7/1/17 – 5/23/18	7/1/18 – 5/23/19	7/1/19 – 5/23/20	7/1/20 – 5/23/21	7/1/21 – 5/23/22
PCQ Received	530	582	469	418	441
Intake Decision	498	449	552	374	424
Complaint Filed	256	269	253	196	169
Investigation Closed	231	240	188	191	224
Notice of Cause	27	12	9	9	15
Enforcement Closure	29	13	7	12	8

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 5.

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, CD1

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. The bill passed both houses as a CD1.

Status: Transmitted to Governor.

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

SB 2670, SD2, HD2, CD1

Establishes the Hawaii state lesbian, gay, bisexual, transgender, queer, plus commission. The bill passed both houses as a CD1.

Status: Enrolled to Governor.

RELATING TO INSURANCE

HB 2405, HD2, SD2, CD1

Prohibits health insurers, mutual benefit societies, and health maintenance organizations from applying categorical cosmetic or blanket exclusions to gender affirming treatments or procedures when determined to be medically necessary pursuant to applicable law and specifies a process for appealing a claim denied on the basis of medical necessity. Requires those entities 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. The bill passed both houses as a CD1.

Status: Transmitted to Governor.

RELATING TO RENTAL DISCRIMINATION

SB 206, SD2, HD1, CD1

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. Does not apply to landlords with ownership of less than four dwelling units, unless the owner owns more than a ten percent interest in more than four dwelling units (a “mom and pop” exception). The bill passed both houses as a CD1.

Status: Enrolled to Governor.

RELATING TO ELECTRONIC INFORMATION TECHNOLOGY ACCESSIBILITY

SB 2144, SD1, HD1, CD1

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. The bill passed both houses as a CD1.

Status: Enrolled to Governor.

RELATING TO THE HAWAIIAN LANGUAGE

HB 2491, HD2, SD2, CD1

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. The bill passed both houses as a CD1.

Status: Transmitted to Governor.

RESOLUTIONS

CC Wurtzel reported that no concurrent resolutions that the HCRC was tracking were adopted, and that these three resolutions were adopted.

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.

SR 219

Status: SR 219 adopted.

Next meeting.

The next meeting of the Commission was scheduled for June 22, 2022, at 11:00 a.m.

Announcements

Chair Ebesugawa shared that the Hawai'i State Ethics Commission was offering ethics training for State Board and Commission Members, live via Zoom in August, October, December, and January, registration required, and also as a self-directed training. It was noted that all current HCRC Commissioners participated in a live ethics training presented at the State Capitol pre-Covid-19 Emergency.

Closed Executive Session

The Commissioners voted to go into Closed Executive Session, to discuss a personnel matter pursuant to HRS § 92-5(a)(2).

The Commissioners came out of Closed Executive Session.

Adjournment

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

Approved by Commission, as circulated, on June 22, 2022.