



# HAWAI‘I CIVIL RIGHTS COMMISSION

## KOMIKINA PONO KĪWILA O HAWAI‘I

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### MINUTES

Hawai‘i Civil Rights Commission Office  
via Zoom  
February 28, 2023  
12:45 p.m.

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

Chair Liann Ebesugawa called the meeting to order.

#### **Approval of Minutes**

The Commissioners reviewed the draft minutes of the January 23, 2023 meeting that was continued to January 30, 2023.

Those minutes were approved as circulated.

#### **Request for Extension of Time to Investigate**

Deputy Executive Director (DED) Marcus Kawatachi requested an extension of time to investigate all cases from March 31, 2023, through March 31, 2024.

The Commission approved the request for extension of time to investigate all cases, from March 31, 2023, through March 31, 2024.

#### **Executive Director’s Report**

DED Kawatachi presented an FY 2023 HCRC Mediation Program year-to-date summary.

#### **Summary & Details (7/1/22 through 2/27/23)**

Referrals	15
Dispositions:	13
Settlements:	8
Non-agreements:	5
Settlement Rate:	61.5%

Dual-filed (EEOC/HCRC and HUD/HCRC) settlements:	6
State-only settlements:	2
Employment cases settled:	2
Housing cases settled:	6

**Primary Bases for Complaints Settled in Mediation**

Disability	4
Familial Status	2
Religion	1
Retaliation	1

**Dispositions by Mediation Center**

Mediation Center of the Pacific	2/2	(settlement rate 100%)
Mediation Services of Maui		
Private Mediators	1/1	(settlement rate 100%)
Ku‘ikahi Mediation Services (Hilo)		
West Hawaii Mediation Center		
Kauai Economic Opportunity, Inc.		
Hawai‘i Civil Rights Commission	5/10	(settlement rate 50%)
<b>OVERALL</b>	<b>8/13</b>	<b>(settlement rate 61.5%)</b>

DED Kawatachi also presented a data and production report showing caseload data through February 27, 2023.

As of February 27, 2023, the written report showed 310 open cases, an increase of 4 cases from the number reported as of January 20, 2023.

Of the 310 open investigation cases, 1 (0.3%) was filed in 2017, 13 (4.2%) in 2018, 35 (11.3%) in 2019, 47 (15.2%) in 2020, 63 (20.3%) in 2021, 126 (40.6%) in 2022, and 25 (8.1%) in 2023.

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	2023	Total
Housing Cases	0	0	2	5	8	24	8	47
Response Monitoring	0	2	13	29	41	89	16	190
Mediation	0	0	3	7	11	11	1	33
Pending Assignment	0	5	14	3	2	1	0	25
Active Investigation	1	6	3	3	1	1	0	15
<b>TOTAL</b>	1	13	35	47	63	126	25	310

The report indicated no new subpoena enforcement litigation.

**Case Aging** (Last report – 1/20/23)

32.6 % of all cases are 2 years or older (33.0 %)

8.1 % of all cases are over 18 months, but less than 2 years old (8.2 %)

15.2 % of all cases are over 12 months, but less than 18 months old (13.7 %)

21.0 % of all cases are over 6 months but less than 12 months (21.6 %)

23.2 % of all cases are 6 months or less (23.5 %)

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

<b>Category</b>	<b>7/1/18 – 2/27/19</b>	<b>7/1/19 – 2/27/20</b>	<b>7/1/20 – 2/27/21</b>	<b>7/1/21 – 2/27/22</b>	<b>7/1/22 – 2/27/23</b>
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PCQ Received	414	397	291	334	319
Intake Decision	337	453	255	296	317
Complaint Filed	192	221	132	131	104
Investigation Closed	200	150	145	182	119
Notice of Cause	7	7	7	14	5
Enforcement Closure	13	4	7	7	0

**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. Commissioner Puette requested a brief memorandum summarizing the case, which CC Wurtzel agreed to provide to the Commissioners.

CC Wurtzel reported that DN 22-01-H-D-RET, *William D. Hoshijo, Executive Director, on behalf of the complaint filed by Tereza Kristall and S. Joshua Kristall-Wagner v. Elizabeth Dutdut; David & Floralee D. Letarte Trust; Garden Island Realty LLC; and Bryan Miyake* went to hearing, and the hearings examiner dismissed the case. The record has been transmitted to the Commission. CC Wurtzel will take a few weeks to provide the Commissioners with a memorandum summarizing the case and then schedule an attorney client meeting with them. Commissioners can receive the entire record, including transcripts, upon request. The case will go to the Commissioners for final decision.

**2023 Legislation**

The Commissioners reviewed 2023 Legislative Summary 2, with staff recommendations, and decided on HCRC positions as follows:

**RELATING TO EMPLOYMENT EARNINGS**

SB1057 SD1 [https://www.capitol.hawaii.gov/sessions/session2023/bills/SB1057\\_SD1\\_.pdf](https://www.capitol.hawaii.gov/sessions/session2023/bills/SB1057_SD1_.pdf)

Requires job listings to include an hourly rate or salary range.

Status: ref to LBT (2-8-23), CPN (2-21 and 23-2023-passed SD 2)

**Discussion: Staff recommended support.** HCRC has supported pay transparency previously, when included in Equal Pay bills. The Commissioners voted to support an Equal Pay bill this year

that included this provision. In this bill, pay transparency is the only issue. This bill will aid women and minorities who are traditionally paid less, providing them with more information about pay.

**Position: Support.**

## **RELATING TO BACKGROUND CHECKS**

HB777 HD1 [https://www.capitol.hawaii.gov/sessions/session2023/bills/HB777\\_HD1\\_.pdf](https://www.capitol.hawaii.gov/sessions/session2023/bills/HB777_HD1_.pdf)

Authorizes the Department of Human Services to conduct national criminal background checks for current and prospective employees; volunteers; contractors; and contractors' employees, agents, and volunteers, who are in positions that require close proximity to certain minors, young adults, or vulnerable adults.

Status: Ref to HUS (2-2-2023), JHA

**Discussion: Staff recommended no opposition.** The arrest and court record statute (HRS § 378-2.5) contains numerous exceptions (19 listed), including the State, specific departments, financial institutions, and those who work with vulnerable populations. In the past HCRC has had no opposition to these types of additions to the exceptions.

**Position: No opposition.**

## **RELATING TO PARENTAL RIGHTS**

HB1393 [https://www.capitol.hawaii.gov/sessions/session2023/bills/HB1393\\_.pdf](https://www.capitol.hawaii.gov/sessions/session2023/bills/HB1393_.pdf)

Establishes certain parental rights. Prohibits the State and counties from enacting any rules, regulations, or laws that infringe upon these parental rights.

Status: JHA

**Discussion: Staff recommended oppose.** This bill appears to be based on model legislation proposed by the American Legislative Exchange Council (ALEC). This bill refers to the rights of parents to direct education, so it could prevent schools from teaching material antithetical to a parent's beliefs. Commissioner Lewis stated that parents already have the right to choose to opt their child out of current curriculum, and it does occur. The Department of Education has a list of controversial subject matter issues listed on its website, and it advises teachers what they must do if they take up anything at all controversial in the classroom. Commissioner Lewis stated that this year alone she has had 5 or 6 students opt out in her school, and she has concerns that this may increase. Commissioner Matsuoka noted that it is a trend that he is seeing nationwide. Executive Director Hoshijo asserted that HB 1393 goes beyond the rights explained by Commissioner Lewis and allow parents to challenge the curriculum, not just opt out of curriculum.

**Position: Oppose.**

## **Legislative Updates**

CC Wurtzel provided updates on the following bills on which the Commissioners had already taken a position:

CC Wurtzel reported that SB 40, relating to civil remedies for discriminatory reporting to a law enforcement officers, passed out of committee with some amendments, as SB 40 SD1. The standard for discriminatory reporting was changed to “knowingly.” The committee asked the HCRC to work on the language of the bill.

CC Wurtzel reported that one of the service animal bills that the Commissioners had already considered was still alive.

CC Wurtzel reported that SB 1, SD1 has become the Senate’s vehicle for supporting abortion rights. It incorporates SB 896, including a preamble explaining the purpose of the bill. Although the Commissioners previously decided to take no position on SB 896, the current version appears to be in the same spirit as the Commissioners’ earlier position on SB 1 (support in part, and no opposition in part). The current version has an even clearer purpose.

CC Wurtzel reported that SB 1167, SD1 is a constitutional amendment to protect an individual's reproductive freedom in their most intimate decisions, including the right to abortion and contraceptives. It was not on the previous list. It is substantially similar to SB 1528, on which the Commissioners took a position of support, though not identical. Based on that position, testimony in support was provided for SB 1167, as SB 1528 was not set for hearing.

## **Next meeting**

The next meeting of the Commission was scheduled for March 21, 2023, at 2:00 p.m.

## **Closed Executive Session**

There being no objection, the Commissioners went into Closed Executive Session, to discuss a personnel matter pursuant to HRS §§ 92-4 and 92-5(a)(2).

The Commissioners came out of Closed Executive Session.

## **Announcements**

The Commissioners and Staff paid tribute to Bill Hoshijo, thanked him for his 26 years of service as the Executive Director of the HCRC, and congratulated him on his retirement.

## **Adjournment**

**Draft minutes circulated by Marcus L. Kawatachi, Executive Director.  
Approved by Commission, as circulated, on March 21, 2023.**