



HAWAI‘I CIVIL RIGHTS COMMISSION

KOMIKINA PONO KĪWILA O HAWAI‘I

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MINUTES

Hawai‘i Civil Rights Commission Office
via Zoom
March 21, 2023
2:00 p.m.

Present: Liann Ebesugawa, Joan Lewis, William Puette, Jon Matsuoka, and Arsima Muller, Commissioners; Robin Wurtzel, Marcus Kawatachi, Sandy Yoshimura, and Heather McVay, Staff.

Chair Liann Ebesugawa called the meeting to order.

Approval of Minutes

The Commissioners reviewed the draft minutes of the February 28, 2023 meeting. Those minutes were approved as circulated.

Executive Director’s Report

Executive Director (ED) Marcus Kawatachi presented an FY 2023 HCRC Mediation Program year-to-date summary.

Summary & Details (7/1/22 through 3/20/23)

Referrals	16
Dispositions:	16
Settlements:	89
Non-agreements:	7
Settlement Rate:	56.3%

Dual-filed (EEOC/HCRC and HUD/HCRC) settlements:	7
State-only settlements:	2

Employment cases settled: 3
 Housing cases settled: 6

Primary Bases for Complaints Settled in Mediation

Disability 5
 Familial Status 2
 Religion 1
 Retaliation 1

Dispositions by Mediation Center

Mediation Center of the Pacific 2/3 (settlement rate 66.7%)
 Mediation Services of Maui
 Private Mediators 1/1 (settlement rate 100%)
 Ku‘ikahi Mediation Services (Hilo)
 West Hawaii Mediation Center 1/1 (settlement rate 100%)
 Kauai Economic Opportunity, Inc.
 Hawai‘i Civil Rights Commission 5/11 (settlement rate 45.5%)
OVERALL 9/16 (settlement rate 56.3%)

ED Kawatachi also presented a data and production report showing caseload data through March 20, 2023.

As of March 20, 2023, the written report showed 321 open cases, an increase of 11 cases from the number reported as of February 27, 2023.

Of the 321 open investigation cases, 1 (0.3%) was filed in 2017, 13 (4.0%) in 2018, 34 (10.6%) in 2019, 46 (14.3%) in 2020, 62 (19.3%) in 2021, 126 (39.3%) in 2022, and 39 (12.1%) in 2023.

ED 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	14	53

Response Monitoring	0	2	13	29	41	86	24	195
Mediation	0	0	3	7	10	10	1	31
Pending Assignment	0	5	14	3	1	3	0	26
Active Investigation	1	6	2	2	2	3	0	16
TOTAL	1	13	34	46	62	126	39	321

The report indicated no new subpoena enforcement litigation.

Case Aging

32.7 % of all cases are 2 years or older

6.9 % of all cases are over 18 months, but less than 2 years old

15.0 % of all cases are over 12 months, but less than 18 months old

20.9 % of all cases are over 6 months but less than 12 months

24.6 % of all cases are 6 months or less

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

Category	7/1/18 – 3/20/19	7/1/19 – 3/20/20	7/1/20 – 3/20/21	7/1/21 – 3/20/22	7/1/22 – 3/20/23
PCQ Received	470	427	318	356	365

Intake Decision	369	485	286	337	354
Complaint Filed	213	236	147	139	125
Investigation Closed	214	169	157	189	131
Notice of Cause	9	9	7	14	6
Enforcement Closure	13	4	9	9	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. CC Wurtzel provided a summary of the case to the Commissioners.

CC Wurtzel reported that she had provided the Commissioners with a confidential memorandum regarding 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*. She offered to provide case related documents to the Commissioners, or specific ones, as requested

2023 Legislation

CC Wurtzel reported on the status of bills the HCRC has been following. The Commissioners reviewed 2023 Legislative Summary 3, with staff recommendations, and decided on HCRC positions as follows:

RESOLUTIONS

REQUESTING THE HAWAII CIVIL RIGHTS COMMISSION AND EXECUTIVE OFFICE ON AGING TO STUDY THE PREVALENCE OF AGE DISCRIMINATION IN HIRING APPLICANTS OVER THE AGE OF SIXTY

SCR61 https://www.capitol.hawaii.gov/sessions/session2023/bills/SCR61_.pdf

SR55 https://www.capitol.hawaii.gov/sessions/session2023/bills/SR55_.pdf

HCR129 https://www.capitol.hawaii.gov/sessions/session2023/bills/HCR129_.pdf

HR130 https://www.capitol.hawaii.gov/sessions/session2023/bills/HR130_.pdf

Asks the HCRC and the Executive Office on Aging to create a report on:

- (1) Barriers for seniors to re-enter the workforce
- (2) Recommendations on mitigation measures to eliminate age discrimination.

Status: SCR 61 ref to JDC/LBT

HCR 129/HR 130 ref to LGO, JHA

Discussion: Staff recommended offer comments. Staff recommendation was to offer comments stating that the HCRC process is complaint driven and that the content of the complaints is protected by statutory confidentiality. Therefore, the case-related information that the HCRC could provide might be limited to statistics. Staff suggested that the Legislature provide funding for the report and consider utilizing a more research-oriented organization such as the University of Hawai‘i Center on Aging to produce the report.

Discussion urged the HCRC to support the effort of this resolution and note the importance of the issues that the resolution is intended to address. There was concern whether the HCRC has the capacity to produce a meaningful report on its own; however, the HCRC should try to assist as it can, for example by providing information and statistics.

Commissioner Puette recommended watching a documentary entitled “Coded Bias” about the potential bias in algorithms. This type of bias is mentioned briefly in the resolution. Algorithmic bias is a priority for the EEOC regarding disability, and there has been a great deal written about algorithmic bias relating to categories such as race and gender.

Position: Offer comments.

ENCOURAGING THE FACILITATION OF A PATH TO CITIZENSHIP FOR IMMIGRANTS FROM PARTIES TO THE COMPACTS OF FREE ASSOCIATION

SCR102 https://www.capitol.hawaii.gov/sessions/session2023/bills/SCR102_.pdf

SR112 https://www.capitol.hawaii.gov/sessions/session2023/bills/SR112_.pdf

HCR74 https://www.capitol.hawaii.gov/sessions/session2023/bills/HCR74_.pdf

HR75 https://www.capitol.hawaii.gov/sessions/session2023/bills/HR75_.pdf

SCR 102 and its companions encourage the facilitation of a path to citizenship for immigrants from parties to the Compacts of Free Association.

Status: SCR 102/ SR 112 ref to JDC

HCR 74/ HR 75 ref to JHA

Discussion: Staff recommended support. This resolution asks the federal government to create policy regarding immigrants from nations who are parties to the Compacts of Free Association (COFA). The HCRC has, in the past, supported numerous bills for the rights of immigrants and particularly for those from COFA states, because of the higher rates of discrimination. The HCRC also had a project with the Medical Legal Partnership to address discrimination against the COFA community.

Position: Support.

CC Wurtzel reported on the Foley Commission's recommendations regarding transparency. One bill of note is HB 712, which would require that all recordings of meetings be sent to archives and saved in perpetuity. Currently the HCRC removes recordings when the minutes or draft minutes of a meeting are posted. The Commissioners discussed the ubiquity of recordings and their presence on the internet in perpetuity. Commissioner Puette noted that preserving recordings of meetings may hinder participants' willingness to engage in free discussion and debate. The Commissioners discussed concerns about the need for technical support to comply with the bill's requirements, and possible liability for accidental deletion of recordings or other error.

Next meeting

The next meeting of the Commission was scheduled for April 18, 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.

Adjournment

**Draft minutes circulated by Marcus L. Kawatachi, Executive Director.
Approved by Commission, as circulated, on April 18, 2023.**