



HAWAI‘I CIVIL RIGHTS COMMISSION **KOMIKINA PONO KĪWILA O HAWAI‘I**

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MINUTES

Hawai‘i Civil Rights Commission Office
via Zoom
September 19, 2023
3:00 p.m.

Present: Chair Liann Ebesugawa, Commissioner William Puette, Commissioner Jon Matsuoka, Commissioner Arsima Muller, Commissioner Joan Lewis (late arrival)

Staff: Chief Counsel Constance Yonashiro, Adjudications Secretary, Sandy Yoshimura, Executive Director Marcus Kawatachi, Deputy Executive Director Attorney Heather McVay

Chair Ebesugawa called the meeting to order at 3:02pm and noted taking agenda items out of order.

Chief Counsel’s Report

Chief Counsel (CC) Constance Yonashiro reported no decision yet on *Morning Hill Foods, LLC dba Mana Bu’s v. The Hawai‘i Civil Rights Commission*, Civil No. 18-100034-01 KKH, pending in the ICA.

CC Yonashiro gave an update on docketed cases, DN 23-01-E-SH-A-RET and DN 23-02-E-SH-RET. CC reported the docketed cases were consolidated by the hearings examiner for hearing and discovery but will have separate verdicts and judgments. Additionally, the parties stipulated to request an extension of time to hold the contested case hearing, which will be need action by the Commission. Commissioner Lewis and CC Yonashiro would be recused from any decision making. A deputy AG from the Office of the Attorney General, Chelsea Maja, will advise the Commission on any decision by the Commission in the next Commission meeting on the motion for extension of time.

CC Yonashiro provided an update on proposed changes to the Hawai‘i Administrative Rules. The DLIR has requested permission from the Governor to hold a public hearing on the rules, but Governor approval might be delayed because of the Maui fires. Pending approval from the Governor, the public hearing will likely be held via Zoom towards the end of the year or early next year.

Discussion of the proposed changes of the rules took place, specifically the changes to the definition of “employment”. CC explained that the HCRC currently uses a definition from a declaratory relief petition that includes factors that are numerous and confusing. The proposed definition is the same one used by unemployment insurance, temporary disability insurance, and the state’s prepaid healthcare act. Having a definition in the rules, along with the proposed definition of 3 factors, which should bring clarity to the analysis. CC Yonashiro also highlighted the proposed pregnancy rule changes which aligns and borrows language from the federal Pregnant Workers’ Fairness Act that took effect on June 27th of this year. Chair Ebesugawa asked if the rules had to go to the AG’s for approval, and CC Yonashiro stated she believed the AG signed off on the proposed rules when the proposed rules were submitted to the Governor for approval to hold a public hearing, but will follow up with the assigned AG to determine the approval process.

Approval of Minutes

Chair Ebesugawa noted that Commission Lewis joined the meeting, the Commissioners reviewed the draft minutes of the August 22, 2023 meeting. Those minutes were approved as circulated.

Executive Director’s Report

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

Summary & Details (7/1/23 through 9/19/23)

Referrals	4+4=	8
Dispositions:	1+4=	5
Settlements:	0+1=	1
Non-agreements:	1+3=	4
Settlement Rate:		20%

Primary Bases for all Mediation Settlements (total: 1)

Sex	1
Dual-filed settlement:	1
State-only settlements:	0
Employment Cases settled:	0
Housing cases settled:	1

Dispositions by Center

Mediation Center of the Pacific	
Mediation Services of Maui	
Private Mediators	0/1 (settlement rate 0%)
Ku’ikahi Mediation Services (Hilo)	
West Hawaii Mediation Center	

Kauai Economic Opportunity, Inc.

Hawai'i Civil Rights Commission 1/4 (settlement rate 25%)

OVERALL 1/5 (settlement rate 20%)

ED Kawatachi also presented a data and production report showing caseload data through September 19, 2023.

All Open Cases Pending Investigation

Year of Filing	Numbers of Cases	Percentage of Caseload
2017	1	0.3%
2018	7	2.0%
2019	28	8.1%
2020	36	10.4%
2021	53	15.3%
2022	100	28.9%
2023	121	35.0%
TOTAL	346	100.0%

Changes From Last Report (August 22, 2023)

2017:	None
2018:	-1 case
2019:	-1 case
2020:	None
2021:	-1 case
2022:	-4 cases
2023:	+8 cases (23 complaints filed; 15 complaints closed)
TOTAL:	+1 case

Case Aging

(Last report – 8/22/23)

29.2% of all cases are 2 years or older	(29.3%)
11.0% of all cases are over 28 months, but less than 2 years old	(10.4%)
14.5% of all cases are over 12 months, but less than 18 months old	(15.4%)
19.4% of all cases are over 6 months, but less than 12 months old	(18.3%)
26.0% of all cases are 6 months or less	(26.7%)

Breakdown by Type of case

	<i>Year of Case Filing</i>							<u>Totals</u>
	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	
Housing cases	0	0	2	1	5	19	38	65
Non-Housing Cases:								
Response Monitoring	0	0	13	23	35	74	65	210
Mediation	0	0	3	7	10	6	6	32

Pending Assignment	0	0	3	2	1	0	2	8
Active Investigation	1	7	7	3	2	1	10	31
	1	7	28	36	53	100	121	346

ED Kawatachi noted that the Annual Report will be done soon and then there could be better comparisons of the numbers for the most recent year-to-date comparisons. ED noted that consistent with his reports, looking at the data, the HCRC is coming back towards the numbers for PCQ and intake decisions that the HCRC had prior to the pandemic.

Commissioner Puette asked ED Kawatachi about the case from 2017 and asked if it was being investigated. ED Kawatachi could not provide more information other than the case was in the hands of an investigator. Chair Ebesugawa clarified that it was not that ED Kawatachi did not know the substance of the case, but that he is keeping investigation and adjudication separate, and the ED confirmed.

Next meeting

Chair Ebesugawa asked if there was a need to schedule the October Meeting. CC Yonashiro stated that the Commission will need to take action on a request for extension to hold a contested case hearing for the docketed cases. Next meeting of the Commission was scheduled for Tuesday, October 10th at 1:00 p.m.

Announcements

None

Adjournment

Meeting adjourned at 3:33pm

Approved by Commission, with corrections, on January 25, 2024.