



HAWAI‘I CIVIL RIGHTS COMMISSION

KOMIKINA PONO KĪWILA O HAWAI‘I

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MINUTES

Hawai‘i Civil Rights Commission Office
via Zoom
August 22, 2023
2:00 p.m.

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

Chair Liann Ebesugawa called the meeting to order.

Approval of Minutes

The Commissioners reviewed the draft minutes of the June 20, 2023 and July 25, 2023 meetings. Those minutes were approved as circulated.

Executive Director’s Report

Executive Director (ED) Marcus Kawatachi introduced Legal Clerk Chanpen Snell, a staff member who was interested in attending the meeting.

ED Kawatachi welcomed Constance Yonashiro as the HCRC’s newly selected Chief Counsel, starting September 1, 2023.

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

Summary & Details (7/1/23 through 8/22/23)

Referrals	4
Dispositions:	1
Settlements:	0
Non-agreements:	1
Settlement Rate:	0%

Dual-filed (EEOC/HCRC and HUD/HCRC) settlements: 0
 State-only settlements: 0
 Employment cases settled: 0
 Housing cases settled: 0

Dispositions by Mediation 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
OVERALL 0/1 (settlement rate 0%)

ED Kawatachi stated that the one case that went through the mediation process during the reporting period was handled by a private mediator. He then fielded a few questions from the Commissioners about the difference between private mediators and mediators from community mediation centers.

ED Kawatachi also presented a data and production report showing caseload data through August 22, 2023.

As of August 22, 2023, the written report showed 345 open cases, an increase of 1 case from the number reported as of June 19, 2023.

Of the 345 open investigation cases, 1 (0.3%) was filed in 2017, 8 (2.3%) in 2018, 29 (8.4%) in 2019, 36 (10.4%) in 2020, 54 (15.7%) in 2021, 104 (30.1%) in 2022, and 113 (32.8%) 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	1	5	20	37	65

Response Monitoring	0	0	13	24	36	74	64	211
Mediation	0	0	3	7	10	8	7	35
Pending Assignment	0	0	3	1	1	0	4	9
Active Investigation	1	8	8	3	2	2	1	25
TOTAL	1	8	29	36	54	104	113	345

The report indicated no new subpoena enforcement litigation.

Case Aging

29.3 % of all cases are 2 years or older

10.4 % of all cases are over 18 months, but less than 2 years old

15.4 % of all cases are over 12 months, but less than 18 months old

18.3 % of all cases are over 6 months but less than 12 months

26.7 % of all cases are 6 months or less

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

Category	7/1/19 – 8/22/19	7/1/20 – 8/22/20	7/1/21 – 8/22/21	7/1/22 – 8/22/22	7/1/23 – 8/22/23
PCQ Received	107	65	56	71	83

Intake Decision	95	68	43	47	90
Complaint Filed	32	42	20	30	27
Investigation Closed	37	37	27	27	28
Notice of Cause	1	3	10	3	1
Enforcement Closure	2	0	2	0	1

Chair Ebesugawa asked about the HCRC’s approach to reduce the number of the oldest open cases in investigation. ED Kawatachi discussed the HCRC’s efforts to fill investigator vacancies and train new investigators to increase the capacity to focus on those oldest cases.

Chief Counsel’s Report

Chief Counsel (CC) Robin Wurtzel reported no change 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 Wurtzel reported on two newly docketed cases revolving around the same set of facts: *Marcus L. Kawatachi, Executive Director, on behalf of the complaint filed by Cynthia M. Lanting vs. State of Hawai’i, Department of Education, Waipahu Elementary School*; Docket No. 23-01-E-SH-A-RET; and *Marcus L. Kawatachi, Executive Director, on behalf of the complaint filed by Allison T. Fleischer (formerly known as Allison T. Oshiro) vs. State of Hawai’i, Department of Education, Waipahu Elementary School*; Docket No. 23-02-E-SH-RET. Commissioner Lewis would have a conflict as an employee of the Respondent in these cases and would be recused from any decisionmaking. The HCRC’s new Chief Counsel as of September 1, 2023, Constance Yonashiro, would also have a conflict due to her past involvement with these cases as an HCRC Enforcement Attorney. The HCRC plans to contact the Office of the Attorney General for counsel to deal with the conflicts.

CC Wurtzel provided an update on proposed changes to the Hawai’i Administrative Rules. CC Wurtzel reported that the HCRC already sought comments on the proposed changes from the public, which resulted in some amendments. These amended proposed changes are posted on the HCRC website. CC Wurtzel then met with the Small Business Regulatory Review Board, as required, and has asked the Department of Labor and Industrial Relations to request permission from the Governor to hold a public hearing. Commissioners must be present at such a hearing, and notice must be provided in newspapers at least 30 days prior to the hearing. The hearing would likely be conducted via Zoom. Chair Ebesugawa stated that not all the Commissioners necessarily needed to be present at the hearing, and that she or a designee could preside over the hearing and then the information would be shared with others at a later date.

CC Wurtzel stated that the primary proposed changes were to the definition of “employment” and “final decision.” The definition of “employment” applies when the HCRC is trying to determine if a complainant is an employee or an independent contractor. The HCRC currently uses a definition from a Commission declaratory relief decision that requires consideration of many factors. The proposed definition requires consideration of only three factors and is the same one used by Unemployment Insurance, Temporary Disability Insurance, and Prepaid Healthcare.

Next meeting

The next meeting of the Commission was scheduled for September 19, 2023, at 3:00 p.m.

Announcements

The Commissioners and Staff paid tribute to Robin Wurtzel, thanked her for her years of service as an Enforcement Attorney and Chief Counsel of the HCRC, and congratulated her on her retirement.

Adjournment

**Draft minutes circulated by Marcus L. Kawatachi, Executive Director.
Approved by Commission, as circulated, on September 19, 2023.**