



HAWAI‘I CIVIL RIGHTS COMMISSION

KOMIKINA PONO KIWI‘LA O HAWAI‘I

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[DRAFT] MINUTES

Hawai‘i Civil Rights Commission Office
via Zoom
November 7, 2024
2:00 p.m.

Present: Chair Dr. William Puette, Jon Matsuoka, Arsima Muller, Jo-Ann Adams

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

Public: Sergio Alcubilla, Debbie Cabebe

Chair Puette called the meeting to order.

Approval of Minutes

Minutes of the August 13, 2024 meeting were approved.

Executive Director’s Report

Executive Director (ED) Marcus Kawatachi presented an FY 2025 HCRC Mediation Program year-to-date summary.

Summary of Mediation Program FY 2025 Year to Date (7/1/24 through 11/7/24)

Referrals: 9
Dispositions: 10
Settlements: 8
Non-agreements: 2
Settlement Rate: 80%

Dual-filed settlements: 6
State-only settlements: 2

Employment cases settled: 3
Housing cases settled: 4
Public accommodations cases settled: 1

Dispositions by Center:	Settlements/Dispositions:	Settlement Rate:
Mediation Center of the Pacific	3/3	100%
Mediation Services of Maui		
Private Mediators		
Ku'ikahi Mediation Services (Hilo)	1/1	100%
West Hawaii Mediation Center		
Kauai Economic Opportunity, Inc.		
Hawaii Civil Rights Commission	4/6	66.7%
OVERALL	8/10	80%

ED Kawatachi also presented a data and production report showing caseload data through November 4, 2024.

As of November 4, 2024, the written report showed 352 open cases.

Of the 352 open investigation cases, 1 (0.3%) was filed in 2017, 3 (0.9%) in 2018, 14 (4.0%) in 2019, 15 (4.3%) in 2020, 34 (9.7%) in 2021, 58 (16.5%) in 2022, 107 (30.4%) in 2023, and 120 (34.1%) in 2024.

ED Kawatachi reported a breakdown of the status of the open cases by type of case and investigation stage.

	<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>	<u>2024</u>	
<u>Housing Cases:</u>	0	0	0	1	2	11	42	44	100
<u>Non-Housing Cases:</u>									
Response Monitoring	0	0	7	5	20	39	34	44	149
Mediation	0	0	3	5	9	5	11	14	47
Pending Assignment	0	0	1	2	2	1	7	4	17
Active Investigation	<u>1</u>	<u>3</u>	<u>3</u>	<u>2</u>	<u>1</u>	<u>2</u>	<u>13</u>	<u>14</u>	<u>39</u>
	1	3	14	15	34	58	107	120	352

The report indicated no new subpoena enforcement litigation.

Case Aging

32.1 % of all cases are 2 years or older.

14.5 % of all cases are over 18 months, but less than 2 years old.

14.5 % of all cases are over 12 months, but less than 18 months old.

16.8 % of all cases are over 6 months but less than 12 months.

22.2 % of all cases are 6 months or less.

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

Category	7/1/20 – 11/4/20	7/1/21 – 11/4/21	7/1/22 – 11/4/22	7/1/23 – 11/4/23	7/1/24 – 11/4/24
PCQ Received	150	172	176	201	230
Intake Decision	129	150	152	220	184
Complaint Filed	78	67	56	71	50
Investigation Closed	76	88	78	85	67
Notice of Cause	4	14	5	2	9
Enforcement Closure	0	5	0	3	2

Chief Counsel’s Report

1. Update on *Morning Hill Foods, LLC dba Mana Bu’s v. The Hawaii Civil Rights Commission*, Civil No. 18-100034-01 KKH:
 Chief Counsel Yonashiro reported that this case had been filed in the federal U.S. District Court, District of Hawai’i, based on a constitutional challenge. This federal case had been stayed for a number of years while a related case filed by the plaintiff made its way through the state system, from Hawai’i Civil Rights Commission complaint, to Circuit Court decision, and most recently as an appeal to the Intermediate Court of Appeals (ICA). Earlier this year the ICA affirmed the Circuit Court decision. The plaintiff did not appeal the ICA decision and also agreed to drop the federal case. Therefore, the matter is now concluded on both the state and federal level.
2. Update on *Marcus L. Kawatachi, as Executive Director of the Hawai’i Civil Rights Commission, on behalf of the complaint filed by Junko Knipe v. Gary Sommer, as Trustee of the Holualoa Residence Trust, Peter Pritchard, as Trustee of the Holualoa Residence Trust, and Gary Sommer, individually*; Dkt. No. 24-001-H-D-SH-RET.
 A contested case hearing is scheduled to take place during the week of December 2, 2024, and is expected to last one or two days. Judge Leslie Hayashi is the assigned hearings examiner. After the hearing, Judge Hayashi will issue a Proposed Findings of Fact and Conclusions of Law for the Commissioners to consider, along with the entire record of the hearing.
3. Updated on other cases:
 No new cases have been docketed since the last Commission meeting. However, the enforcement section of the HCRC has sent out final demands in two cases.

Commission Chair’s Report

Chair Puette asked Chief Counsel Yonashiro to report on the public hearing on proposed amendments to the Hawai’i Administrative Rules (HAR):

1. The public hearing was held on November 4, 2024. In attendance were 11 individuals via Zoom, none in person.
2. Two individuals provided oral testimony:

- a. Sherry Menor-McNamara, president and CEO of the Chamber of Commerce Hawai'i, testified in opposition to the proposed amendment to HAR § 12-46-187, regarding reasonable accommodations in employment for individuals with disabilities.
- b. Debbie Cabebe, CEO of Maui Economic Opportunity, testified in opposition to the proposed amendment to HAR § 12-46-187.
3. Five individuals provided written testimony in anticipation of the hearing:
 - a. Sherry Menor-McNamara, president and CEO of the Chamber of Commerce Hawai'i, wrote testimony in opposition to the proposed amendment to HAR § 12-46-187 and provided a suggestion for alternative wording.
 - b. Kelvin Kohatsu, Managing Director of Hawai'i Transportation Association, wrote testimony in opposition to the proposed amendment to HAR § 12-46-187 and provided suggested alternate wording.
 - c. Brad Nicolai, JN Group, wrote testimony in opposition to the proposed amendment to HAR § 12-46-187
 - d. Kenneth Nakasone, private attorney, wrote testimony in opposition to the proposed amendment to HAR § 12-46-187
 - e. William D. Hoshijo, former Executive Director of the Hawai'i Civil Rights Commission, wrote testimony in support of the proposed amendment to the definition of "employment" and in support of the proposed amendment to HAR § 12-46-187.
4. Prior to the meeting Chief Counsel Yonashiro provided the Commissioners with a board packet containing all written comments received since initial introduction of the proposed amendments, including comments from earlier this year and from 2023.

Chair Puette recalled that some individuals who testified in opposition to the proposed amendments to HAR § 12-46-187 were concerned about a potential conflict with federal laws such as the Occupational Safety and Health Act and the Drug-Free Workplace Act and wanted language that would waive the requirements of those federal laws.

Chief Counsel Yonashiro summarized the concerns raised by those in opposition to the proposed amendments to HAR § 12-46-187, as well as the history of the various drafts submitted to the Attorney General's office for review and comment. The concerns raised involved issues of safety for customers, the public, and other employees if an employee were impaired at work; the employer's ability to discipline employees who are impaired at work, test positive for illegal substances, or create a dangerous work environment; and the employer's ability to comply with federal standards such as the Occupational Safety and Health Act and the Drug-Free Workplace Act. The Deputy Attorneys General within the labor division of the Attorney General's office have provided legal advice and made many comments to change language that they felt was confusing and superfluous in the various drafts. They acknowledged that the concerns about safety and compliance with federal regulations were all legitimate and understandable concerns.

Chief Counsel Yonashiro explained the changes in the language of the proposed amendments from earlier drafts to the most recent version that had been submitted for public hearing and linked on the public meeting agenda. She suggested non-substantive

changes to HAR § 12-46-187 in the most recent draft that she felt would address the concerns raised during the public hearing: changing the title of HAR § 12-46-187 to “Failure to make reasonable accommodation, Interactive Process,” and clarifying in HAR § 12-46-187(a) that an employer would not be required to make an accommodation that would conflict with specific activities permitted under HAR § 12-46-192.

Motion

Chair Puette moved to adopt, as a secondary amendment, the post-hearing non-substantive changes to HAR § 12-46-187 as proposed by Chief Counsel Yonashiro. Seconded by Commissioner Matsuoka.

Discussion

Commissioner Muller found that the link on the public meeting agenda was incorrectly connected to a previous July 2023 version of the proposed rules, not the most recent version. Chief Counsel Yonashiro checked and confirmed that the Notice of Public Hearing published in the *Honolulu Star-Advertiser* did contain the correct link to the most recent July 2024 version of the proposed rules. Since the proposed amendment to HAR § 12-46-187 was the only one to receive opposition at the public hearing and contained the only changes made from the version of the proposed rules that was linked in the Agenda, and because the post-hearing suggested changes were non-substantive, the Commissioners decided to proceed with the motion. However, it was also decided that Chief Counsel Yonashiro would consult with the Office of Information Practices to determine whether the Commission had given proper legal notice of the proposed rule amendments to the public.

Chair Puette clarified that the instant motion to adopt the post-hearing non-substantive changes to HAR § 12-46-187 would be for the purpose of allowing those changes to be part of the entire package of proposed rule amendments to be considered at some future meeting, subject to the approval of the Office of Information Practices.

Hearing no objections, the motion was approved by general consent.

Next Meeting

Tuesday, November 19, 2024, at 2:00 p.m. via Zoom.

Adjournment

Draft minutes circulated by Marcus Kawatachi, Executive Director.

Approved by Commission, as circulated, on _____, 2024.