

**ANNUAL REPORT**

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**JULY 1, 1995 – JUNE 30, 1996**

**HAWAII  
CIVIL  
RIGHTS  
COMMISSION**

**BENJAMIN CAYETANO,**  
*Governor*

**LORRAINE AKIBA,**  
*Director, Department of Labor & Industrial Relations*

**AMY AGBAYANI,**  
*Commission Chairperson*

**LINDA TSEU,**  
*Executive Director*

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## INTRODUCTION

Article I, Section 5 of the Hawai'i Constitution provides that "no person shall...be denied the enjoyment of the person's civil rights or be discriminated against in the exercise thereof because of race, religion, sex, ancestry."

In 1988 and 1989, the Hawai'i Civil Rights Commission (HCRC) was established by the Legislature under Acts 219 and 386 respectively. The HCRC began its operations on January 2, 1991.

H.R.S. § 368-1 declares that discrimination--based on race, color, religion, age, sex, sexual orientation, national origin, ancestry, or disability--in employment, housing, public accommodations, or access to services receiving state financial assistance--is against public policy\*. The Commission's mandate is to provide a uniform procedure for the enforcement of the state's discrimination laws.

The Commission is comprised of five (5) members, all of whom are volunteers appointed by the Governor on the basis of their knowledge and experience in civil rights matters and a demonstrated commitment to the preservation of the civil rights of all individuals.

The HCRC is attached to the Department of Labor & Industrial Relations (DLIR) for administrative purposes. The Commission oversees a staff of twenty-eight (28) persons who are divided into

\*certain bases are not protected under all laws.

two separate entities (Enforcement and Adjudication) to carry out its functions. Pursuant to Hawai'i Revised Statutes (H.R.S) § 368-3, these functions are to:

- receive, investigate and conciliate complaints alleging any unlawful discriminatory practice under H.R.S. Chapter 368 (programs and activities receiving state financial assistance), Chapter 489 (public accommodations), Chapter 515 (real property transactions) and Part I of Chapter 378 (employment practices);
- hold administrative hearings on such complaints and order appropriate legal and equitable relief or affirmative action when a violation is found;
- commence civil actions in circuit court to seek appropriate relief, including the enforcement of any Commission order, conciliation agreement, or predetermination settlement;
- issue right-to-sue letters which allow the parties to pursue their cases in Circuit Court;
- issue publications, results of investigations, and research that in its judgement will tend to promote goodwill and minimize or eliminate discrimination in employment, housing, & public accommodations.

The accompanying report is submitted pursuant to H.R.S.

§§ 368-3 and 515-9.

## ADMINISTRATIVE PROCEDURE

Two requirements that must be fulfilled before the HCRC can accept a complaint of discrimination under one or more the anti-discrimination laws it enforces are:

- 1) a person must allege that they have been treated in an unequal or unfair manner because of their "protected basis" (race, sex, ancestry, disability, etc.).
- 2) the complaint must be filed with the HCRC within 180 days of the alleged incident (or the most recent incident if there is a recurring pattern of discrimination).

After a **complaint** is filed, an HCRC investigator begins a neutral, fact-finding **investigation** collecting documents and contacting witnesses from both the complainant's and respondent's sides. The investigator also explores the possibility of settling the complaint prior to a determination of reasonable cause as to whether discrimination has occurred (pre-determination settlement).

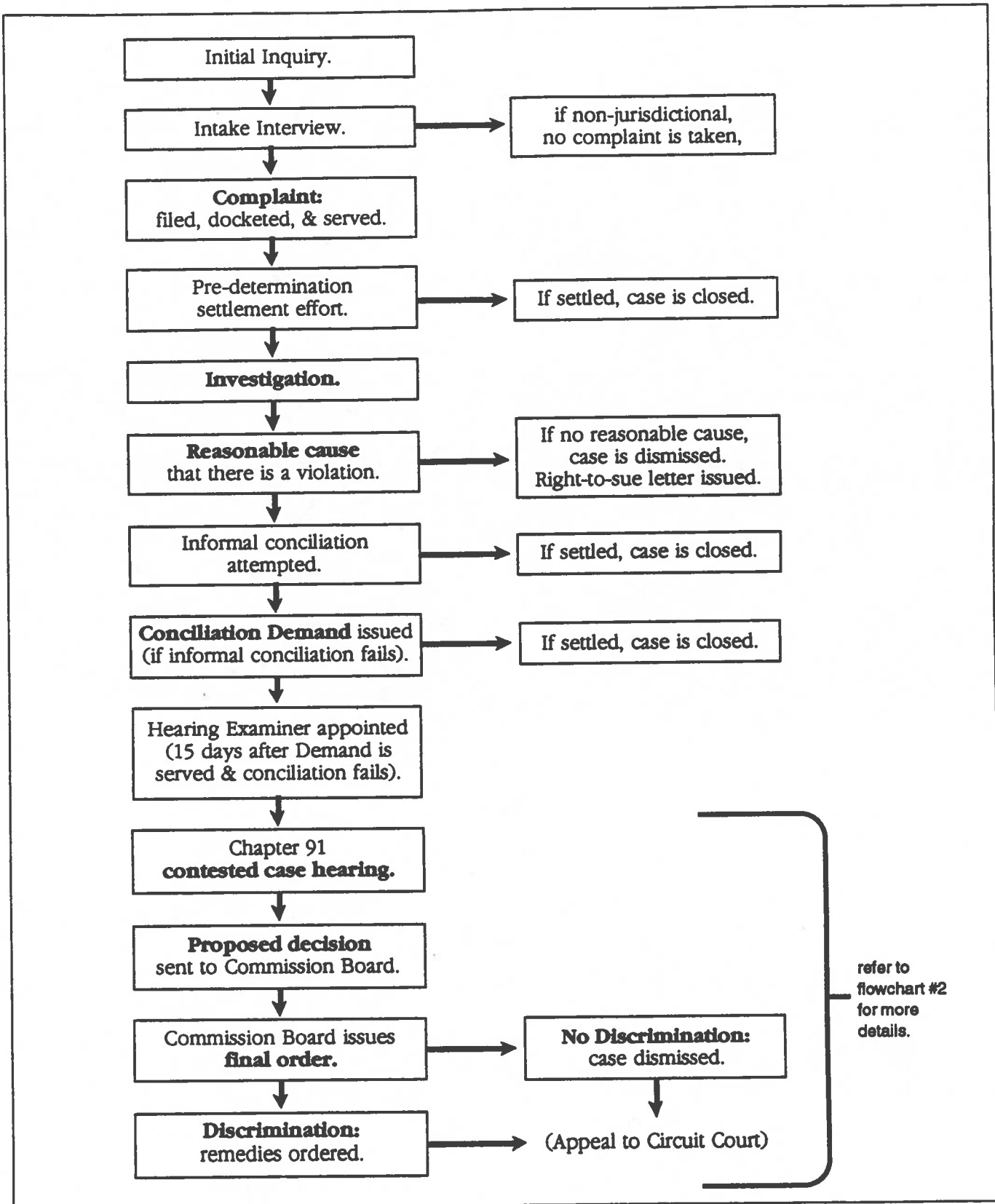
If a preponderance of the evidence shows that there is no reasonable cause to believe that discrimination has occurred, the case is closed and a right-to-sue letter is issued. The right-to-sue letter can also be issued to complainants at any time if they wish to file their own civil suit.

If **reasonable cause** is determined, the HCRC Enforcement Staff attempts to conciliate or settle the complaint. If conciliation is unsuccessful, then the complaint is docketed for a contested case

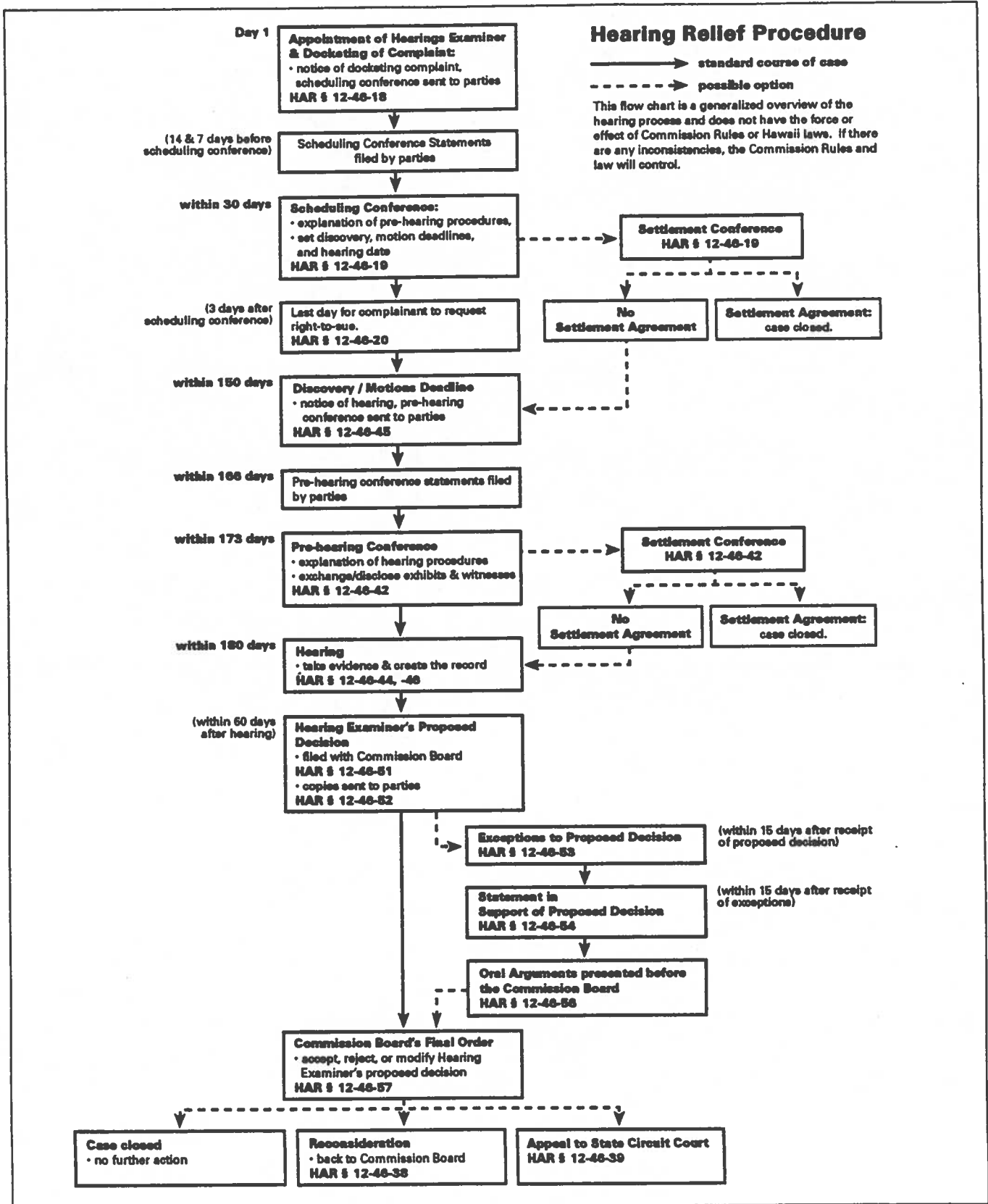
hearing. An HCRC enforcement attorney presents the case in support of the complaint before an impartial hearings examiner. The respondent (represented by themselves or counsel of their choice) also presents its case at the hearing. Under certain circumstances, the complainant may also intervene and be represented by counsel or other representative. The hearings examiner issues a **proposed decision** based on the evidence.

The proposed decision and the hearing record is then reviewed by the five-member Commission Board. The parties may file written exceptions and support statements and present oral arguments to the Board. The Commission Board then accepts, rejects, or modifies the proposed decision, issues a **final order**, and awards remedies if appropriate.

If any party feels that the decision is unfair, they have 30 days to file an **appeal** to the Circuit Court. The HCRC administrative procedure is illustrated in flow chart #1 on the facing page. The hearing relief procedure is graphically presented in flow chart #2. The time frame for the hearing procedures is highlighted, as are the Hawai'i Administrative Rules which govern them.



Flowchart #1: HCRC administrative procedure.



Flowchart #2: Hearing relief procedure.



### CASELOAD DEMOGRAPHICS

There were 3,595 telephone and walk-in inquires at the HCRC during FY95-96. This led to 739 intake interviews between investigators and complainants. 53.6% of those interviewed were women, 45.3% were men, and 1.1% were group complainants.

The intake interviews resulted in 493 charges of discrimination being actually accepted by the HCRC, averaging 41.1 new cases per month. The primary reasons that the other intake interviews did not lead to docketing a charge were either an inability to correlate the adverse act(s) with the protected base(s), or the complainant later decided not to pursue the complaint.

HCRC investigators closed 360 cases during this period, for an averaged closure rate of 30 cases per month. There were 35 cause determinations during the fiscal year.

Case closures averaged 313.6 days per closure, with 42.4% of the cases processed resulting in a favorable outcome for the complainant. As of June 30, 1996, the active caseload for the agency was 481 cases as compared to 355 cases at the end of the previous fiscal year.

A review of case closures for the fiscal year shows the following reasons for closures:

<u>type of closure</u>	<u>number</u>	<u>% of total</u>
no jurisdiction	2	0.5%
complaint withdrawn	11	2.8%
complainant not available	11	2.8%
complainant failed to cooperate	3	0.8%
complainant failed to accept a just resolution offer	0	0.0%
complaint withdrawn--complainant elected court action	84	21.3%
resolution by parties, negotiated settlement, or conciliation	48	12.2%
no cause determination	196	49.6%
determination by another civil rights agency	0	0.0%
bankruptcy of respondent	0	0.0%
no significant relief available	0	0.0%
cases transferred to the EEOC for investigation	5	1.3%
cause determination	35	8.9%

## EMPLOYMENT DISCRIMINATION

H.R.S. Chapter 378, Part I, prohibits discriminatory employment practices based on race, sex, sexual orientation, age, religion, color, ancestry, disability, marital status, arrest and court record, assignment of income for child support obligations, or National Guard participation. Examples of such unlawful practices are outlined in H.R.S. § 378-2.

The HCRC has a work share agreement with the federal Equal Employment Opportunity Commission (EEOC). Where there is concurrent jurisdiction, the case is dual-filed with both agencies, but only the intake agency conducts the investigation, thereby eliminating duplication of enforcement activities. During the fiscal year 415 employment cases were accepted by the HCRC, of which 352 (84%) were dual-filed with EEOC.

Of the employment cases accepted during the fiscal year, sex was the largest category with 149 cases accounting for 35.9% of all employment discrimination cases. Within the sex category, 27 cases were based on pregnancy (18.1% of all sex cases) and 66 cases alleged sexual harassment (44.3% of all sex cases).

Race was the second largest basis with 60 cases, representing 14.5% of accepted employment cases, followed by disability with 51 cases (12.3%). There were 42 age discrimination cases (10.1%).

Ancestry/national origin cases numbered 38 (9.2%); there were 27 cases of retaliation (6.5%); 19 cases based on arrest & court record (4.6%); 11 cases based on sexual orientation (2.7%); nine

cases based on religion (2.2%); five cases based on marital status (1.2%); four cases based on color (1.0%); and no cases based on National Guard participation (0.0%).

Case closures averaged 326.6 days for the 311 employment cases that were closed during FY95-96.

#### DISCRIMINATION IN PUBLIC ACCOMMODATIONS

H.R.S. Chapter 489 prohibits unfair discriminatory practices which deny, or attempt to deny a person the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of a place of public accommodation on the basis of race, sex, color, religion, ancestry, or disability.

During the fiscal year, 26 new cases of public accommodations discrimination were accepted. There were 14 cases of race discrimination which accounted for 53.8% of the public accommodation cases; six cases were based on sex discrimination accounting for 23.1% of the cases; two cases were based on ancestry (7.7%); two cases were based on disability discrimination (7.7%); one case was based on religious discrimination (3.8%); and another case was based on retaliation (3.8%).

These complaints alleged discrimination by medical and health service entities, retail establishments, hotels, eating and drinking establishments and transportation carriers.

Public accommodations case closures averaged 302.4 days for 18 cases closed during FY95-96.

## DISCRIMINATION IN REAL PROPERTY TRANSACTIONS

H.R.S. Chapter 515 is Hawaii's fair housing law. It prohibits discriminatory real estate practices based on race, sex, color, religion, marital status, familial status, ancestry, disability, age, or HIV infection. Examples of such unlawful practices are listed in H.R.S. § 515-3 and include actions such as refusing to rent, sell, or enter into financial transactions with an individual because of one or more of the aforementioned bases.

Since Hawaii's fair housing law has been determined to be substantially equivalent to federal law, the HCRC entered into a workshare agreement with the Department of Housing & Urban Development (HUD). HUD now refers most of the complaints it receives to the HCRC for investigation, preventing duplicate investigations.

During FY95-96, the HCRC accepted 51 cases of housing discrimination. Familial status and disability were the basis for 13 cases each, (25.5% each) followed by ten race cases (19.6%), and five retaliation cases (9.8%). There were three cases of ancestry discrimination (5.9%); two cases each based on age discrimination, sex discrimination and marital status (3.9% each); and one case that alleged color discrimination (2.0%).

Housing case closures averaged 158.6 days for the 28 cases closed during FY95-96.

ACCESS TO STATE & STATE-FUNDED SERVICES

H.R.S § 368-1.5. prohibits State agencies, or any program or activity receiving State financial assistance, from excluding from participation, denying benefits or otherwise discriminating against persons with disabilities (the only protected class in this area of jurisdiction).

During the fiscal year, there was one case filed under § 368-1.5.

Three cases were closed during FY95-96 averaging 485.0 days for closure.

## CASE SETTLEMENTS

During FY95-96, the cash value of the remedies obtained from negotiated pre-determination settlements and conciliation agreements exceeded \$265,000. However, other important relief was obtained including letters of apology, reinstatement, training, posting non-discrimination policies and publishing advertisements to inform the public about the HCRC and discrimination laws.

Many cases were settled after a determination of cause was made. For example, a sexual harassment and retaliation complaint against a local firm was conciliated for \$50,000. This was the largest single conciliation of FY95-96.

Many settlements were also pre-determination settlements, reached before a complete investigation and determination of the merits of the charges were made. A number of these settlement agreements did not include monetary relief but were acceptable to both parties. Examples of these types of agreements were: preparing a proper maternity leave policy with the Enforcement Section's help, changing condominium rules regarding children, and reaching agreement on a reasonable accommodation for a disabled person.

Believing that education and training are the best ways to prevent future occurrences of discrimination, the HCRC advocates affirmative relief, such as management and staff training on anti-discrimination policies and posting of appropriate anti-discrimination policies.

Employment discrimination settlements illustrative of these goals included:

- A transportation company refused to allow a female driver to drive its largest trucks and gave the job to a less qualified male. Settlement terms included payment of \$20,000 and training for supervisors.
- A restaurant failed to reasonably accommodate a pregnant waitress during her pregnancy and terminated her. In addition to a negotiated sum of \$40,000 and affirmative relief, settlement terms included the revision and dissemination of a new pregnancy leave policy.
- An employee for a local restaurant chain was reassigned to a different store after she made a charge of sexual harassment. The company paid the employee \$2,205 and agreed to terminate the harasser.
- During its job application procedures, a government entity disqualified an applicant based on a perceived disability due to degenerative back problems. In addition to a negotiated sum of \$37,000, the entity corrected its selection procedures and placed the applicant on the job.
- An employee was terminated when the company discovered that she had a prior conviction record. Besides \$450 in monetary damages, the employee was reinstated without loss of benefits, a non-discrimination policy was prepared and posted, and the supervisors received special



training on the new policy.

Housing discrimination settlements provided both individual relief as well as the development of appropriate policies.

- The Commission filed for injunctive relief against a landlord who raised the rent after discovering the tenant was pregnant. The case was resolved with monetary damages of \$3,000 to the tenant and affirmative relief.
- A realty company that refused to accept a rent check written in Hawaiian agreed to prepare a non-discrimination policy for its employees and tenants and provide a letter of apology and \$500 to the tenant.
- A landlord who refused to allow children in a large unit on the stated basis that the outside area was unsafe for children agreed to change his policy and to pay \$6,000 in damages to the affected tenants.

## LITIGATION & RULINGS

### **ADMINISTRATIVE HEARINGS:**

During FY 95-96, seven cases were docketed; two were settled before their scheduled hearings and three administrative hearings were held.

On May 2, 1996 the Commission Board issued a final decision in Tseu on behalf of the Complaint filed by Cole vs. Treehouse Restaurant Inc., Docket No. 95-002-E-A-D-RET. This case involved allegations of age and disability discrimination and retaliation by a bartender, Mary Anne Cole.

The Commission found that Respondent reduced Ms. Cole's shifts because of her age and disability (insulin-dependent diabetes) and terminated her in retaliation for filing a complaint. The Commission found that Respondent's reasons for justifying its actions were false. Because of the State's strong public policy against discrimination and its different evidentiary rules on presumptions, the Commission applied the evidentiary burdens found in Rule 304 of the Hawai'i Rules of Evidence instead of those enunciated in St. Mary's Honor Center vs. Hicks, 509 U.S. 502, 113 S.Ct 2742, 125 L.Ed.2d 407 (1993).

The Commission awarded Ms. Cole approximately \$36,000 in back pay and benefits and \$20,000 in compensatory damages. It also awarded \$10,000 in punitive damages and ordered Respondent to provide Ms. Cole with a neutral letter of reference. The Respondent has appealed the decision in Circuit Court.

On June 28, 1996 the Commission Board issued a final decision in Tseu on behalf of the Complaint filed by Collins vs. Cederquist, Inc. et. al., Docket No. 95-001-E-R-S. This case involved allegations of sexual harassment and constructive discharge by Susan Collins, a carpenter. The Commission found that the company's foreman once slapped Ms. Collins on the buttocks and that the foreman and co-workers made unwelcome verbal remarks which created a hostile, intimidating and offensive work environment. The Commission awarded Ms. Collins \$30,000 in compensatory damages for emotional distress and ordered Respondents to cease and desist from sexually harassing employees and to publish a notice. The Commission did not find that Ms. Collins was constructively discharged. The Complainant and a Respondent have appealed this decision.

**CIRCUIT COURT:**

In City and County of Honolulu v. Agbayani et al., Civil No. 95-0178-01 (First Circuit), the Court upheld the Commission's Final Decision that the City had discriminated against Complainant Hawaiiiloa Aho because of his perceived disability. Mr. Aho had been working as a City grounds keeper for two years on contract. When a civil service position became available, Mr. Aho applied and was rated the top candidate. The City physician advised that he should not be hired because of potential problems due to high blood pressure and possible heart problems. Mr. Aho's cardiologist told the City that he could work without significant risk of harm. The

City's expert said that the risks to Mr. Aho were low. The Court upheld the Commission's award of back pay from the date of the rejection (calculated at approximately \$90,000 including interest) and compensatory damages of \$50,000 for emotional distress. No further appeals were taken.

In Davis v. Hawai'i Civil Rights Commission, Civil No. 95-109, and Kondo v. Hawai'i Civil Rights Commission, Civil No. 95-105, two appeals were filed in the Third Circuit (Hilo) from the Commission's Final Decision which found that Complainant Diane Davis had been harassed because of her race. The employer made racial slurs which created an intimidating, hostile, and offensive work environment. The Court upheld the Commission's determination that the racial slurs were discriminatory and increased the award of damages from \$2,500 to \$5,000. No further appeals were taken.

In Sam Teague Ltd. v. Hawai'i Civil Rights Commission, Civil No. 95-1164-04 (1st. Cir.), the Circuit Court upheld the Commission's Final Decision which found that the company had discriminated against Complainant Yvette Shaw because of her sex by denying her maternity leave, terminating her when she went on maternity leave, and refusing to reinstate her when she was released by her doctor. The court upheld the Commission's award of back pay (\$16,500) and compensatory damages (\$5,000) for emotional distress. The employer made derogatory comments about pregnancy and women raising young children, indicating a bias against pregnancy and childbirth. There was also an opportunity to rehire Ms. Shaw after giving birth because her replacement quit, but the

employer hired someone else. One year later, the company offered her the same job back after she filed a complaint with the Commission. The employer has appealed the Circuit Court's decision to the Hawai'i Supreme Court, and no decision has been rendered.

In Hemphill v. Hawai'i Civil Rights Commission, Civil No. 95-104K (Third Circuit/Kona), an individual filed a lawsuit seeking to require the Commission to investigate her complaint which had been dismissed because it was filed after the 180 day limit. The Court upheld Commission's dismissal because the Plaintiff was not misled about the filing date and there was no equitable basis to extend the deadline. No appeal was taken.

In Hawai'i Civil Rights Commission v. Mitsumine (Hawai'i) Inc., Civil No. 94-3291 (1st Cir.), the Commission brought an action to enforce the provisions of a settlement agreement. This case settled after the employer provided the Commission with the information to demonstrate its compliance with the settlement agreement.

## LEGISLATIVE HIGHLIGHTS

### **NEW LEGISLATION:**

The Commissioners and staff of the HCRC testified before the State Legislature on a variety of measures affecting civil rights.

Although many bills were introduced that could have affected the HCRC, its budget and its jurisdiction, none passed during the 1996 Legislative Session.

However, the Legislature through its passage of the Supplemental Budget, Act 287, SLH 1996, significantly reduced the Commission's General Fund appropriation and permanent position count for the 1996-97 Fiscal Year by \$214,398 and 2.0 positions. Thus, the Legislative General Fund appropriation of \$1,170,178 and 25.50 positions for FY 1995-96 was cut to \$955,780 and 23.50 positions for FY 1996-97, an 18% reduction.

As a result, the Enforcement Section of the Commission will now more than ever, be faced with the formidable challenge of conducting timely investigations on all Islands and seeking appropriate relief and justice for all whose charges have been determined to have met the reasonable cause standard after investigation.

## EDUCATION & OUTREACH

The Commission believes that it has a major responsibility to educate the public about their rights and responsibilities under the State's discrimination laws. It is hoped that such educational efforts will prevent or constrain discriminatory actions, resulting in a gradual decline in the number of new complaints filed.

During the 1995-96 Fiscal Year, commissioners and staff participated in numerous education and outreach activities:

- spoke to police recruits at the Honolulu Police Academy about the history of civil rights and the HCRC.
- participated as a panelist at the ILWU 4th Labor Institute workshop.
- participated as a panelist at the Joint Services Employers Council workshop.
- coordinated a reception in honor of Martin Luther King Jr. Week at Washington Place. Later that week presented a film and participated as panelists to discuss the life and message of Dr. King.
- appeared in a television news interview on the "secret sexism".
- met with interested organizations and employers to obtain input and concerns on promulgating rules relating to employment discrimination on the basis of arrest and court record.
- spoke before the City and County of Honolulu's Department of Personnel, Classification and Pay Division.

- addressed a Hilo, Hawai'i Chamber of Commerce meeting.
- conducted a workshop for small construction companies which receive contracts from the Department of Transportation.
- participated as a panelist on the Hawai'i Job Corp's television series aimed at preparing students for work.
- spoke to journalism students from China studying at the University of Hawai'i about civil rights and African Americans.
- designed and coordinated the placement of a public service advertisement regarding employment discrimination in Small Business Hawaii's monthly newsletter.
- designed and placed public education advertisements regarding employment discrimination and fair housing in several island newspapers including the Honolulu Advertiser, Honolulu Star Bulletin, and Mahogany.
- spoke as panelists about fair housing laws at a Hawai'i Continuing Legal Education seminar.
- attended and participated in InterAgency Council and Council on Language Policy and Planning meetings.
- participated as a panelist at the EEOC Technical Assistance Program Conference.
- participated as a panelist at a fair housing seminar sponsored by the Community Associations Institute.
- spoke to managers about employment discrimination at a seminar held by the Renaissance Wailea Beach Resort.



STAFF OF THE HCRC

The HCRC's Organization Plan was approved by the Governor on January 5, 1993.

The HCRC staff\* is comprised of the following positions:

**Executive Director**

**ENFORCEMENT STAFF:**

Deputy Executive Director  
Enforcement Attorneys (3)  
Administrative Services Assistant  
Investigator VI  
Investigator V Unit Supervisors (2)  
Investigator IV (10)  
Secretary III  
Legal Stenographer I  
Clerk Typist III (3)  
Clerk Typist II (1)

**ADJUDICATION STAFF:**

Chief Counsel  
Hearings Examiner  
Secretary II

\*before budget cuts.

## COMMISSION BOARD MEMBERS

The HCRC is guided by its five-member Commission Board. Commissioners are appointed for staggered terms by the Governor with the advice and consent of the State Senate. The following commissioners served during FY 1995-96:

**AMY AGBAYANI:**  
**Chairperson (term 1993-1997).**

Dr. Agbayani was educated at the University of Philippines and the University of Hawai'i at Manoa. She holds a Ph.D. in political science and is currently the Director for Student Equity, Excellence & Diversity at the University of Hawai'i at Manoa. Dr. Agbayani was previously the Director of Operation Manong at the UH, and Chair of the Inter-Agency Council For Immigrant Services. Her second term expires June 30, 1997.

**RICHARD J. PORT:**  
**Commissioner (term 1992-96).**

Mr. Port was educated at Boston College, Columbia University where he received a Master of Arts degree, and at the University of Hawai'i where he received a professional certificate. Recently retired from a position as an education specialist with the Department of Education, he previously worked for the U.S. Agency for International Development in Nigeria and was a member of the Peace Corps in Ghana. He is an ordained deacon assigned to Saints Peter and Paul Roman Catholic Church in Honolulu. Mr. Port's second term expired June 30, 1996.

**JACK LAW:**  
**Commissioner (term 1996-2000).**

Mr. Law was educated at the University of Hawai'i at Manoa. He was first appointed in 1994 to serve the remaining term of a vacancy on the Commission, and in 1996 was reappointed to a second term. He is co-owner and manager of three Waikiki restaurants and nightclubs. A founding member of the Life Foundation, he served on that organization's board for over eight years.

**WILLIAM HOSHIJO:**  
**Commissioner (term 1996-1999).**

Mr. Hoshijo is an attorney and Executive Director of Na Loio No Na Kanaka- The Lawyers For The People Of Hawai'i, which provides legal assistance for people with immigration and related problems. He is an active member of the InterAgency Council For Immigrant Services, the Council on Language, Policy and Planning, and the Civil Rights Coalition. In addition, he played a leadership role in advancing the legislation which created the HCRC. Mr. Hoshijo's first term expires June 30, 1999.

**FAYE KENNEDY:**  
**Commissioner (term 1996-1997).**

Ms. Kennedy is an author and retired New York social worker. She is a past member of the State Martin Luther King Jr. Commission and the Commission on the Status of Women. She is also a member of the U.S. Civil Rights Commission's Hawai'i Advisory Committee. Appointed in 1995 to serve out the remaining term caused by a vacancy on the Commission, her first term expires June 30, 1997.

**ALLICYN HIKIDA TASAKA**  
**Commissioner (term 1996-2000).**

Ms. Hikida Tasaka is the President of Allicyn Hikida Tasaka Public Relations. She is the former Chairperson for the State Commission on the Status of Women and former President of the Honolulu Chapter of the Japanese American Citizens League. She is also a past member of the Board of the American Civil Liberties Union of Hawai'i and is active with the Women's Coalition and the Coalition for Equity and Diversity.

