

**ANNUAL REPORT**

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**JULY 1, 1996 – JUNE 30, 1997**

**HAWAI'I  
CIVIL  
RIGHTS  
COMMISSION**

**BENJAMIN CAYETANO,**  
*Governor*

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

**CLAUDIO SUYAT,**  
*Commission Chairperson*

**WILLIAM HOSHIO,**  
*Executive Director*

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## **MISSION STATEMENT**

**The mission of the Hawaii Civil Rights Commission is to eliminate discrimination by protecting civil rights and promoting diversity through enforcement of anti-discrimination laws and education.**

## INTRODUCTION

Article I, Section 5 of the Hawaii 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".

The Hawaii Civil Rights Commission (HCRC) was established by the Legislature under Act 219, L. 1988 and Acts 386 and 387, L. 1989. 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 sections (enforcement and adjudication) to carry out its functions. Pursuant to Hawaii 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.

§§ 368-4 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, 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.

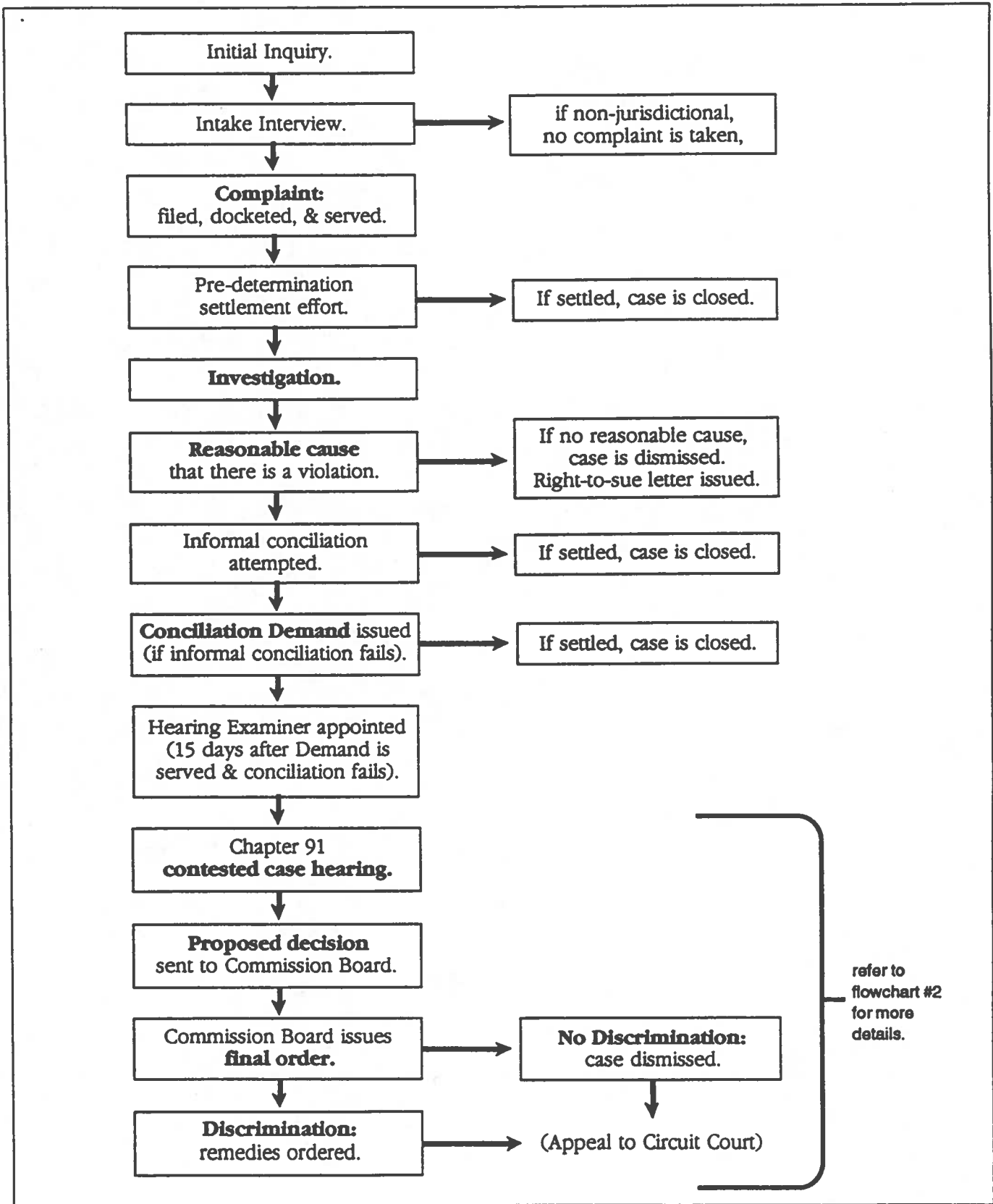
If **reasonable cause** is determined, the HCRC enforcement staff attempts to conciliate or settle the complaint. If conciliation is unsuccessful, then the complaint is docketed for a contested case **hearing**. An HCRC enforcement attorney presents the case in support of the complaint before an impartial 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 intervene as a party and be represented by counsel or other representative. The hearing 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. This decision is legally binding.

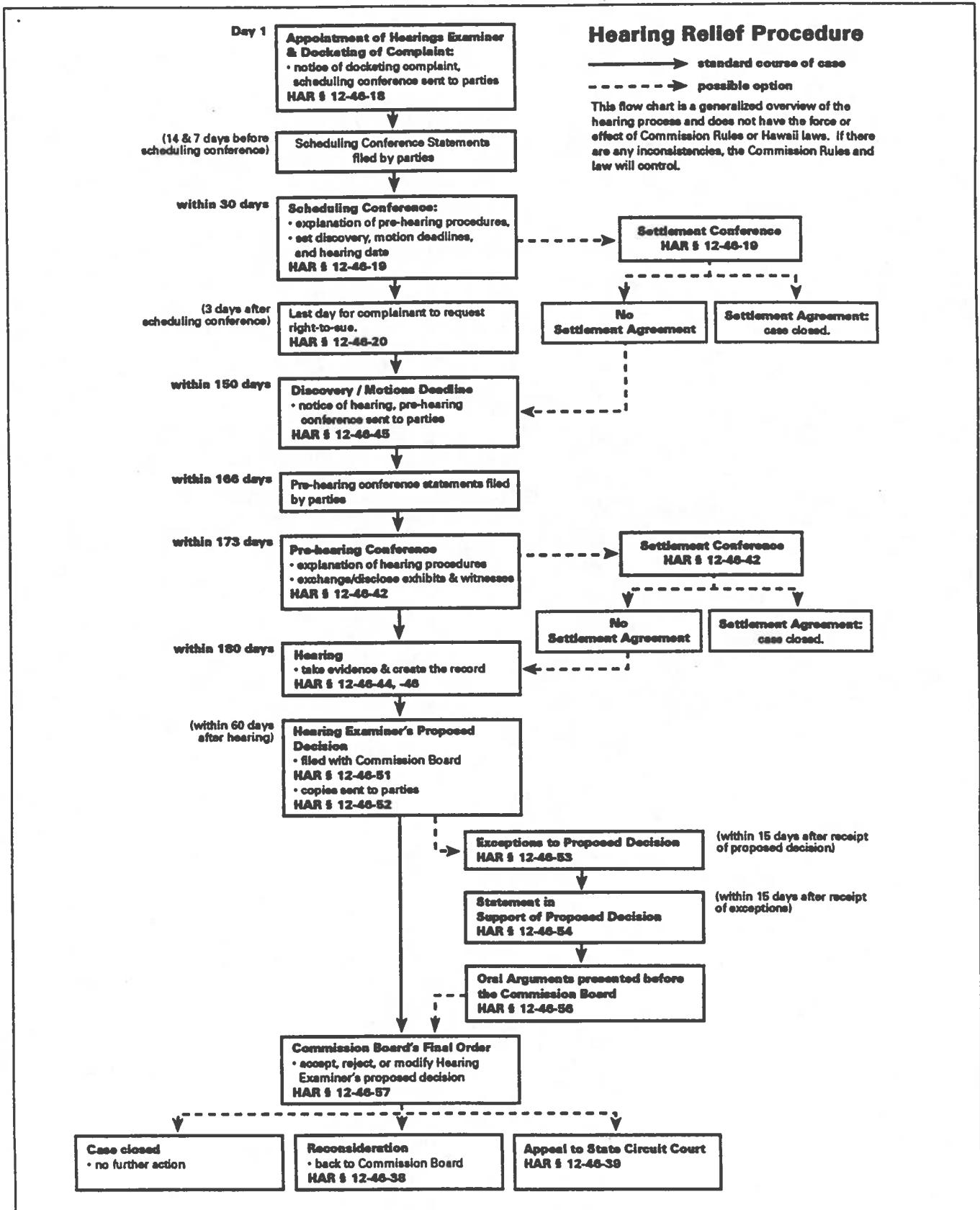
If either party feels that the decision is unfair, they have 30 days to file an **appeal** to the Circuit Court. The HCRC administrative procedure is illustrated in flow chart #1 on the facing page. The hearing relief procedure is graphically presented in flow chart #2. The time frame for the hearing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

During the 1996-1997 Fiscal Year, Commission staff worked on plans for prioritized complaint processing and voluntary mediation with implementation planned during the 1997-1998 Fiscal Year.



Flowchart #1: HCRC administrative procedure.





Flowchart #2: Hearing relief procedure.

### CASELOAD DEMOGRAPHICS

There were 3,269 telephone and walk-in inquires at the HCRC during FY96-97. This led to 704 intake interviews between investigators and complainants. 381 or 54.1% of those interviewed were women and 323 or 45.9% were men. There were no group complainants.

The intake interviews resulted in 629 charges of discrimination being actually accepted by the HCRC, averaging 52.4 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 463 cases during this period, for an averaged closure rate of 38 cases per month. There were 28 cause determinations during the fiscal year.

Case closures averaged 336.8 days per closure, with 40.6% of the cases processed resulting in a favorable outcome for the complainant. As of June 30, 1997, the active caseload for the agency was 620 cases as compared to 481 cases at the end of the previous fiscal year.

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

<u>type of closure</u>	<u>number</u>	<u>%</u>
no jurisdiction	3	0.7%
complaint withdrawn	6	1.3%
complainant not available	8	1.7%
complainant failed to cooperate	8	1.7%
complainant failed to accept a just resolution offer	0	0.0%
complaint withdrawn--complainant elected court action	100	21.6%
resolution by parties, negotiated settlement, or conciliation	60	13.0%
no cause determination	249	53.8%
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 HUD	1	0.2%
cases transferred to EEOC	0	0.0%
cause determination	28	6.0%

## 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 557 employment cases were accepted by the HCRC, of which 466 (83.6%) were dual-filed with EEOC.

Of the employment cases accepted during the fiscal year, sex was the largest category with 157 cases accounting for 28.2% of all employment discrimination cases. Within the sex category, 67 cases alleged sexual harassment (42.7% of all sex cases) and 28 cases were based on pregnancy (17.8% of all sex cases).

Race was the second largest basis with 98 cases, representing 17.6% of accepted employment cases, followed by age discrimination with 89 cases (16%).

There were 65 disability cases (11.7%); 61 cases of retaliation (11%); 43 cases of ancestry/national origin discrimination (7.7%); 17 cases based on arrest & court record (3%); 11 cases based on sexual orientation (2%); 5 cases based on

religion (0.9%); 4 cases based on martial status (0.7%); 3 cases based on National Guard participation and 3 cases based on child support obligations (0.5% each); and 1 case based on color (0.2%).

Case closures averaged 366.9 days for the 378 employment cases that were closed during FY96-97.

## 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, 22 new cases of public accommodations discrimination were accepted. There were 8 cases of race discrimination which accounted for 36.4% of the public accommodation cases; 5 cases based on disability discrimination (22.7%); 4 cases based on ancestry (18.2%); 2 cases based on sex discrimination and 2 cases based on color (9.1% each); 1 case based on age (4.5%); and no cases were based on religious discrimination or retaliation.

These complaints alleged discrimination by financial institutions, medical and health service entities, retail establishments, hotels, and government agencies.

Public accommodations case closures averaged 340.4 days for 30 cases closed during FY96-97.

## 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, martial 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.

When state law is substantially equivalent to federal law, state agencies can apply to enter into a work share agreement with the Department of Housing & Urban Development (HUD). The HCRC has such an agreement and HUD now refers most of the complaints it receives to the HCRC for investigation.

During FY96-97, the HCRC accepted 45 cases of housing discrimination. There were 13 cases based on familial status discrimination (28.9%); 10 cases of disability discrimination (22.2%); followed by 6 race cases (13.3%), and 4 retaliation cases (8.9%). There were 3 cases of ancestry discrimination and 3 cases based on age discrimination (6.7% each); 2 cases of sex discrimination, 2 cases of martial status discrimination and 2 cases of discrimination based on religion (4.4% each).

Housing case closures averaged 138.8 days for the 50 cases closed during FY96-97.

## 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 were 5 cases filed under § 368-1.5.

5 cases were closed during FY96-97 averaging 16.2 days for closure.



## CASE SETTLEMENTS

During FY96-97, the cash value of the monetary relief obtained from negotiated settlements during investigation and prior to a finding of discrimination exceeded \$287,425. The monetary relief obtained through conciliation in cases after a finding of reasonable cause to believe discrimination occurred exceeded \$310,000.

In addition to monetary relief, other significant affirmative relief was obtained through settlements. The HCRC believes that education and training are the best means of preventing future occurrences of discrimination. In this context, affirmative relief included letters of apology, reinstatement, development and implementation of anti-discrimination policies, employee and supervisor training on anti-discrimination policies, posting of these policies, and publication of notices informing the public of the HCRC and anti-discrimination laws.

The following illustrate the nature of cases settled and the relief obtained.

### **EMPLOYMENT CASES:**

- \* An employee of a restaurant/bar operation alleged harassment and termination based on race and ancestry. Settlement included payment of \$23,000 and training for supervisors.
- \* An employee alleged she was subjected to unwelcome sexual comments and requests for sexual favors by her immediate supervisor. Settlement included \$13,700 and affirmative relief.

- \* An employee became pregnant and was unable to work for a period of time due to a pregnancy-related disability. She provided medical documentation stating that she required leave due to such disability. When the employee contacted her employer to return to work, she was denied reinstatement and told to call back later. When she called back, she was again denied reinstatement and was told to find another job. Settlement included \$13,000 and letter of apology.
- \* Another employee alleged that she was not reinstated to her same or comparable position upon her return from maternity leave. Settlement included \$30,000 and affirmative relief.
- \* An employee in the food industry settled her claim of pregnancy discrimination for \$30,000 and affirmative relief.
- \* Another employee in the food industry who had brought an earlier claim with the Hawaii Civil Rights Commission was allegedly subjected to retaliation by the employer. In addition to paying the employee \$15,000, the company agreed to apologize and adopt an anti-discrimination policy.
- \* An employee alleged that he had been subjected to racial harassment, excessive discipline, unfair performance evaluations and termination because of his race. Investigation produced evidence supporting the employee's claims, such as being called a "fucking haole," in the work place. There was also evidence that supervisory employees were aware of the harassment and took no corrective action. Settlement included \$10,000 and affirmative relief.
- \* An employee filed a sexual orientation harassment claim after being called names such as "fag," "mahu," and "queer." This matter was resolved for \$17,000 and the adoption and implementation of anti-discrimination policies.
- \* A bar manager who alleged harassment and termination based on race and ancestry settled for \$18,000 and affirmative relief.
- \* A disability discrimination claim based on HIV status was settled for \$50,000 and affirmative relief.

#### **PUBLIC ACCOMMODATIONS CASES:**

- \* An African-American bus rider claimed that a bus driver refused to answer her questions and made racially derogatory remarks to her. The Enforcement Section determined that there was reasonable cause to believe that unlawful discrimination by the bus driver had taken place. Settlement against the bus company included \$10,000 and affirmative relief; settlement against the employee harasser included anti-oppression training and a letter of apology.
  
- \* A visually impaired woman brought a discrimination claim against two taxi companies based on their refusal to provide her a ride because she was with her service dog. The matter was resolved with the payment of \$1,200 and affirmative relief.

#### **HOUSING CASES:**

- \* A family of five, including three minor children, who leased an apartment were repeatedly issued warnings about excessive noise made by the children. As a result of these warnings the owner of apartment refused to renew the family's annual lease. A reasonable cause finding was issued after it was determined that the warnings of excessive noise were a pretext for evicting the family on the basis of familial status and that the apartment owners had engaged in a pattern of evicting or attempting to evict other families with children on the same pretext. Settlement included \$12,500 and affirmative relief.

## LITIGATION & RULINGS

### **ADMINISTRATIVE HEARINGS:**

During FY 96-97, eleven cases were docketed; nine were settled before their scheduled hearings and two administrative hearings were held. One Petition For Declaratory Relief was also filed and decided.

On October 29, 1996 the Commission Board issued a final decision in Tseu on behalf of the Complaint filed by Gould vs. Dr. Robert Simich et. al, Docket No. 95-012-E-SH. This case involved allegations of sexual harassment, same gender sexual harassment and constructive discharge by Linda Louise Gould, a medical assistant who had formerly worked for Kailua Family and Urgent Medical Care Clinic. The Commission found that Dr. Harold Steinberg, who also worked at the clinic, dropped objects down the front of Ms. Gould's shirt, snapped her bra strap several times, rubbed up against her, shot rubber bands and paper clips at her breast and crotch areas and made unwelcome verbal remarks which created a hostile, intimidating and offensive work environment. The Commission awarded Ms. Gould \$40,000 in compensatory damages for emotional distress and ordered Dr. Steinberg to pay Ms. Gould \$20,000 in punitive damages. Dr. Steinberg has appealed this decision.

On April 9, 1997 the Commission Board issued a final decision on a Petition For Declaratory Relief in Hoshijo on behalf of the Complaint filed by John Doe / Estate of John Doe vs. Chaney Brooks & Company and Luana Kai AOA, DR No. 97-011. This case involved allegations of disability discrimination in a place of public accommodation. The Executive Director and Mr. Doe's estate alleged

that Respondents failed to renew an agreement with Mr. Doe's company to operate a tourist activity desk on the premises of an apartment complex because of Mr. Doe's HIV status. Respondent Luana Kai Association Of Apartment Owners contended that it was not a place of public accommodation because it did not advertize, solicit, offer or otherwise make the operation of the tourist activity desk available to the general public. The Commission found that Respondent Luana Kai AOA did make the operation of the tourist activity desk available to the general public because it accepted and considered unsolicited proposals from persons interested in operating the tourist activity desk. The Commission concluded that Respondent Luana Kai AOA met that portion of the H.R.S § 489-2 definition of a "place of public accommodation".

#### **UNITED STATES SUPREME COURT**

The Commission, together with the Native Hawaiian Legal Corporation, Na Loio No Na Kanaka, and Native Hawaiian Advisory Council, filed a friend of the court brief in Arizonans For Official English v. State of Arizona, 117 S.Ct. 1309, 137 L.Ed.2d 473 (1996), a challenge to a state constitutional amendment which designated English as the official language of Arizona. The amendment prohibited state employees from communicating in any languages other than English when performing official actions, even when dealing with people who cannot read, speak or understand English.

The brief noted that Hawaii has two official languages and discussed Hawaii's historical experience of the suppression of

Hawaiian and other languages spoken by immigrant groups. The brief pointed out that laws which exclude non-English speakers are contrary to democratic principles because they exclude minorities from the political process. The appeal was dismissed by the U.S. Supreme Court on mootness grounds because the bilingual employee no longer worked for the state. However, the issue may resurface due to other cases challenging the amendment.

#### **HAWAII SUPREME COURT**

In Furukawa v. Honolulu Zoological Society, 85 Hawaii 7 (1997), the Commission filed a friend of the court brief in an employment case involving discrimination because of race and sex. The Hawaii Supreme Court decision cited to the Commission's brief in concluding that the trial court excluded relevant evidence. The trial court refused to allow evidence that other similarly situated employees of different races and sex were treated more favorably than the plaintiff. This type of evidence can be used to prove that plaintiff's unfavorable treatment was based upon his race and sex. The trial court also excluded evidence of the employer's unfavorable treatment of an individual of the same race and sex. The Court stated that such evidence was also relevant because it could be used to prove the employer's general animus against employees of the same race and sex as the plaintiff.

## CIRCUIT COURT

In Corpuz v. Hawaii Civil Rights Commission, Civil No. 96-0614(1) and Collins v. Hawaii Civil Rights Commission, Civil No. 96-0629(1), two appeals were filed in the Second Circuit (Maui) from the Commission's final decision which found that Complainant Susan C. Collins was the victim of sexual harassment while working as the only female carpenter at a job site with up to thirteen men. The employer and a supervisor were found liable for damages totalling \$30,000 with the supervisor individually liable for \$3,000. The Circuit Court upheld the Commission's determination that sexual harassment had occurred and the award of damages. No further appeals were taken.

In Tseu ex rel. Hobbs v. Jeyte, Civil No. 94-1553-05 (First Circuit, Oahu), the Commission settled a housing case involving discrimination because of familial status (the presence of children in a household) resulting from an overly restrictive occupancy limit. The complainants received a settlement from the landlord's insurer and withdrew their complaint. The Commission agreed to resolve three counterclaims by reimbursing part of the landlord's court costs. The landlord was allowed to appeal a circuit court decision dismissing a fourth counterclaim. An appeal on this issue is pending before the Hawaii Supreme Court.

## LEGISLATIVE HIGHLIGHTS

The Legislature passed two bills affecting the Commission's jurisdiction.

Act 311 amended the real estate transactions law (H.R.S. Chapter 515) to amend the definition of "signal dog" and replace the term "service dog" with "service animal." The amendments were made to conform State law to federal fair housing law. Service animals are trained to assist persons with disabilities in the life activities limited by their disabilities. Signal dogs are trained to alert a deaf person to intruders or sounds.

Act 365 amended the employment discrimination law to exempt health care facilities from H.R.S. Chapter 378's prohibition against discrimination because of arrest and court record. It allows health care facilities to consider conviction records after an offer of employment where the offense is a relevant factor in determining the bona fide occupational qualifications for a position working in close proximity to patients.



## EDUCATION & OUTREACH

Pursuant to its mission statement, one of the Commission's highest priorities is to educate the public about their rights and responsibilities under state discrimination laws. During the 1996-97 Fiscal Year, commissioners and staff developed a public education action plan, which established a speakers bureau and focussed on updating and developing informational materials.

Commissioners and staff also participated in numerous education and outreach activities:

- \* coordinated a reception in honor of Dr. Martin Luther King Jr. at Washington Place and spoke at two community commemorations held for Dr. King
- \* spoke to management groups such as the Hawaii Newspaper Agency Mangers, the Society of Human Resource Managers, the Hawaii Association of Temporary and Staffing Services, and management of the Renaissance Wailea Beach Resort on state discrimination laws, sexual harassment and the Commission's enforcement procedures
- \* spoke to housing organizations, such as the Community Associations Institute and the Hawaii Council of Associations of Apartment Owners about state fair housing laws
- \* spoke at an EEOC technical assistance program about accent discrimination and English only policies
- \* spoke to police recruits at the Honolulu Police Academy about the history of civil rights and the jurisdiction of the HCRC
- \* spoke to various legal organizations (Consumer Lawyers of Hawaii, National Employment Lawyers Association, Hawaii State Bar Association Labor and Employment Section, Hawaii Association of Legal Assistants) about the Commission's jurisdiction and procedures

- \* spoke at various schools (Hawaii Baptist Academy, Kapiolani Community College, University of Hawaii William S. Richardson Law School, Wayland Baptist University, U.C. Los Angeles, U.C. Santa Barbara) about the history of civil rights and current civil rights laws
- \* published fair employment and fair housing informational ads in various Hawaii newspapers
- \* posted fair housing placards on public buses

STAFF OF THE HCRC

The HCRC's Organization Plan was approved by the Governor on January 5, 1993. However, classification of job positions subject to state civil service laws was still in process.

The HCRC staff\* are comprised of the:

**Executive Director**

**Enforcement Staff:**

Deputy Executive Director  
Enforcement Attorneys (3)  
Administrative Services Assistant  
Investigator VI  
Investigator V Supervisors (2)  
Investigator IV (11)  
Secretary III  
Legal Stenographer I  
Clerk Typists (4)

**Adjudication Staff:**

Chief Counsel  
Hearings Examiner  
Secretary II

\* subject to budget reduction and approval to fill vacancies

## 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 FY96-97.

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

Dr. Agbayani was educated at the University of Philippines and the University of Hawaii-Manoa. She holds a Ph.d. in political science and is currently Director for Student Equity, Excellence & Diversity at the University of Hawaii-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 expired on June 30, 1997.

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

Mr. Law was educated at the University of Hawaii 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 two restaurants and nightclubs. A founding member of the Life Foundation, he has served on that organization's board for over eight years.

**WILLIAM HOSHIJO:**  
**commissioner (term 1995-1996).**

Mr. Hoshijo was an attorney and executive director of Na Loio No Na Kanaka and played a leadership role in advancing legislation which created the HCRC. In November 1996 Mr. Hoshijo resigned from the Commission and was selected to become its Executive Director.

**FAYE KENNEDY:**  
**commissioner (term 1995-1997).**

Ms. Kennedy is a former New York social worker. She is a past member of the Martin Luther King, Jr. Commission and the Commission on the Status of Women. She is also member of the U.S. Civil Rights Commission's Hawaii Advisory Committee. Appointed in 1995 to serve out the remaining term caused by a vacancy on the Commission, her first term expired on 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 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 Hawaii and is active with the Women's Coalition and the Coalition for Equity and Diversity.

**CLAUDIO SUYAT**  
**commissioner (term 1996-1999).**

Mr. Suyat was appointed to replace Commissioner Hoshijo. He brings a wealth of experience, commitment and community service to the Commission. He is a retired educator and administrator with the Department of Education. He was a member of the Judicial Selection Commission and a member and chair of the Hawaii Paroling Authority.

