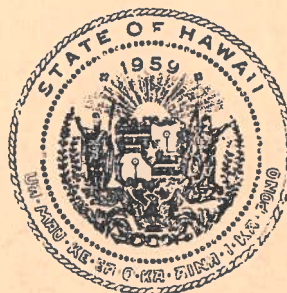


Annual Report

July 1, 1999 — June 30, 2000

Hawaii Civil Rights Commission



Benjamin Cayetano,
Governor

Lorraine Akiba,
Director, Department of Labor & Industrial Relations

Harry Yee,
Commission Chair

William Hoshijo,
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.

Overview

The laws of the State of Hawaii reflect a strong commitment to the protection of civil rights. Article I, Section 5 of the Hawaii Constitution provides that "no person shall ... be denied the enjoyment of ... civil rights or be discriminated against in the exercise thereof because of race, religion, sex, or ancestry." The legislature gave meaning to this commitment by creating the Hawaii Civil Rights Commission (HCRC), through enactment of Act 219 in 1988 and Acts 386 and 387 in 1989.

The HCRC was organized in 1990 and officially opened its doors in January 1991. For ten years the HCRC has exercised jurisdiction over state laws prohibiting discrimination in employment (H.R.S. Chapter 378, part I), housing (H.R.S. Chapter 515), public accommodations (H.R.S. Chapter 489), and access to state and state-funded services (H.R.S. § 368-1.5). The HCRC receives, investigates, conciliates, litigates, and adjudicates complaints of discrimination, providing a uniform procedure for the enforcement of the state's discrimination laws.

As the Hawaii Civil Rights Commission (HCRC) marks its tenth anniversary of operations, we look back with pride and feelings of accomplishment, and we look forward with anticipation and renewed determination to do more to protect civil rights and promote diversity.

In its first years of operation, the HCRC established policies and procedures for its enforcement and adjudication functions, promulgated rules, and set up its office, staffing, and training — start up issues which must be faced and addressed by any new agency. During this initial period, with assistance from the Department of Labor and Industrial Relations, federal civil rights enforcement agencies (EEOC and HUD), and the civil rights, labor and business communities, the HCRC laid the groundwork for effective and efficient civil rights law enforcement.

For much of the 1990's, the HCRC was impacted by the weak Hawaii economy that affected everyone in the state. All state agencies were admon-

ished to "do more with less." Economic conditions spurred down-sizing and reductions in force; workers who wanted to keep their jobs were vulnerable to discrimination; the increase in adverse employment actions resulted in an increase in the number of employment discrimination complaints. During this period, the HCRC continued to establish a strong body of state civil rights law, through its decisions, statutory amendments, and rule-making, and maintained enforcement efforts despite a decline in state general funding.

From 1997 through 2000, the HCRC took a new approach, implementing a system of prioritized charge processing and specialization among its investigators, while also expanding public outreach and preventative education. As a result, the HCRC substantially reduced its backlog of cases and has maintained a lower case in-

ventory. This has allowed more timely investigation of complaints and an increase of resources for complex and meritorious complaints. We have also changed the way that we process, keep, and disseminate information by upgrading our computer system, our database of cases, and our electronic connectivity.

Embarking on our second decade of operation, HCRC Commissioners and staff continue in our unwavering commitment to our mission – to eliminate discrimination by protecting civil rights and promoting diversity through enforcement of anti-discrimination laws and education. We will continue to explore new approaches to civil rights law enforcement, both internally and in partnership with government, civil rights, business, labor and community organizations, so that no person shall be denied their civil rights under Hawaii law.

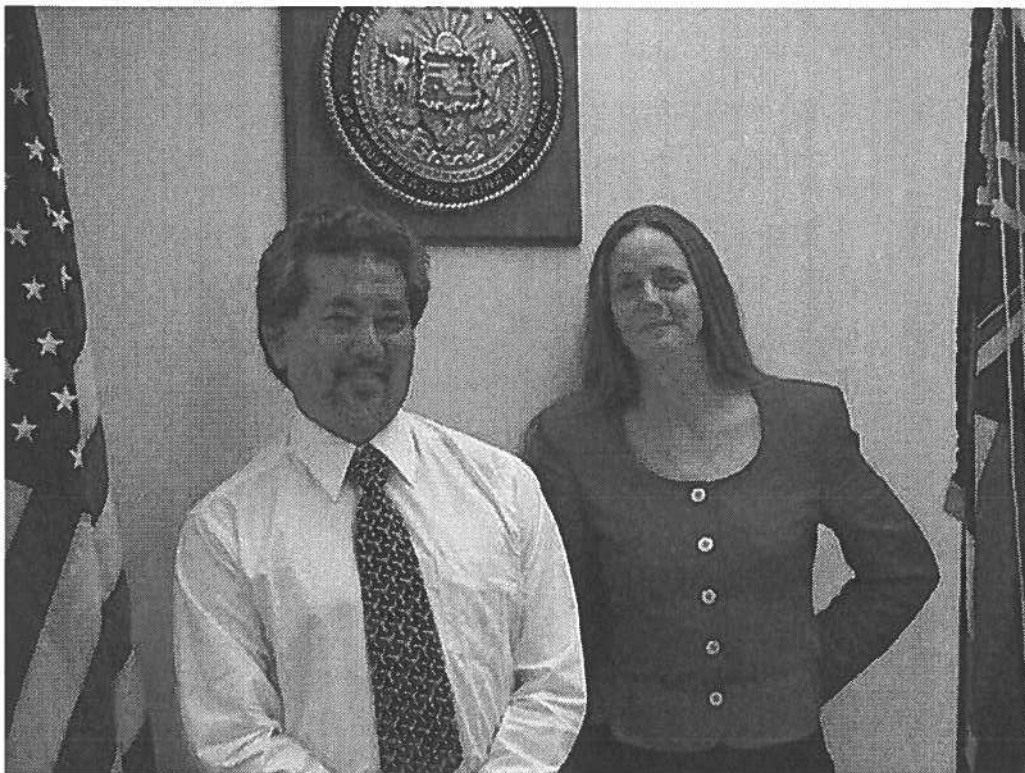
ACTION PLANS FOR THE FUTURE:

1. Maintain case inventory at a level that allows for timely investigation of complaints and commitment of resources to complex and meritorious complaints.
2. Evaluate the HCRC voluntary mediation program, and based on assessment of the first two years of implementation, work with partners to improve and expand the program

to offer the mediation alternative in more cases.

3. Continue to focus on the largely unfunded priority of HCRC public education activities, partnering with co-sponsors from the private sector, government, and educational institutions.

The accompanying report is submitted pursuant to H.R.S. §§ 368-4 and 515-9.



*William D. Hoshijo,
Executive Director.*

*April Wilson-South,
Deputy Executive Director*

Mediation Program

Complainants, respondents, and the HCRC all want quick and fair resolutions to discrimination complaints. To help accomplish this, the HCRC has developed a voluntary mediation program. Mediation is a process in which neutral third parties (usually a team of two mediators) help the parties discuss and decide how to settle the complaint. Mediators do not take sides or make a ruling on the complaint. Instead, the mediators help parties reach agreements ranging from simple apologies to monetary settlements. Mediation saves time, money, and resources, reduces stress on those involved, and allows the parties to control the process.

HCRC works with trained and senior mediators from the Mediation Centers of Hawaii (MCH), a statewide network of community non-profit mediation centers. Parties may also elect to use private mediators instead. MCH mediators receive training in civil rights laws from HCRC attorneys and investigation staff. An HCRC mediation coordinator assists the efforts of HCRC staff, the parties, and the mediation centers.

HCRC's voluntary mediation program was fully implemented on January 5, 1999. Mediation can occur at any stage of the complaint process. Mediation is first offered right after a complaint is accepted because it is often easier to deal with a complaint when the facts are still fresh and before damages accumulate. As of June 30, 2000, mediated settlements were reached in over thirty early stage cases and in five cases prior to reasonable cause determinations. In addition, two cases set for administrative hearings were settled through the HCRC's mediation program. The monetary value of all of these settlements exceeded \$200,000.

The HCRC mediation program is strongly supported by the Commissioners as an efficient and cost effective way to resolve discrimination complaints. Approximately 70% of cases referred by investigation and/or legal staff are successfully settled by mediation. In early-stage cases, an estimated 50% of referred complainants opt for mediation and an estimated 40% of offered respondents opt for mediation. HCRC staff will continue its ef-

forts towards increasing the number of cases referred to mediation.

The following are examples of cases settled by mediation:

- A female employee alleged discrimination and harassment based on sex. Settlement included a monetary payment and affirmative relief.
 - A male employee of a transportation service company alleged he was subjected to discrimination based on his age. The parties agreed to settle for monetary and affirmative relief.
 - In a Maui case, an African-American bus driver was terminated from his position with a travel company after working 2-1/2 years with a good record. He alleged race discrimination. An agreement in mediation was reached for \$8,500 and his personnel file was cleared.
 - In another Maui case, a female salesperson was denied reinstatement after temporary leave and replaced by a male. She alleged discrimination on the basis of sex. The parties agreed on a monetary settlement of \$3,000.
- A golf course maintenance worker at a hotel alleged he was harassed on the basis of his disability. The hotel mediated with the employee for over \$17,000 in back pay and benefits and the employee voluntarily resigned.
 - A massage therapist applicant at hotel was not selected. She alleged that she was sexually harassed during the selection process, and then denied the position because of her refusal to participate in the harassment. A mediated settlement was reached in the amount of \$20,000. In addition, the HCRC strongly recommended the resort adopt a thorough written policy regarding sexual discrimination and retaliation at the earliest possible time.
 - In a national origin case, a journeyman alleged he was terminated because of his ancestry (Hawaiian) after an altercation with a supervisor at a steel company. After mediation, the company agreed to pay the complainant \$2,500 and his attorney fees and costs in addition to liquidated damages of \$5,000 for any

violation of the agreement. Further, the company agreed to provide cultural sensitivity training for all of its employees at its own cost.

Not all mediated settlements were monetary. Examples of other types of relief obtained include:

- 1) education of supervisors on the American Disabilities Act;
- 2) training of employees on civil rights laws;
- 3) eligibility for rate increases;
- 4) development and adoption of new policies regarding various types of discrimination;
- 5) An employee's voluntary resignation in exchange for consideration;
- 6) rehire of the employee;
- 7) deletion of inappropriate negative comments in employee records;
- 8) accommodation for religious beliefs, such as not working on certain holy days;
- 9) HCRC training on specific kind of discrimination;
- 10) revision of inappropriate negative letters of recommendations; and
- 11) re-tests of employees who failed English proficiency tests for inappropriate reasons instituted by the employer.

Public Education & Outreach

In addition to enforcement of anti-discrimination laws, the HCRC is committed to preventing and eliminating discrimination through public education. Working with limited resources, the HCRC Commissioners and staff have maintained a number of public education efforts, and are working with partners in the civil rights, business, labor, and broader communities on new initiatives.

FY 1999-2000 highlights:

- The HCRC updated and reprinted its informational flyers on its jurisdiction and processes, employment discrimination law, pregnancy discrimination, sexual harassment, public accommodations discrimination, and housing discrimination. These were disseminated through government and community organizations, HCRC outreach and training efforts, at conferences and workshops, and in response to requests for information from the public.
- The HCRC website, www.state.hi.us/hcrc, was enhanced in substance and function through the updating and footnoting of Commission decisions, making Pre-Complaint Questionnaires (PCQs) available for downloading and printing, and providing new information on commissioners, staff, and scheduled events. This was made possible through the work of Dr. William Puette of the UH Center for Labor Education and Research. The HCRC website is one of the most accessible sources of information on the HCRC, registering more than 6,000 "hits" per month.
- The HCRC continued to provide speakers and trainers for conferences, workshops, schools, employers, labor organizations, landlord and tenant organizations, government agencies, and community groups on rights and responsibilities under anti-discrimination laws, specific issues such as pregnancy discrimination and sexual harassment, and diversity issues.
- The HCRC continued to work with the U.S. Department of Housing and Urban Development, the State and counties, and community fair housing organizations to co-

sponsor fair housing training on all islands, and assisted in the production of fair housing public service announcements.

- The HCRC provided support for "Anti-Discrimination in the Workplace Month," proclaimed in March by Governor Cayetano, which included presentations to government administrators.
- The HCRC also co-sponsored seminars and forums with the U.S. Equal Employment Opportunity Commission, State of Hawaii Judiciary, Kapiolani Community College Legal Education Department, and Hawaii Justice Foundation.
- The HCRC continued to sponsor and participate in a number of Martin Luther King, Jr., Holiday events, including a Proclamation Ceremony hosted by Governor and Mrs. Cayetano at Washington Place, a symposium featuring EEOC General Counsel C. Gregory Stewart, and a holiday program co-sponsored by the U.S. National Weather Service.

SPECIAL ADVISORY COMMITTEE ON DIVERSITY

Recognizing that discrimination cannot be eliminated through law enforcement alone, in 1999 the HCRC convened a Special Advisory Committee on Diversity, comprised of the HCRC Commissioners, staff members, educators, representatives of the Department of Education, the Hawaii State Teachers Association, community and civil rights organizations, and concerned individuals.

The stated mission of the Diversity Committee is: To ensure student safety, equity, and respect for diversity, by working primarily with schools in partnership with community groups.

During FY 1999-2000, the Diversity Committee developed a draft flyer on diversity and fairness in education, for planned distribution to teachers statewide. The Diversity Committee also plans to develop a bibliography, a flyer providing answers to frequently asked questions (FAQ's), and other educational resources on diversity.

Caseload Statistics



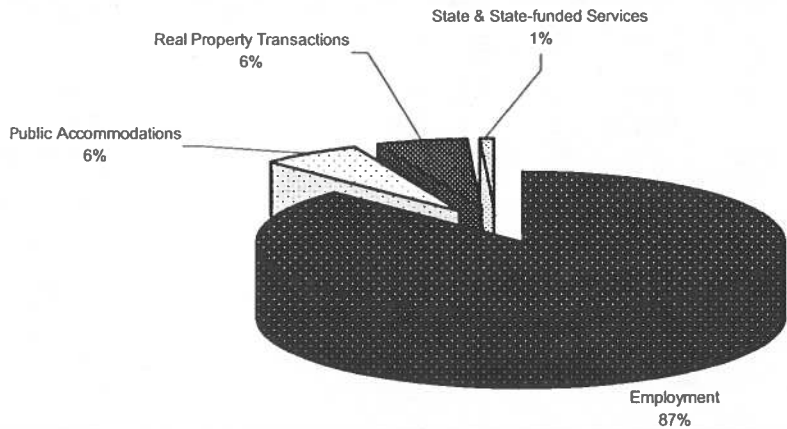
INTAKE

During FY 1999-2000, the HCRC received approximately 3,300 telephone and walk-in inquiries, resulting in 954 intake interviews by HCRC investigators.

660 charges of discrimination were actually accepted by the HCRC, including 226 dual-filed charges assigned for investigation by the EEOC, and averaging 55 new cases per month. The

charges included: 577 employment cases, 40 public accommodations cases, 37 housing cases, and 6 cases involving state and state funded services. The primary reasons that the other inquiries did not lead to filed charges include: lack of jurisdiction; failure to correlate the alleged act(s) with the protected basis or bases; and the complainant's decision not to pursue the complaint.

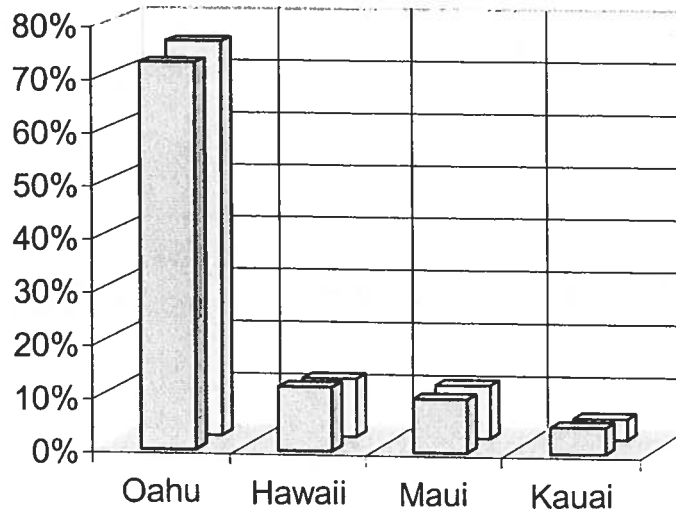
Complaints Filed FY 1999-2000



The 660 charges accepted by HCRC consisted of 493 Oahu complaints, 71 complaints from Hawaii County, 67 Maui County complaints, and 29 complaints

from Kauai County. The number of complaints filed from each county was consistent with its portion of resident population.

Complaints Filed by County



	Oahu	Hawaii	Maui	Kauai
□ Population	73%	12%	10%	5%
□ Complaints Filed	75%	11%	10%	4%

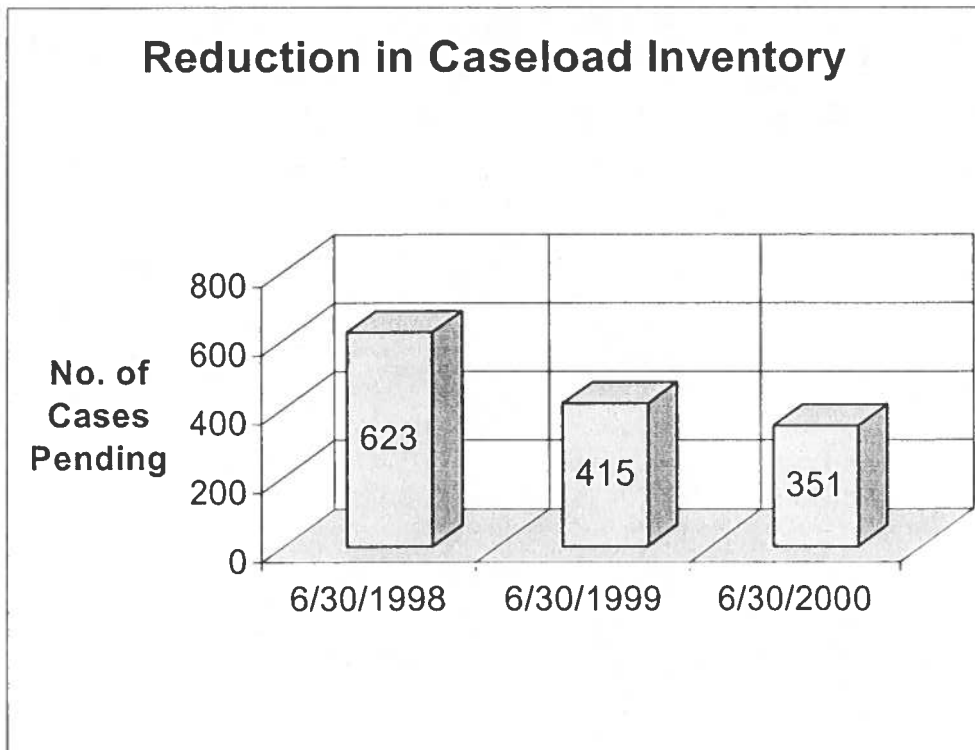
CLOSURES

HCRC investigators closed 506 cases during this period, for an average monthly closure rate of 42.17. There were 44 cause determinations during the fiscal year.

As of June 30, 2000, the inventory of cases pending with investigators had been reduced to 351 cases. Two years before, HCRC investigators operated with a case inventory of more than 600 cases, which included a substantial backlog of older cases pending investigation. Through implementation of a system of prioritized charge process-

ing and specialization in investigation, HCRC was able to reduce this backlog substantially and achieve a 44% reduction in case inventory.

This reduction in case inventory brings the HCRC closer to the optimum caseload of 30 cases per investigator, as recommended by the Legislative Auditor in "A Study on Implementation of the Civil Rights Commission for the State of Hawaii" (Report No. 88-9, January 1989). In order to maintain this manageable case inventory, however, HCRC must continue to close in excess of 450 cases each fiscal year.



The average period for case closure was reduced to 303 days, as compared to 319 days in the previous fiscal year. In the future the HCRC will strive to maintain a manageable inventory of ac-

tive cases, and to further reduce the average closure period of pending cases.

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

Type of Closure	Number	Percentage
No Jurisdiction	15	2.96%
Complaint Withdrawn	5	0.99%
Complainant Not Available	4	0.79%
Complainant Failed to Cooperate	5	0.99%
Complainant Elected Court Action	78	15.41%
Resolution by Parties or Settled	38	7.51%
No Cause Determination	309	61.07%
Already Investigated by Other Agency	4	0.79%
Administratively Closed	4	0.79%
Cause Determinations	<u>44</u>	<u>8.69%</u>
TOTALS	506	100.00%

EMPLOYMENT CASES

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, National Guard participation, or breast feeding/expressing milk. Examples of 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 filed with both agencies, but only the intake agency conducts the investigation, thereby eliminating duplication of enforcement activities. During the fiscal year 577 employment cases were accepted by the HCRC, of which 509 (88.2%) were dual-filed with EEOC.

Of the employment cases accepted, sex was the largest category with 151 cases, accounting for 26.2% of all em-

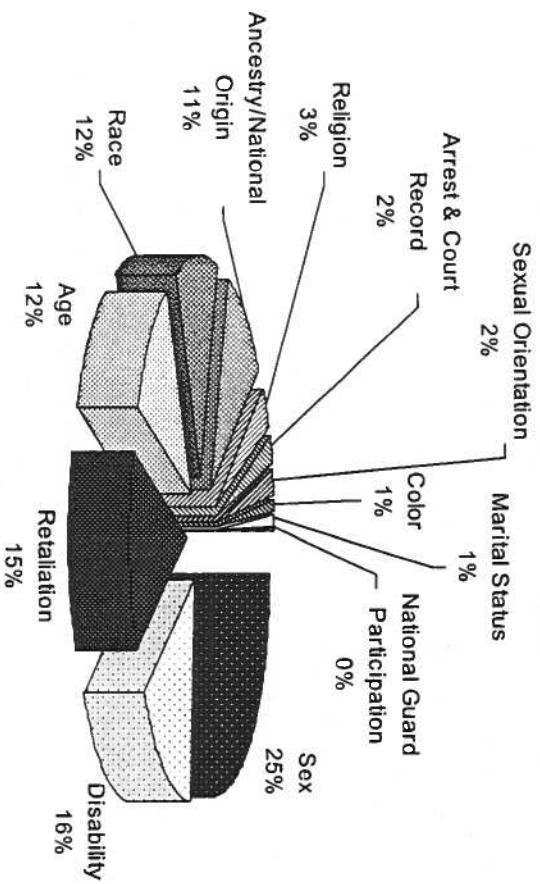
ployment discrimination cases. Within the sex category, 54 cases alleged sexual harassment (35.8% of all sex cases) and 23 cases were based on pregnancy (15.2% of all sex cases).

Disability was the second largest basis with 90 cases, representing 15.6% of accepted employment cases. Retaliation was next with 84 cases, representing 14.6% of accepted employment cases, followed by age discrimination with 70 cases (12.1%).

There were 68 race discrimination cases (11.8%); 62 cases of ancestry/national origin discrimination (10.7%); 19 cases based on religion (3.3%); 11 cases based on arrest & court record (1.9%); 10 cases based on sexual orientation (1.7%); 6 cases based on color (1.0%); 5 cases based on marital status (0.9%); and 1 case based on national guard service (0.2%).

Case closures averaged 329 days for the 412 employment cases that were closed by HCRC investigators during FY 1999-2000.

Employment Complaints Filed



HOUSING CASES

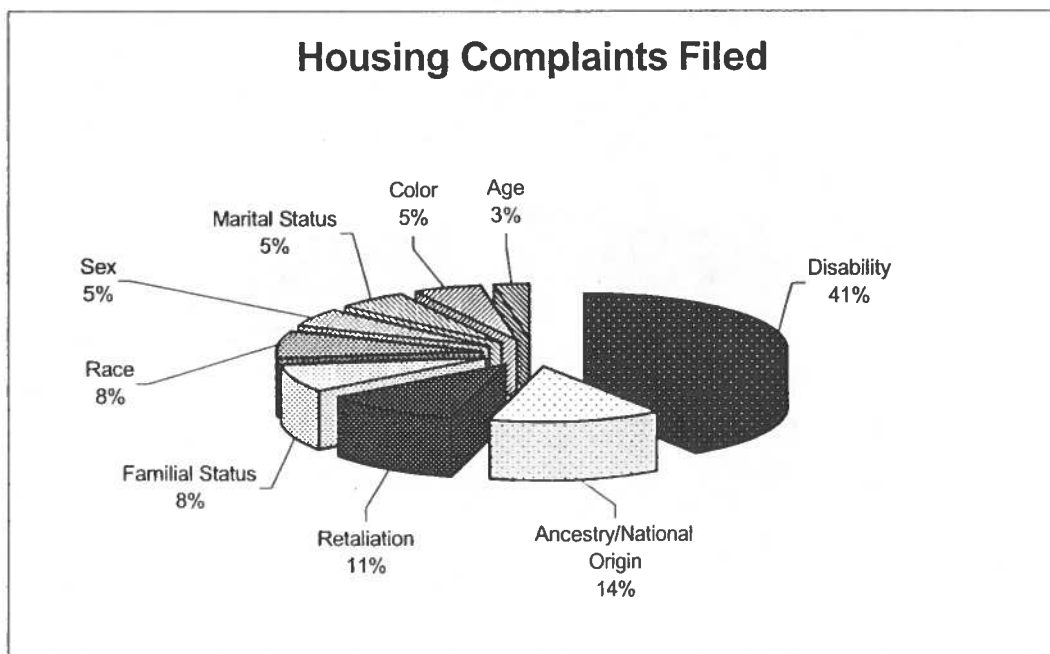
H.R.S. Chapter 515 is Hawaii's fair housing law. It prohibits discriminatory housing practices based on race, sex, color, religion, marital status, familial status, ancestry, disability, age, or HIV infection. Examples of such unlawful practices are listed in H.R.S § 515-3 and include actions such as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

When state law is substantially equivalent to federal law, state agencies can enter into a workshare 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 FY 1999-2000, the HCRC accepted 37 cases of housing discrimination. There were 15 cases based on disability status (40.5%); followed by 5 cases alleging ancestry/national origin discrimination (13.5%); 4 retaliation cases (10.8%); 3 alleging race discrimination (8.2%); 3 cases based on familial status (8.2%); 2 cases each based on sex, marital status, and color; and 1 case alleging age discrimination.

Housing case closures averaged 276 days for the 38 cases closed during FY 1999-2000.



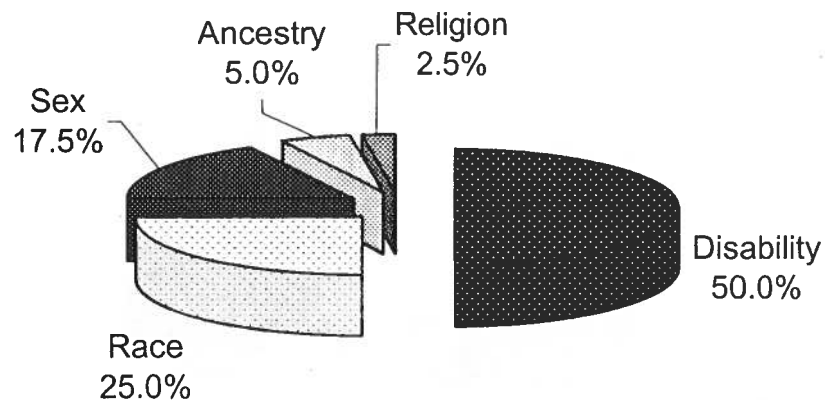
PUBLIC ACCOMMODATIONS CASES

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. Public accommodations include: retail stores, restaurants, government agencies, healthcare organizations, hotels, and banks.

During the fiscal year, 40 new cases of public accommodations discrimination were accepted. There were 20 cases based on disability discrimination which accounted for 50.0% of the public accommodations cases; 10 cases alleging race discrimination (25.0%); 7 cases based on sex discrimination (17.5%); 2 cases based on ancestry (5.0%); and 1 case based on religion (2.5%);

Public accommodations case closures averaged 110 days for the 43 cases closed during FY 1999-2000.

Public Accommodations Complaints Filed



ACCESS TO STATE & STATE-FUNDED SERVICES CASES

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

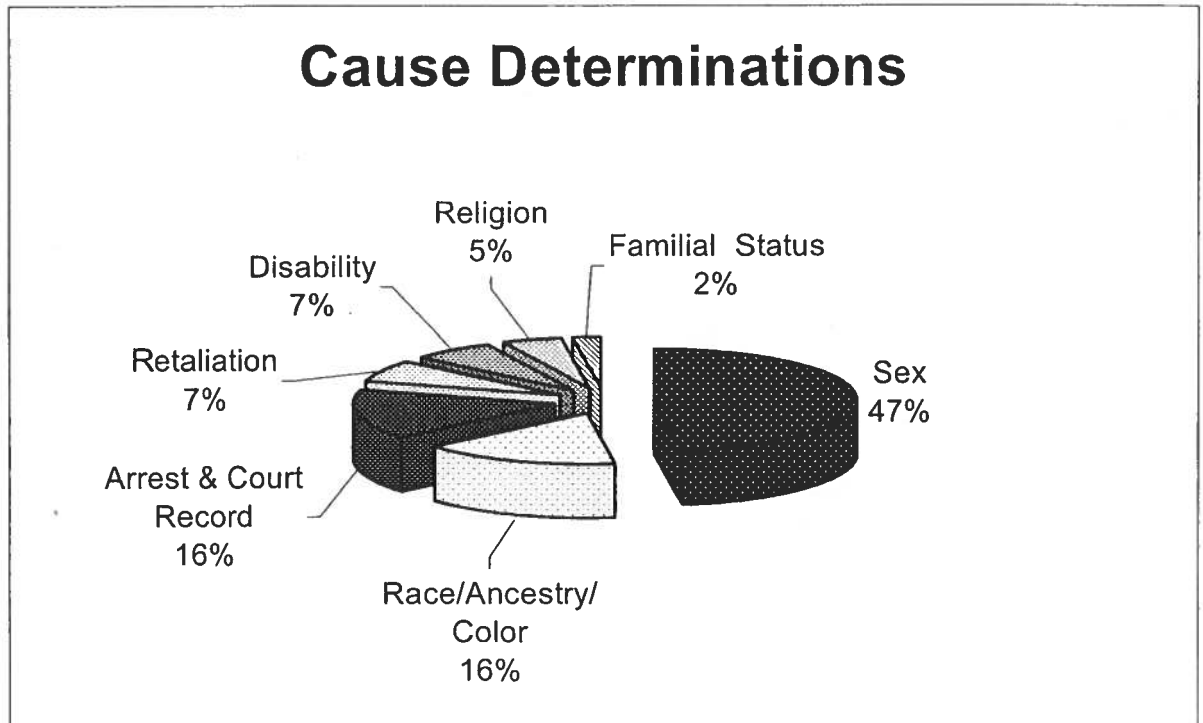
otherwise discriminating against persons with disabilities (the only protected class under this statute).

During the fiscal year, there were 6 cases filed under § 368-1.5. 13 cases were closed during FY 1999-2000 averaging 184 days for closure.

CAUSE CASES

When the investigation section has determined that there is "reasonable cause" to believe discrimination has taken place, cases are assigned to HCRC enforcement attorneys for legal action. In FY 1999-2000, the enforcement attorneys received 44 cause determinations, more than twice as many as in the previous fiscal year. Of these, 37 (84%) were employment cases, 5 (11%) were public accommodations cases, and 2 (5%) were housing cases.

Of the 44 new cases, nearly half (21 cases or 48%) involved discrimination on the basis of sex, including sexual harassment and pregnancy cases. There were also 7 cases (16%) involving race, color, or ancestry discrimination, and 7 based on arrest and court record. The remaining 9 cases involved retaliation, disability, religion, or familial status as bases. During FY 1999-2000, enforcement attorneys closed 18 cases, of which 13 (72%) resulted in negotiated settlements.



Case Settlements

During FY 1999-2000, the HCRC obtained over \$664,400 in monetary relief through settlements. The HCRC obtained more than \$155,402 from negotiated settlements during the investigation stage and prior to a finding of reasonable cause and more than \$309,000 through conciliation after a finding of reasonable cause. In addition, the HCRC obtained more than \$200,000 through the Mediation Program. These figures do not include settlements in cases involving confidential agreements.

In addition to monetary relief, other significant affirmative relief was obtained, including reinstatement to jobs, letters of apology, development and implementation of anti-discrimination policies, and training. Because the HCRC places a high priority on preventative education and training, it has consistently sought the development and implementation of anti-discrimination policies, training on and posting of such policies, and the publication of notices informing the public of state anti-discrimination laws and HCRC's enforcement role and process.

The following cases are illustrative of settled cases and the relief obtained:

- A bus rider alleged that a driver discriminated against him because of his race. Complaint settled for training and \$7,000 in damages.
- A social worker alleged that she had been discriminated against because of her Hawaiian ancestry. She settled for the adoption of a non-discrimination policy and training of supervisors on this policy.
- A pregnant employee was terminated after she tried to extend her pregnancy leave. Her doctor wrote to her employer stating that she could not be released to return to work until a week later. She settled her complaint for the adoption of a revised pregnancy leave policy, training of all managers, and a payment of \$32,000.
- A county employee alleged discrimination based on disability. Complainant settled for \$55,000 in damages and affirmative relief, including the county's reaffirmation and posting of its nondiscrimination policy

and nondiscrimination training for all managerial employees.

- A county employee with greater seniority and qualifications was denied a promotion because he would be working in the same unit as his wife. He would not have been denied the promotion if he and his wife were unmarried. Complainant's marital status discrimination complaint was settled for the promotion, adoption of a nondiscrimination policy, training of managers and a payment of \$5,000.
- A pregnant woman was terminated after her pregnancy-related disability leave exceeded 12 weeks. Her complaint was settled for the adoption of a pregnancy leave policy, training of managers, and a payment of \$42,500.
- An insurance claims adjuster alleged discrimination based on arrest and court record. The Complaint settled for \$25,000 and affirmative relief, including the employer providing Complainant with a positive letter of reference, reaffirming and posting its nondiscrimina-

tion policy and giving nondiscrimination training for all managerial employees.

- Complainant was terminated after he voluntarily informed employer of his arrest and court record a year after he was hired. Employer terminated Complainant for lying in response to a question on the employer's application form asking if he had been convicted of any felony. Settlement included eliminating the unlawful question about felony convictions, training of managers regarding arrest and court record discrimination, and a payment of \$35,000.
- An applicant for a custodian position alleged hiring discrimination based on his arrest and court record. The complaint settled for \$1,500 and affirmative relief including eliminating an unlawful inquiry into conviction records on respondent's employment application, reaffirmation and posting of respondent's nondiscrimination policy, and nondiscrimination training for all managerial employees.

- A waitress alleged sexual harassment in the workplace. She settled for \$17,500 and affirmative relief, including receipt of a letter of apology from the two alleged harassers, and the restaurant's adoption and posting of a nondiscrimination policy and nondiscrimination training

for all managerial employees.

- An employee alleged that his employer required him to speak English at all times in the workplace. His claim was settled for a payment of \$11,000, the development of a non-discrimination policy and employee training.

Case Decisions

CONTESTED CASE HEARINGS

During FY 1999-2000, six cases were docketed for hearing; four were settled and one was mediated. Two administrative hearings were pending at year's end.

On February 28, 2000 the Commissioners issued a final decision in Ho-shijo on behalf of the Complaint filed by Jerry and Moana Ramos vs. Beretania Hale, Ltd. and Mary Mau LeCavelier, Docket No. 99-001-H-D. This was the first housing case that went to hearing. (Pursuant to H.R.S. § 515-9, any party may request a right to sue letter and remove housing cases to state circuit court; therefore most housing cases are litigated in that forum.) The Executive Director alleged that complainant Moana Ramos was disabled and that respondent refused to provide her with a parking stall to accommodate her disability.

The Commissioners' decision established the following elements of a prima facie case for failure to make a reasonable housing accommodation:

- a) Complainant is a person with a disability or is a person associated with a disabled person;
- b) Respondent knew of the disability or could have been reasonably expected to know about it;
- c) Complainant requested a reasonable accommodation which may be necessary to afford an equal opportunity to use and enjoy his/her dwelling; and
- d) Respondent refused to make a reasonable accommodation.

The Commissioners also held that once a prima facie case is established, a respondent may still prevail if he or she can demonstrate that the accommodation would cause an undue hardship.

In this case, the Executive Director showed that Mrs. Ramos was substantially limited in her ability to walk, that she requested a parking stall near her apartment unit, that respondents knew of her disability and request and refused to provide a parking accommo-

dation. However, the Commissioners also found that there were fewer parking stalls than units, that each parking stall had been leased out to other unit owners or their tenants, and that the other owners and tenants were not willing to give up their parking stalls.

The Commissioners concluded that respondents would have to break existing leases in order to provide Mrs. Ramos with a parking accommodation and this would cause undue hardship. The Commissioners also concluded that while the Executive Director could bring a claim for failure to engage in an interactive process with complainant (i.e., failed to discuss accommodation of her disability), there is no per se liability if no reasonable accommodation can be made. The Commissioners held that respondents were not liable and dismissed the case.

CIRCUIT COURT:

There were no proceedings in Circuit Court involving HCRC contested cases.

HAWAII SUPREME COURT:

In Sam Teague, Ltd. v. Hawaii Civil Rights Commission, 89 Hawai'i 269, 971 P.2d 1104 (1999), the Hawaii Supreme Court upheld the Commissioners' final decision which found that a company discriminated against an employee because of her pregnancy. Complainant Yvette Shaw's supervisor made derogatory comments about pregnancy and women raising young children, indicating a bias against pregnancy and childbirth. The company denied Mrs. Shaw's maternity leave, terminated her, and refused to reinstate her. The decision found that an employer may not ask an applicant if she is pregnant and cannot implement a "no-leave" policy to deny maternity leave. The court also upheld the Commissioners' award of compensatory damages and back pay, holding that unemployment benefits were not deductible from the back pay award. (Note: this case was decided in February 1999 but was inadvertently omitted from the prior Annual Report.)

Legislation

The Legislature amended the public accommodation law, H.R.S. Chapter 489, to protect the rights of women who breast-feed in public. Act 227 makes it unlawful for a place of public accommodations, such as a restaurant, shopping center, or any business open to the public, to discriminate or attempt to discriminate against a woman because she is breast feeding a child. The law allows a woman to file a claim in small claims court and seek \$100 in dam-

ages, an injunction, and attorney's fees. The law will be enforced through private court action rather than through the HCRC complaint process.

The Legislature also passed a bill to provide for gender equity in sports. Act 229 requires the Superintendent of Education to define equity in athletics for public high schools, recommend rules to enforce equity, and develop a strategic plan to insure equity. The law does not allow a private right of action.

Appendix

OVERVIEW

The Hawaii Civil Rights Commission (HCRC) was established under Act 219, L. 1988, and Acts 386 and 387, L. 1989.

The HCRC's enabling statute, H.R.S. chapter 368, declares that discrimination because of 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. Certain bases are not protected under all laws under HCRC jurisdiction.

The HCRC exercises jurisdiction over Hawaii's laws prohibiting discrimination in employment (H.R.S. Chapter 378, Part I), housing (H.R.S. Chapter 515), public accommodations (H.R.S. Chapter 489), and access to state and state-funded services (H.R.S. § 368-1.5). Under its statutory mandate, the HCRC receives, investigates, conciliates, litigates, and adjudicates complaints of discrimination, providing a

uniform procedure for the enforcement of the state's discrimination laws.

The HCRC has five (5) uncompensated volunteer Commissioners. They are appointed by the Governor, with the consent of the Senate, based on their knowledge and experience in civil rights matters and commitment to preserve the civil rights of all individuals.

The HCRC is attached to the Department of Labor & Industrial Relations (DLIR) for administrative purposes. The HCRC has a staff of twenty-nine (29) persons who are divided into separate enforcement and adjudication sections.

ADMINISTRATIVE PROCEDURE

Before the HCRC can accept a complaint of discrimination a person must allege:

- 1) that he/she has been subjected to unlawful discrimination because of a "protected basis" (that is, because of race, age, sex, ancestry, disability, etc.); and
- 2) that the unlawful discrimination occurred within the previous 180 days (or that the most recent incident of

unlawful discrimination was within 180 days of filing, if there is a recurring pattern of discrimination).

After a **complaint** is filed with HCRC, in certain cases the parties are offered an opportunity to voluntarily **mediate** the complaint. If the parties agree to mediate, the HCRC mediation coordinator refers them to a community mediation center, which schedules and conducts the mediation sessions. Parties may alternatively choose to hire a private mediator.

In cases not referred to mediation and in cases where mediation is unsuccessful, an HCRC investigator will conduct an objective, fact-finding **investigation** by collecting and reviewing documents, and by contacting and interviewing witnesses who are alleged to have relevant information. The witnesses contacted include objective, uninvolved witnesses, witnesses supportive of the complainant's allegations, and witnesses supportive of the respondent's allegations. The investigator also explores the possibility of settling the complaint prior to a determination (**pre-determination settlement**).

If, after an investigation, the evidence is insufficient to demonstrate that it is reasonable to believe that a state anti-discrimination law has been violated or the evidence is sufficient to demonstrate that the state anti-discrimination law has not been violated, a finding of no reasonable cause to believe that discrimination has occurred will be issued. At that time, the case is closed and a right-to-sue letter is issued. The right-to-sue letter can also be issued to a complainant up until three days after a contested case scheduling conference if the complainant makes a written request to the HCRC. A right-to-sue letter enables a complainant to file a civil suit in state court.

If a **reasonable cause finding** is made, an HCRC enforcement attorney will attempt to **conciliate** or settle the complaint. If conciliation is unsuccessful, the complaint will be docketed for a **contested case hearing**. In an HCRC contested hearing case, an HCRC enforcement attorney will present 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 most circumstances, a complainant may intervene in the contested case process as a party and be represented by counsel or other representative of their choice.

After the completion of the contested case hearing, the hearing examiner will issue a **proposed decision** based on the law and evidence relevant to the particular case. The five-HCRC Commissioners then review the proposed decision and the hearing record. The parties may file written exceptions and support statements and present oral arguments before the Commissioners.

The Commissioners accept, reject, or modify the proposed decision, issuing a **final decision and order**, and award remedies if appropriate. This decision is legally binding.

If any party feels that the decision is legally erroneous, she/he has 30 days to file an **appeal** to a State Circuit Court. The HCRC administrative procedure is illustrated in flow chart # 1.

The HCRC enforcement and administrative process is more cost effective than litigation in court. It provides for

the investigation of complaints and access to justice for those who lack the resources to pursue their claims in court. This is particularly important in employment discrimination cases, where employees often have lost their source of income and often have little or no control over the evidence needed to prove unlawful discrimination.

The HCRC enforcement and administrative process funnels cases away from the court system, resulting in savings of judicial resources and associated costs. Any complainant who wants to file suit in court must first file a complaint with the HCRC. The primary reason for this is to prevent the courts from being overburdened with complaints that are non-jurisdictional or non-meritorious, or with complaints that can be resolved or determined through HCRC's administrative process. In fact, the great majority of complaints filed with HCRC are resolved or disposed of without resort to the courts.

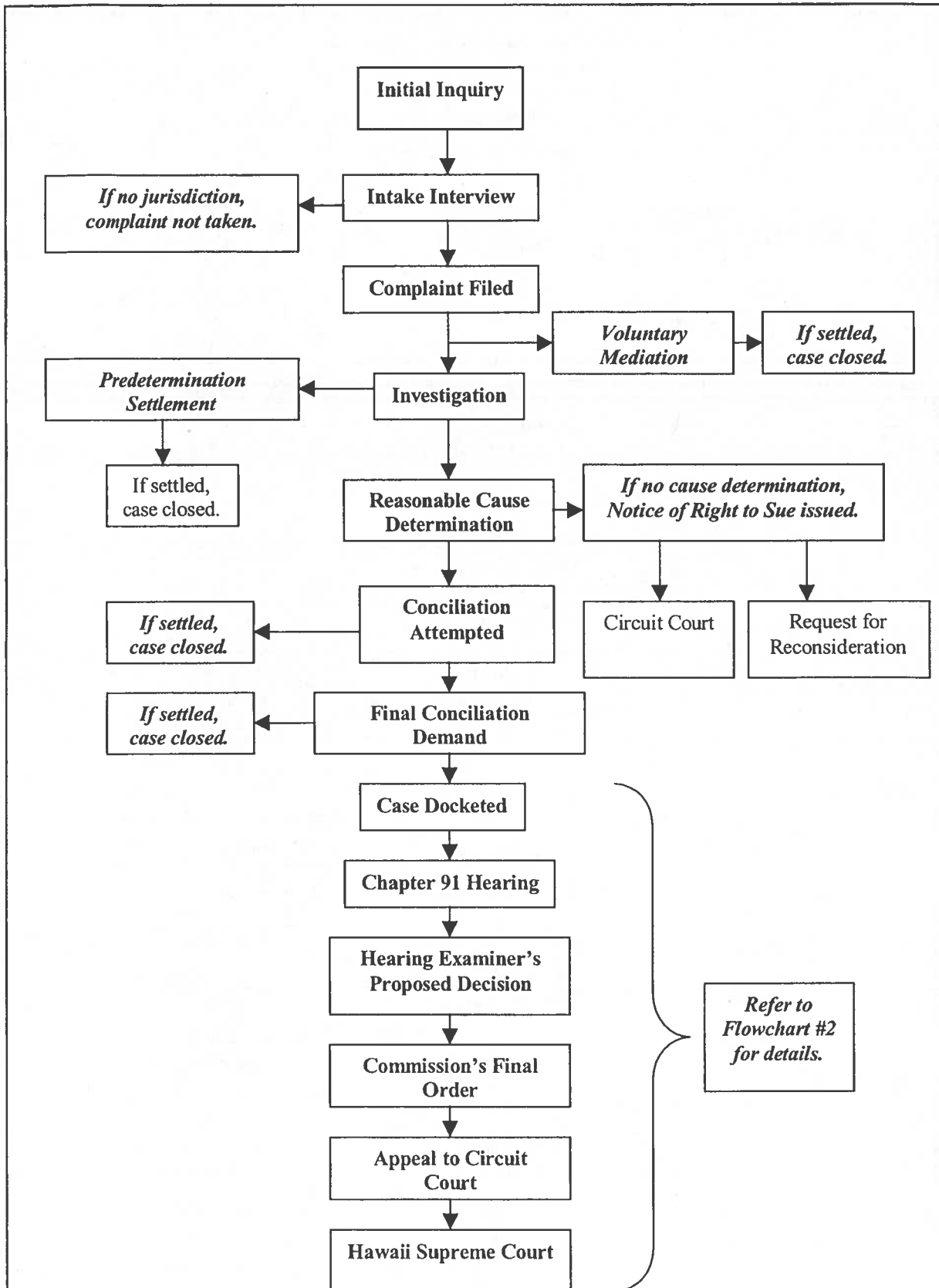
Although only a small portion of cases are brought to administrative hearing and result in final Commission decisions, these cases are particularly

important in creating a body of legal precedent. Such precedents are the basis for many anti-discrimination principles, such as the doctrine of unlawful sexual harassment. These precedents also establish standards that define the rights and protections under our state civil rights laws, and offer guidance to

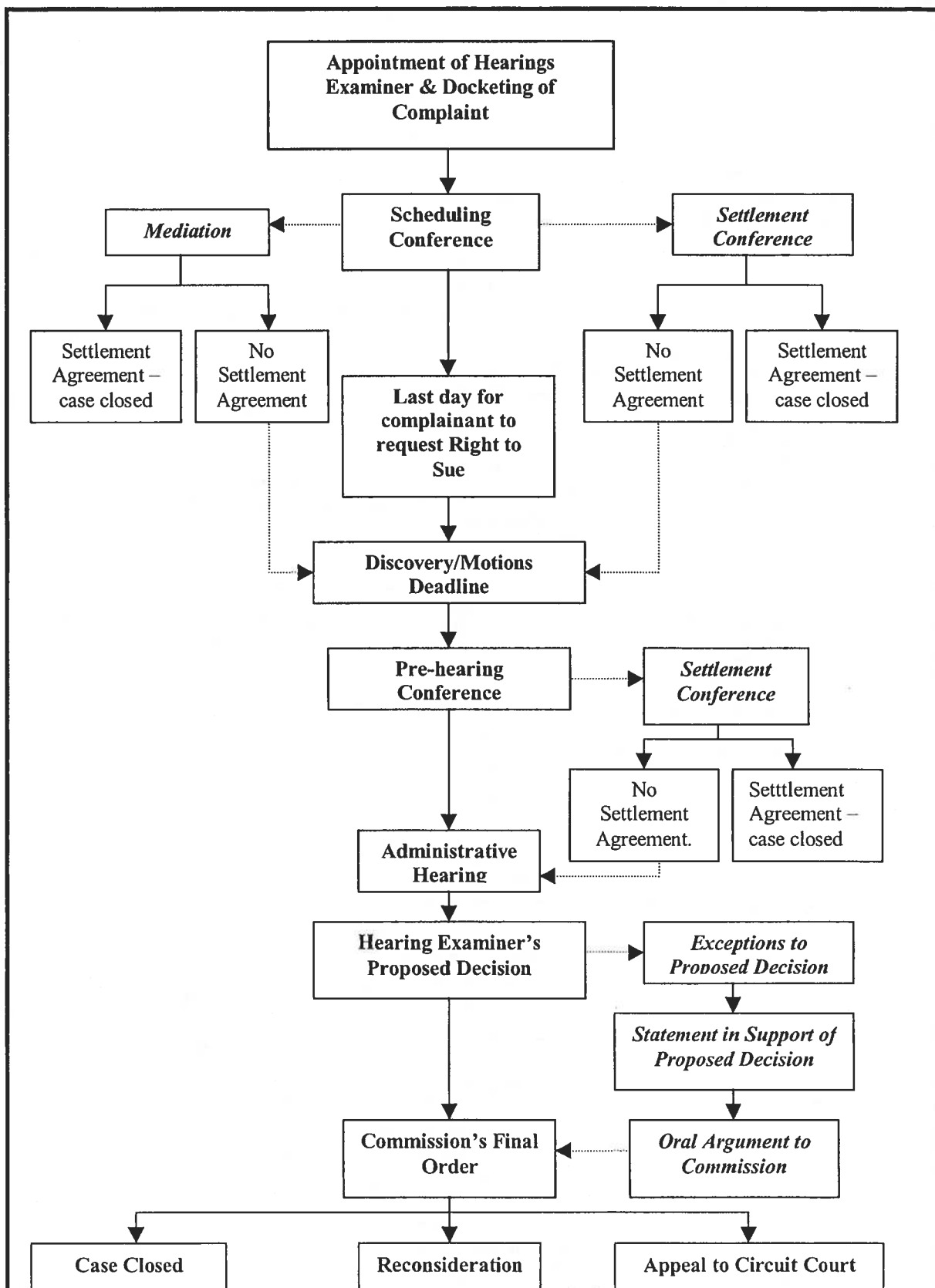
employers, landlords, and businesses on how to prevent and eliminate unlawful discrimination.

On appeals to the circuit courts and to the Hawaii Supreme Court, the HCRC has not been reversed in any case to date.

**HCRC Procedural
Flowchart # 1**



**HCRC Hearing Relief
Flowchart # 2**



HCRC COMMISSIONERS



Jack Law

Harry Yee

Faye Kennedy

June Motokawa

Allicyn Hikida Tasaka

HARRY YEE

Chair (Term 1997-2001)

Mr. Yee is an attorney in private practice in Honolulu. He is President of the Federal Bar Association Hawaii Chapter and is on the board of the National Asian Pacific American Bar Association. Mr. Yee has served as an Assistant Attorney General with the Civil Rights Division of the Massachusetts Office of the Attorney General and managing attorney for Greater Boston Legal Services Chinatown Office. He has also been a member of the Greater Boston Civil Rights Coalition and the George Lewis Ruffin Society. Mr. Yee was appointed Chair of the Commission in December 1998.

JACK LAW

Commissioner (Term 1996-2002)

Mr. Law arrived in Honolulu in 1966 to attend the University of Hawai'i. In 1973 he became licensed real estate broker. Presently, Mr. Law is a businessman in the entertainment industry. His operations include Hula's Bar & Lei Stand, a gay club opened in 1974, and the Wave Waikiki, a rock-n-roll club opened in 1980. Mr. Law was one of the founding board members of the Life Foundation, the AIDS Foundation of Hawai'i, and served on its board for over 9 years. In 1990, Mr. Law began the Adam Baran Honolulu Gay Film Festival which has evolved into the Honolulu Gay & Lesbian Cultural Foundation, a not-for-profit Hawai'i corporation, which sponsors the film festival, and the Gay & Lesbian Cultural Festival.

FAYE KENNEDY

Commissioner (Term 1997-2001)

Ms. Kennedy is a former New York social worker and author. 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 Hawai'i Advisory Committee and the Board of the American Civil Liberties Union of Hawai'i. Appointed in 1995 to serve out the remaining term caused by a vacancy on the Commission, she was appointed to her second term in 1997. Ms. Kennedy coordinates the Commission's participation in Martin Luther King, Jr., Holiday Commemoration events and activities.

ALLICYN HIKIDA TASAKA

Commissioner (Term 2000-2004)

Ms. Tasaka is the Executive Director of the Hawaii State Commission on the Status of Women. She is serving her second four year term as a commissioner. Formerly she was the chair of the Hawaii State Commission on the Status of Women and the first woman president of the Honolulu Chapter Japanese American Citizens League (JACL), and continues to serve on the board of the JACL. She also serves as a director on the boards of the National Association of Commissions for Women, Hawaii Women's Political Caucus, Awareness Foundation, Violence Prevention Consortium, and Business and Professional Women.

JUNE MOTOKAWA

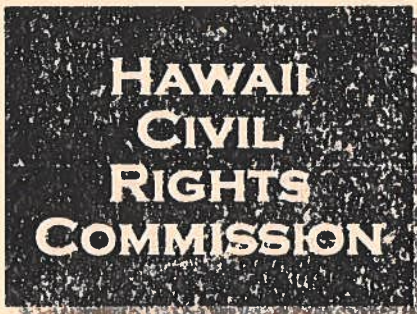
Commissioner (term 1999-2003)

Ms. Motokawa is a special education teacher at Kaimuki Middle School and has been a teacher in Hawaii public schools for 30 years. She is a past president of the Hawai'i State Teachers' Association and a current trustee of the board of directors of the Hawai'i Education Association and Civic Forum on Public Schools. She served on the Commission on the Handicapped in the 1980's and formerly served as Congresswoman Patsy T. Mink's Big Island liaison. Ms. Motokawa was appointed in October 1998 to serve the remainder of Commissioner Claudio R. Suyat's term. She was appointed to her second term in 1999. Ms. Motokawa chairs the HCRC Special Advisory Committee on Diversity.

HCRC STAFF

The HCRC staff consists of 29 individuals in the following positions:

- Executive Director
- Enforcement Staff:
 - Deputy Executive Director
 - Enforcement Attorneys (4)
 - Administrative Services Asst.
 - Investigator-Supervisors V (2)
 - Investigator III-IV (11)
 - Secretary III
 - Legal Stenographer I
 - Clerk Typists (4)
- Adjudication Staff:
 - Chief Counsel
 - Hearings Examiner
 - Secretary II



830 Punchbowl Street, Room 411
Honolulu HI 96813

Oahu

Telephone (Oahu): 586-8636
Fax: 586-8655
TDD (Oahu): 586-8692

Neighbor Islands (Toll-free)

Lanai and Molokai: 1-800-468-4644 Ext. 6-8636
Kauai: 274-3141 Ext. 6-8636
Maui: 374-3141 Ext. 6-8636
Hawaii: 974-4000 Ext. 6-8636

All non-800 numbers are Area Code (808)

E-mail: info@hicrc.org
Website: www.state.hi.us/hcrc