

CIVIL RIGHTS COMMISSION

STATE OF HAWAI'I

	)	DR No. 10-016
	)	
In the Matter of	)	
	)	ORDER REFUSING CONSIDERATION
JEFFREY S. HARRIS,	)	OF THE PETITION
	)	
Petitioner.	)	
	)	
	)	
	)	

CIVIL RIGHTS COMMISSION  
 HONOLULU, HAWAII  
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ORDER REFUSING CONSIDERATION OF THE PETITION

On September 22, 2010 Petitioner Jeffrey S. Harris filed a Petition for Declaratory Relief ("Petition") seeking a ruling on "whether or not anything in our state's disability anti discrimination law prevent (sic) employers from discharging employees who test positive for marijuana, without regard to the employees' reasons for using that illegal drug." Petitioner's stated interest and reasons for filing the Petition are to find out what the Commission's position is so he can advise employers accordingly.

On that date the Executive Director filed a Motion to Dismiss the Petition for Declaratory Relief and to Strike the Memorandum in Support of the Petition on the grounds the Petition

and Memorandum in Support fail to: name potential respondents, identify laws or regulations in question, describe with particularity the facts giving rise to the petition, and present a full discussion of the law and arguments in support of Petitioner's position. On September 27, 2010 Petitioner filed a Response to Motion to Dismiss Petition for Declaratory Relief stating that if the motion is granted the agency will have failed to clarify what conduct is prohibited and any later attempt to prosecute an employer on that issue would violate due process.

Under H.A.R. §12-46-61 any interested person may petition the Commission for a declaratory ruling as to the applicability of any HRS provision or of any rule adopted by the Commission to a factual situation. However, as the Executive Director points out in its motion, under H.A.R. §12-46-63(a), the Commission may refuse to consider a petition for declaratory relief if it: fails to substantially conform with §12-46-61, is not supported by a memorandum of authorities and full discussion of the reasons in support of the petition, is based on hypothetical or speculative facts, or if there are any other reasons justifying denial of the petition. For the reasons stated below, the Petition does not meet the requirements of H.A.R. §12-46-61 et. seq. and the Commission refuses to consider it.

Under H.A.R. §12-46-61, a petition must include the names of any potential respondents. Petitioner asserts that he knows of no specific potential respondents. However the Petition states that a number of employers have asked whether they may discharge employees who test positive for marijuana. Those employees may be potential respondents. In addition, if <sup>? the discharged</sup> those employees are unionized, the unions may be interested in the application of the Commission's ruling in this matter to its members and may also be potential respondents.

H.A.R. § 12-46-61 also requires a petition to state with particularity the facts giving rise to the petition. The Petition however, is based on vague and speculative facts. It asserts that some employees may have "debilitating medical conditions" but does not state whether such employees are persons with a disability who are covered by our state employment discrimination laws. The Petition also does not state what jobs these employees hold, what their essential job functions are, whether there were requests for a reasonable accommodation, and the context and reasons for the drug testing.

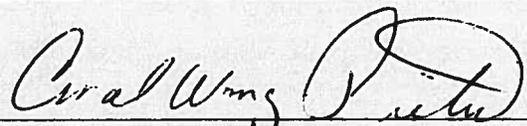
Finally, H.A.R. §12-46-61 requires a petition to state the provision or rule in question, and §12-46-62 requires a petitioner to file a memorandum of authorities in support of the

petition which shall include legal authorities and a full discussion of the reasons supporting the petitioner's position. The Petition states that there is no provision or rule in question. In addition, the Memorandum in Support of Petition does not fully identify and discuss the laws applicable to this matter, such as provisions regarding reasonable accommodations, the state's medical marijuana laws, the relationship between these state laws and federal laws prohibiting the use of marijuana, and how other states with medical marijuana and disability discrimination laws have ruled on this issue.

For these reasons, IT IS HEREBY ORDERED that the Commission refuses to consider the Petition and hereby dismisses the Petition without prejudice.

Dated: Honolulu, Hawai'i, OCT - 1 2010

HAWAI'I CIVIL RIGHTS COMMISSION

  
CORAL WONG PIETSCH  
Chairperson

Copies sent to:

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