



# **HAWAI'I CIVIL RIGHTS COMMISSION**

## **2006-2007 Annual Report**

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## **Mission Statement**

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

## **Overview**

### **Fair and Effective Enforcement**

The state of Hawai`i has a strong commitment to the protection of civil rights. Article I, Section 5 of the Hawai`i 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 Hawai`i 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 sixteen years the HCRC has enforced 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, and adjudicates complaints of discrimination.

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 thirty-two (32) people who are divided into separate enforcement and adjudication sections.

### **An Effective and Uniform Enforcement Scheme**

Prior to the establishment of the HCRC, jurisdiction over state anti-discrimination laws was split among several state departments. Enforcement was limited and sporadic. State litigation to enforce fair employment practices law was virtually non-existent. Nearly all aggrieved were left with litigation of individual lawsuits as their only recourse. Few employment discrimination cases brought under state law were adjudicated, and there was little case law. For complainants who could not afford private attorneys to seek remedies in court, there was no administrative process to adjudicate their claims.

The intent of the legislature in creating the HCRC was “... to establish a strong and viable commission with sufficient ... enforcement powers to effectuate the State’s commitment to preserving the civil rights of all individuals.”<sup>1</sup> The cornerstone of the HCRC statutory scheme was the establishment of a uniform procedure “... designed to provide a forum which is accessible to anyone who suffers an act of discrimination.”<sup>2</sup>

### **Fair Administrative Process**

The HCRC is committed to, and its procedural safeguards are structured, to ensure fairness to both complainants and respondents. The HCRC is a five-member Commission with jurisdiction to enforce state civil rights laws. The HCRC is divided into two separate and distinct sections: the enforcement section, which receives, investigates, and prosecutes discrimination complaints; and the adjudication section which hears, issues orders and renders final determinations on complaints of discrimination filed with the HCRC.

The Commissioners have delegated HCRC enforcement authority to the Executive Director. The Commissioners have authority to adjudicate and render final decisions based on the recommendations of their Hearings Examiner, and oversee the adjudication section through their Chief Counsel.

The Commissioners and Hearings Examiner are not involved in or privy to any actions taken by the Executive Director in the investigation and pre-hearing stages of the HCRC process. Likewise, the Executive Director and enforcement section are not permitted to communicate ex parte with the Commissioners or Hearings Examiner about any case.

The HCRC investigates complaints of discrimination as a neutral fact-gatherer. At the conclusion of an investigation, a determination is made whether or not there is reasonable cause to believe unlawful discrimination has occurred.

The law requires filing of a complaint with the HCRC before filing a discrimination lawsuit in state court. Otherwise, the circuit court will dismiss a lawsuit for failure to exhaust administrative remedies. This requirement prevents overburdening the courts with non-jurisdictional and non-meritorious cases, as well as those cases that can be closed or settled in the administrative process. The great majority of cases filed with the HCRC are resolved, reach disposition, and are closed without resort to the courts.

### **Civil Rights Law Enforcement: State & Federal Law**

Federal fair employment and fair housing laws are enforced by the U.S. Equal Employment Opportunity Commission (EEOC) and U.S. Department of Housing and Urban Development (HUD), respectively. Pursuant to work share cooperative agreements, both EEOC and HUD rely on the HCRC to investigate complaints filed under both state and federal law (“dual-filed” complaints).

While Hawai`i and federal fair employment and fair housing laws are similar, they are not identical. Hawai`i has protected bases not covered under federal law, and there are substantial differences in the definition of “employer” and the statute of limitations for filing a charge of employment discrimination. In addition to these jurisdictional differences, Hawai`i law provides stronger protection against pregnancy discrimination, sexual harassment and disability discrimination in employment.

The greater protections in Hawai`i law are attributable to a strong civil rights mandate contained in the Hawai`i State Constitution, HCRC statutes, HCRC rules, HCRC Commission decisions, and state court interpretations. In contrast, federal court interpretations of federal civil rights laws have resulted in fewer protections against discrimination, particularly in the areas of disability and sexual harassment. The issue of state versus federal standards is an important one, particularly in states like Hawai`i that have a historically strong commitment to equal opportunity and non-discrimination.

There is a trend of limiting jurisdiction and process under civil rights statutes: sovereign immunity barring individual claims against the states under several federal civil rights statutes; free speech and free exercise of religion claims raised in defense of discrimination complaints; and equal protection and other constitutional claims raised to challenge enforcement processes. In this context, strong enforcement of state civil rights laws is more important than ever before.

## **The HCRC Today**

During FY 2006-2007, HCRC Commissioners and staff continued to focus their efforts on improving enforcement and public education activities.

**Investigation and charge processing.** During FY 2006-2007 the HCRC continued to improve its efficiency without sacrificing effective law enforcement by implementing goals designed to reduce the time to complete investigations. Initial efforts focused on completing the investigation of 95% of all complaints within 24 months of filing as an incremental step towards the goal of completing all case investigations within 18 months of filing.

**Mediation.** The HCRC’s voluntary mediation program completed its eighth year of operation, working with the Mediation Centers of Hawai`i and community mediation centers on Oahu, Hawai`i, Maui, and Kauai. 13 cases settled in mediation for monetary relief exceeding \$218,000.

**Public Education.** The HCRC continued to prevent and eliminate discrimination through public education. HCRC staff made numerous presentations on civil rights and discrimination to labor, business, professional, civil rights, and other community organizations. Public education included fair housing training on Kauai, Maui, Hawai`i, and Oahu. In May 2007, the HCRC held its annual public training in Honolulu at the Hawai`i Convention Center. At that training, the HCRC

also screened a new “Abilities at Work” video, with a discussion of reasonable accommodation in the workplace, and distributed copies of the HCRC’s pregnancy discrimination video and study guide.

**Litigation.** During FY 2005-2006, HCRC enforcement attorneys continued to conciliate and litigate cause cases, in which a determination was made that there is reasonable cause to believe that unlawful discrimination has occurred.

The HCRC Commissioners and staff continue their unwavering commitment to the HCRC mission - to eliminate discrimination by protecting civil rights and promoting diversity through enforcement of anti-discrimination laws and education. We renew our pledge to fair and effective enforcement, so that no person shall be denied his or her civil rights under Hawai`i law.

### **Objectives and Goals for 2007-2008**

**Case Inventory and Processing:** The HCRC has implemented a pilot project to complete investigation of 95% of all complaints within 24 months of filing, and will work incrementally toward the goal of completing all investigations within 18 months.

**Voluntary Mediation Program:** The HCRC will continue to improve and expand its voluntary mediation program to encourage and offer mediation in more cases. A full time attorney mediation coordinator position will facilitate growth of the program.

**Public Awareness:** The HCRC plans to focus on public education activities during the upcoming year. The HCRC will continue to work with federal, state, business, labor, and community partners to expand outreach and public education statewide, especially on the neighbor islands, and will explore more public-private partnerships to develop user-friendly public education resources. The HCRC hopes to produce a training video introducing the HCRC and explaining the HCRC process and laws under its jurisdiction, the third in a series that was initiated with the production of a pregnancy discrimination video in FY 2005-2006 and followed by the production of a video on “Abilities at Work” in FY 2006-2007, which focused on reasonable accommodations and employment of persons with disabilities.

In FY 2007-2008, the HCRC and PBS Hawaii will co-sponsor a video contest for students in grades 6-12 and a poster contest for students in grades 4-5, on the theme “E Ola Pono.” This contest will relate the Hawaiian concept of “pono”, (living with respect for everyone and in harmony with everything), to Hawai`i’s civil rights laws and protections.

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

<sup>1</sup>1989 House Journal, Standing Committee Report 372.

<sup>2</sup> Id

<sup>3</sup> Aged case reduction is a priority for the HCRC, as well as for the U.S. Department of Housing and Urban Development (HUD) and the U.S. Equal Employment Opportunity Commission (EEOC), the federal agencies that contract with the HCRC to process complaints dual-filed under state and federal law.

## **Mediation Program**

The HCRC's voluntary mediation program successfully completed its eighth year on June 30, 2007. Complainants, respondents and the HCRC, with the strong support of all the Commissioners, want prompt and fair resolutions to discrimination complaints. To help accomplish this goal, the HCRC developed its voluntary mediation program, a process in which neutral third parties (often a team of two co-mediators with at least one attorney-mediator) help the involved parties discuss, clarify and settle complaints.

The HCRC voluntary mediation program uses community mediators who are unbiased and do not rule on the merits of the complaint. Rather, the HCRC provides the mediators with the basic facts of each case needed to understand the dispute. The mediators then assist the parties in reaching agreements such as apologies, policy changes, monetary settlements, or other appropriate solutions. Mediation saves time, money and resources and reduces stress by allowing the parties to explain their side of the case and to control the process of resolving their disputes in a non-adversarial manner.

The HCRC works with trained, senior mediators from the Mediation Centers of Hawaii (MCH), an Aloha United Way statewide network of community non-profit mediation centers. MCH utilizes a facilitative approach to mediation. MCH mediators are trained in civil rights laws and settling disputes by HCRC and MCH staff on a regular basis. The HCRC mediation coordinator facilitates the process by explaining, encouraging, referring, and reviewing mediation and its benefits to the parties. There are mediation centers on Oahu (Mediation Center of the Pacific - MCP), Maui (Mediation Services of Maui -MSM), Hawaii (Ku'ikahi Mediation Center in Hilo (KMC) and West Hawaii Mediation Center in Kailua-Kona), and Kauai (Kauai Equal Opportunity Mediation Program). The centers charge nominal fees for the sessions, which can be waived or reduced if there is financial hardship.

Private mediation is also available if the parties choose. Private mediations generally utilize an evaluative approach, in which the law and possible damages are emphasized. Private mediation is an important part of the HCRC mediation program.

Mediation can occur at any stage of the intake, investigation, enforcement and hearing process. Mediation is first offered when the complaint is accepted, because disputes are often easier to resolve while the facts are fresh and before potential damages accumulate and the positions of the parties become rigid. However, parties may voluntarily choose mediation at any time of the HCRC investigative, enforcement and hearing process.

During FY 2006-2007, 29 cases were referred to mediation (including cases carried over from the previous fiscal year). 19 cases were disposed of (mediations completed) and 10 cases were carried over to the next fiscal year. Of the 19 dispositions, 13 resulted in mediated settlements (68.4%), with 6 (31.6%) cases resulting in no agreement. The total disclosed monetary value of mediated agreements was \$218,480, with a wide variety of affirmative relief as well. Monetary consideration was exchanged in one case, but was not disclosed due to confidentiality provisions. MCP had 9 settlements; private mediators had 2; and Ku'ikahi Mediation Center and Mediation Services of Maui had 1 each.

Of the 29 cases, 20 (69.0%) were referred to the Mediation Center of the Pacific (including one referred to the MCP Access ADR program, in which a mediator from a panel of private providers may be selected); 5 (17.2%) were referred to private commercial mediators; 3 (10.3%) to Ku'ikahi Mediation Center; and 1 (3.5%) to Mediation Services of Maui. 28 cases were employment complaints and 1 was a public accommodations complaint.

The primary bases of discrimination of the 19 completed mediations were: age (6); sex (4); and disability, retaliation and ancestry (3 each). Most of the completed mediations also included charges on other protected bases.

Although monetary settlements were achieved in most agreements, all mediated agreements involved some form of non-monetary affirmative relief. Typical examples of non-monetary relief in this year and prior years include:

- 1) frank discussion of disputes, which often lay the groundwork for eventual settlement or restoration of the prior employment relationship;
- 2) restoration of employee benefits;
- 3) formal apologies (by either or both sides);
- 4) increasing hours for part-time employees or reinstatement;
- 5) providing neutral or positive references for former employees;
- 6) removal of inappropriate negative comments in employee records;
- 7) provision of reasonable accommodations;
- 8) changing shifts when practicable;
- 9) policy revisions and postings; and
- 10) clarification of communications between employer and employee, leading to more productive working environments.

## Public Education & Outreach

In addition to enforcing anti-discrimination laws, the HCRC is committed to preventing and eliminating discrimination through public education. The HCRC Commissioners and staff maintained or assisted in a number of civil rights public education efforts, working with civil rights, business, labor, professional, and non-profit organizations, on new and continuing initiatives.

On May 9, 2007, the HCRC conducted its annual general public training at the Hawaii Convention Center, entitled "EEO in Hawaii: What's Hot and What's Not". The training was a half day event which featured panels moderated by Bob LeClair, retired Chair of the Kapiolani Community College Legal Assistant Program, with participation from the Honolulu EEOC Office, HCRC Commissioner Lisa Wong, private attorneys, and others. The event also marked the debut showing of a second DVD produced by HCRC Commissioner Sara Banks, titled "Abilities at Work" regarding disability discrimination.

Other HCRC presentations, outreach, and staff activities took place with the following organizations and events:

- American Bar Association panel
- Local 5 presentations
- Center for Labor Education & Research, University of Hawaii-West Oahu
- William S. Richardson School of Law
- University of Hawaii at Manoa Athletics Department
- UH LGBTI panel on sexual orientation
- Honolulu Pride Festival
- Annual Martin Luther King, Jr. Holiday Parade
- NAACP Martin Luther King, Jr. Banquet
- Fair Housing Month Gubernatorial Proclamation
- Participation in statewide Fair Housing Month events
- KUMU Radio's "Voice of Labor"
- Hawaii University Surgeons staff presentation
- Presentation to the State Department of Transportation
- Annual training of statewide mediators

The HCRC website at [www.hawaii.gov/labor/hcrc](http://www.hawaii.gov/labor/hcrc) received 648,396 hits during the fiscal year. Our website is part of a consolidated website which includes all divisions of the Department of Labor & Industrial Relations. The HCRC is grateful for the assistance of DLIR webmaster Casey Cho in posting information on its website and helping make the website more user-friendly. Analysis of the state webmaster's detailed monthly index indicates that the site continued to receive a broad range of hits from the public, businesses, non-profits, government and lawyers. Website usage by the public has increased every year since HCRC began the site.

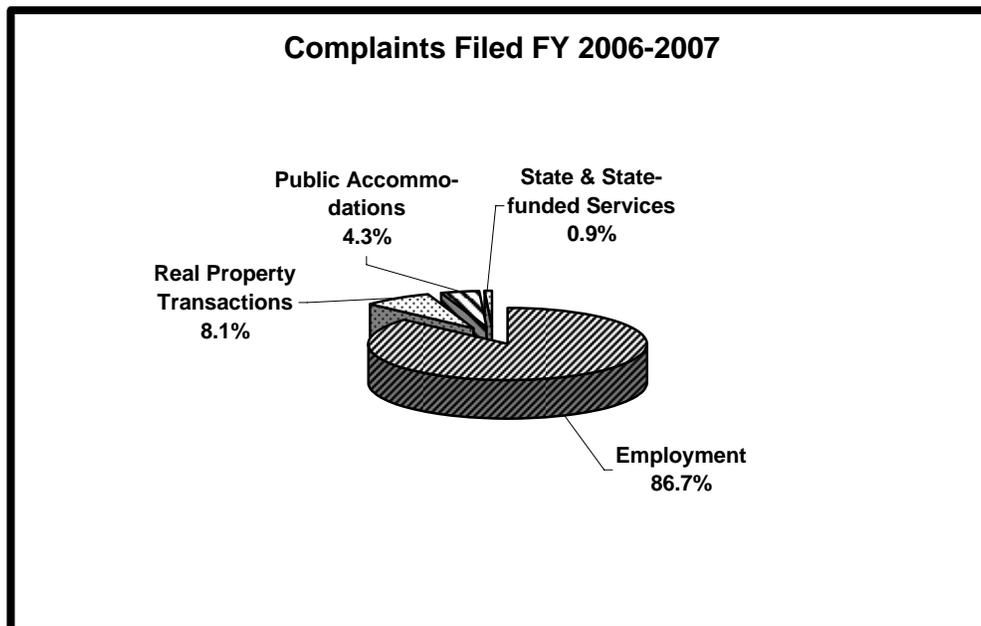
## Caseload Statistics

During FY 2006-2007, the HCRC continued its program of improving efficiency without sacrificing effective law enforcement. Notable achievements for FY 2006-2007 include: 1) declining caseload levels; 2) shortened average processing times; and 3) continued decrease in the overall age of cases.

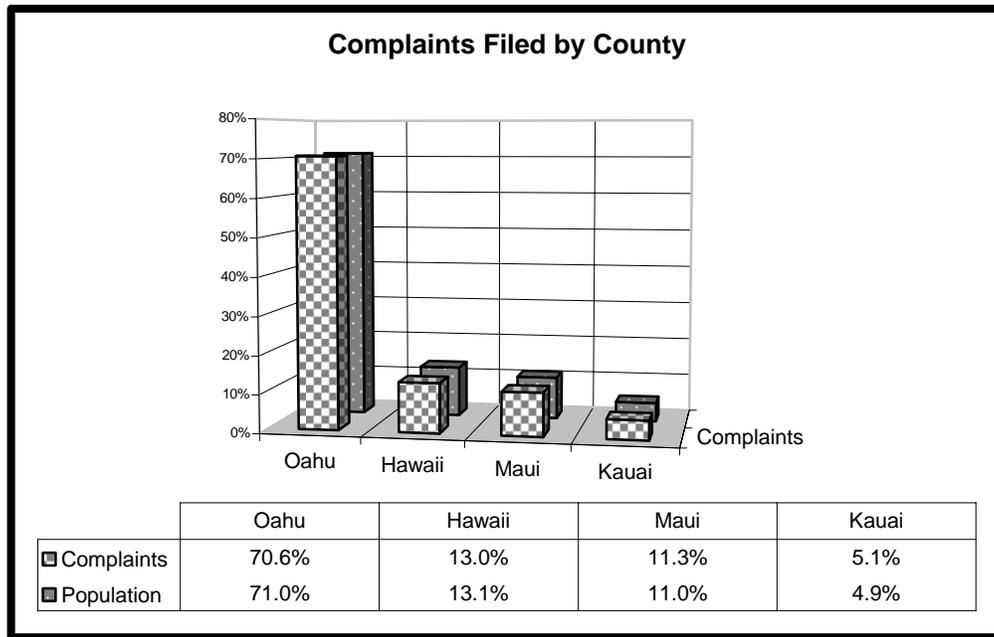
### Intake

During FY 2006-2007, the HCRC received over 11,000 telephone and walk-in inquiries (11,128). HCRC investigators completed 696 intakes and 532 discrimination complaints were filed with the HCRC, an average of 44 cases a month.

Of the 532 complaints that were filed with the HCRC, 318 complaints originated with HCRC investigators (averaging 27 per month), and another 214 cases originated with the federal Equal Employment Opportunity Commission (“EEOC”) or Department of Housing and Urban Development (“HUD”) for investigation. These 214 cases were dual-filed under state law with the HCRC. The 532 cases included 461 employment cases, 23 public accommodations cases, 43 housing cases, and 5 cases involving state and state-funded services. The other inquiries and intake interviews did not lead to filed charges due primarily to: a) lack of jurisdiction; b) failure to correlate the alleged act(s) with the protected basis or bases; or c) a complainant's decision not to pursue the complaint.



The 532 charges accepted by the HCRC consisted of 376 Oahu complaints, 69 Hawai'i County complaints, 60 Maui County complaints, and 27 Kauai County complaints. The number of complaints filed from each county was consistent with its proportion of resident population in the state.



## Closures<sup>4</sup>

HCRC investigators and attorneys closed 349 cases during FY 2006-2007, (down from 375 cases in FY 2005-2006), for an average closure rate of 29.08 cases per month (down from 31.25 cases per month in FY 2005-2006). In addition to the 349 closures during the fiscal year, HCRC investigations resulted in cause determinations in 33 cases. As of June 30, 2007, there were 271 cases pending

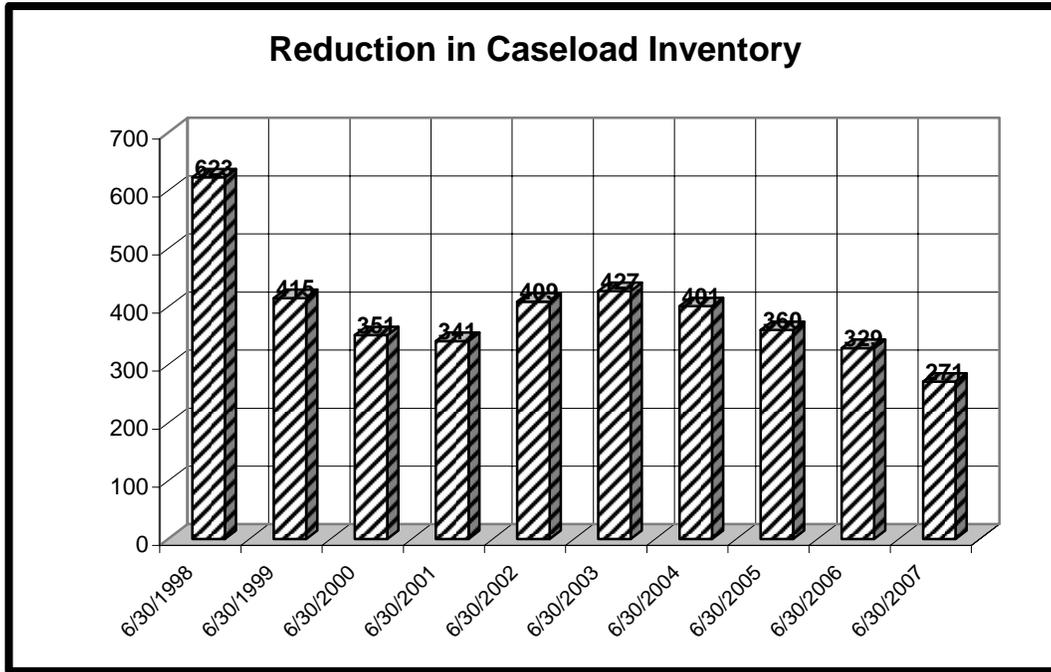
### <sup>4</sup> ANALYSIS AND EXPLANATION OF CLOSURE DATA

This closure data does not reflect the number of completed investigations that result in cause determinations. Generally, the reason for this distinction is that cases are not closed upon issuance of a notice of cause, but are then conciliated, and, if conciliation fails, are docketed for hearing.

Historically, there is a relationship between the number of cause cases and predetermination settlements/resolutions between parties—the larger the number of notices of cause, the smaller the number of settlements/resolutions, and vice versa. Typically, cause determinations and settlements/resolutions constitute between 15-25% of the total of those cases that are either investigated to a cause/no cause determination or settled or resolved by predetermination settlement or resolution between the parties.

During FY 2006-2007, HCRC investigations resulted in 33 cause determinations, and 47 cases were closed on the basis of pre-determination settlement or resolution between parties. 192 cases were closed on the basis of no-cause determinations upon completion of investigation. The ratio of cause determination and predetermination settlement/resolution (80) to those cases that are either investigated to a cause/no cause determination or settled or resolved by predetermination settlement or resolution between the parties (272) for this fiscal year is 29%.

with HCRC investigators.



The average period for case closure by investigators was 371 days, as compared to 381 days for FY 2005-2006 and 514 days for FY 2004-2005. A review of this fiscal year shows the following reasons for closures:

	No. of Cases	% of Subtotal	% of Total Closures
<b>Merit Closures</b>			
Resolved by Parties	33	12.69%	9.46%
Pre-Determination Settlements	14	5.38%	4.01%
Cases Settled or Otherwise Resolved After a Cause Determination	21	8.08%	6.02%
No Cause Determinations	<u>192</u>	<u>73.85%</u>	<u>55.01%</u>
<b>Subtotal</b>	<b>260</b>	<b>100.0%</b>	<b>74.50%</b>
<b>Non-merit Closures</b>			
Complainant Elected Court Action	34	38.20%	9.74%
No Jurisdiction	1	1.12%	0.29%
Complaint Withdrawn	14	15.73%	4.01%
Complainant Not Available	7	7.87%	2.01%
Complainant Failed to Cooperate	32	35.96%	9.16%
Other Agency Investigated	0	0.00%	0.00%

Administratively Closed	1	1.12%	0.29%
No Significant Relief Available	<u>0</u>	<u>0.00%</u>	<u>0.00%</u>
<b>Subtotal</b>	<b>89</b>	<b>100.0%</b>	<b>25.50%</b>
<b>Total Number of Closures</b>	<b>349</b>		<b>100%</b>

## Employment Cases

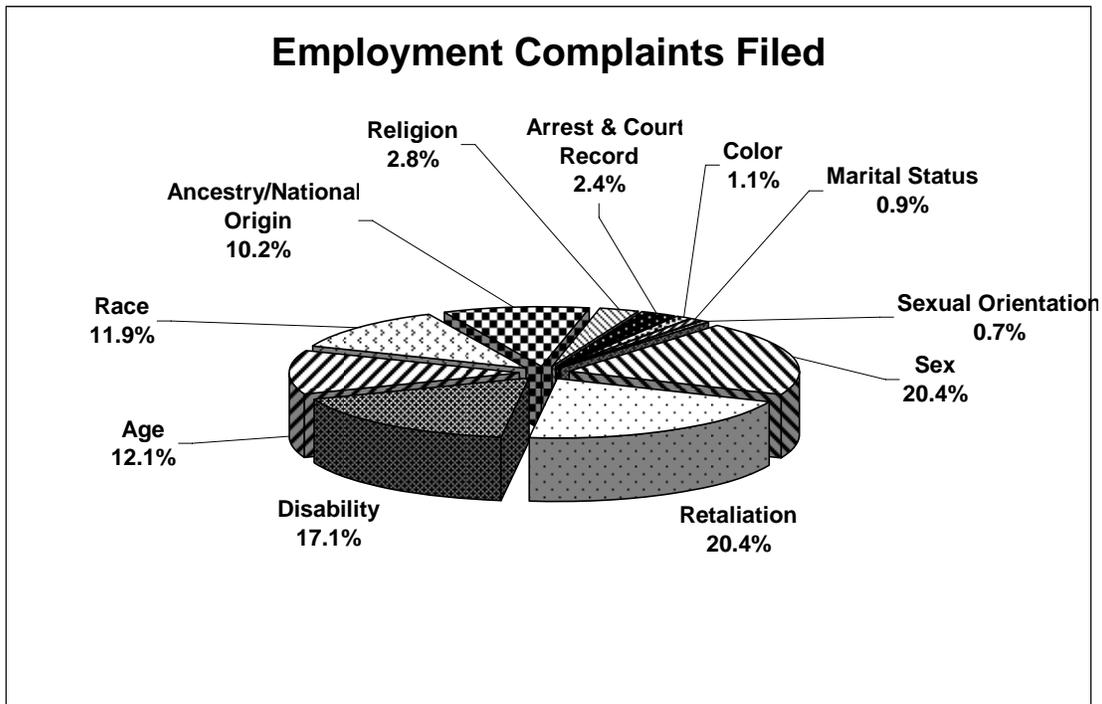
H.R.S. Chapter 378, Part I prohibits discriminatory employment practices based on race, sex, sexual orientation, age, religion, color, ancestry, disability, marital status, arrest and court record, assignment of income for child support obligations, National Guard participation, or breast feeding/expressing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

The HCRC has a work-share agreement with the EEOC. A case is filed with both agencies where there is concurrent jurisdiction, but only the intake agency conducts the investigation, thereby eliminating duplicate enforcement activity. During the fiscal year a total of 461 employment cases were accepted by the HCRC. HCRC was the intake agency for 257 of these cases, and HCRC dual-filed another 204 cases originating with EEOC.

Of the HCRC-originated cases, 75% were also filed with EEOC. Of the 461 employment complaints filed, the bases most cited were retaliation, in 94 (20.4%) cases, and sex, also in 94 (20.4%) cases. Of those sex discrimination complaints, 41 (43.6% of all sex cases) alleged sexual harassment and 24 (25.5% of all sex cases) were based on pregnancy.

Disability was the third most common basis with 79 cases, representing 17.1% of all employment cases, followed by age discrimination with 56 cases (12.1%), and race discrimination with 55 cases (11.9%). There were 47 cases based on ancestry/national origin discrimination (10.2%); 13 cases based on religion (2.8%); 11 cases based on arrest & court record (2.4%); 5 cases based on color (1.1%); 4 cases based on marital status (0.9%); and 3 cases based on sexual orientation (0.7%). There were no cases based on child support obligations or National Guard participation.

The case closure period averaged 406 days for the 287 employment cases that were closed (or caused) by HCRC investigators during FY 2006-2007.

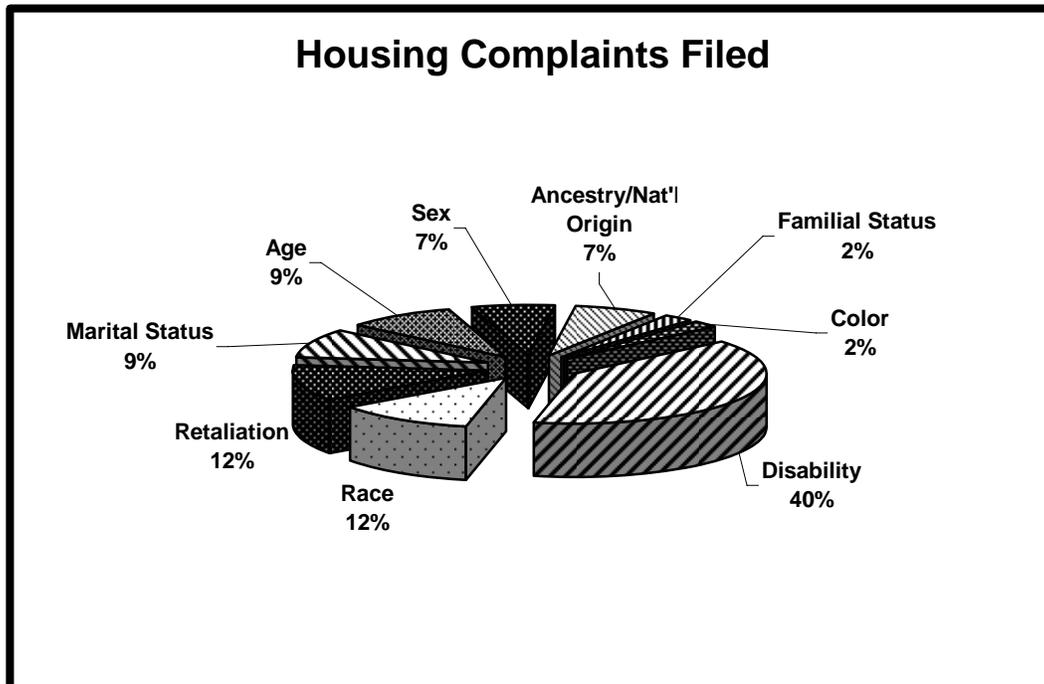


## Housing Cases

H.R.S. Chapter 515 is Hawai'i's fair housing law. It prohibits discriminatory housing practices based on race, sex, sexual orientation, 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 grant loans to an individual because of one or more of the above protected bases.

The HCRC has a work-share agreement with the U.S. Department of Housing & Urban Development (HUD). HUD refers most of the complaints it receives regarding unlawful discrimination in Hawai'i to the HCRC for investigation.

During FY 2006-2007, the HCRC accepted 43 cases of housing discrimination. There were 17 cases based on disability status (40.0%); followed by 5 cases based on race (12.0%); 5 cases alleging retaliation (12.0%); 4 cases based on age (9.0%); 4 cases based on marital status (9.0%); 3 cases based on ancestry/national origin (7.0%); 3 cases based on sex (7.0%); 1 case based on familial status (2.0%); 1 case based on color (2.0%). There were no cases based on religion. Housing case closures averaged 125 days for the 47 cases closed (or caused) during FY 2006-2007.

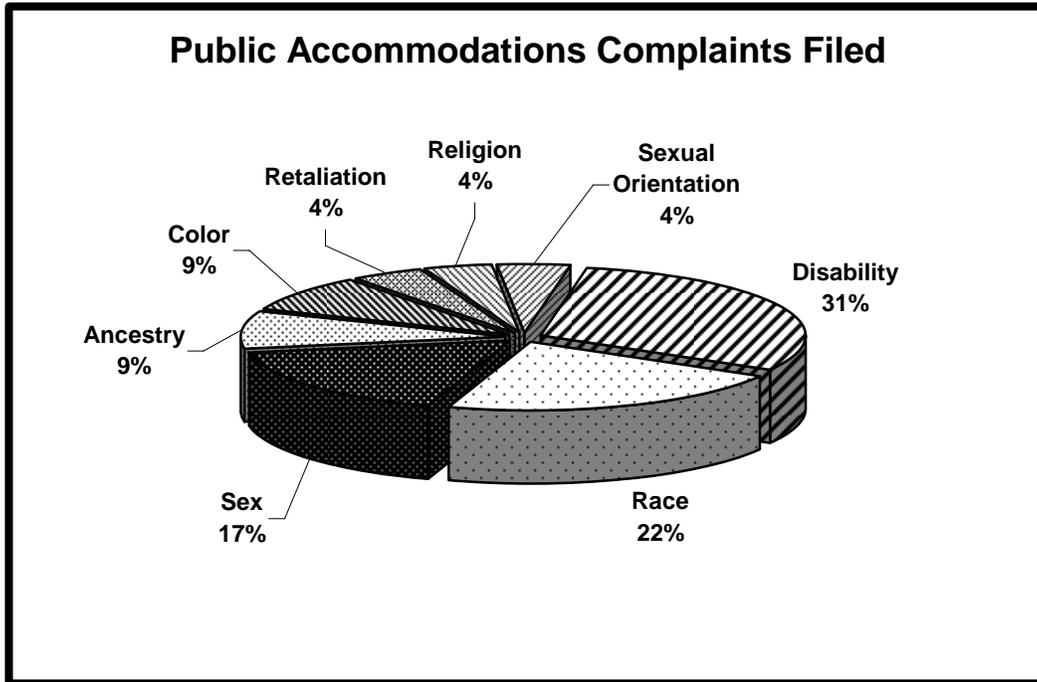


#### Public Accommodation Cases

H.R.S. Chapter 489 prohibits unfair discriminatory practices that 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, sexual orientation, color, religion, ancestry, or disability. Public accommodations include retail stores, restaurants, theaters, sports arenas, public transportation, healthcare providers, hotels, and banks.

During the fiscal year, 23 new cases of public accommodations discrimination were accepted. There were 7 cases based on disability discrimination (31.0%); 5 cases alleging race discrimination (22.0%); 4 cases based on sex discrimination (17.0%); 2 cases based on ancestry (9.0%); 2 cases based on color (9.0%); 1 case based on retaliation (4.0%); 1 case based on religion (4.0%); and 1 case based on sexual orientation (4.0%).

Public accommodations case closures averaged 418 days for the 26 cases closed (or caused) during FY 2006-2007.



### Access to State and 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 5 cases filed under § 368-1.5. 1 case was closed during FY 2006-2007. Access to state and state-funded services case closures averaged 674 days for the 1 case closed (or caused) during FY 2006-2007.

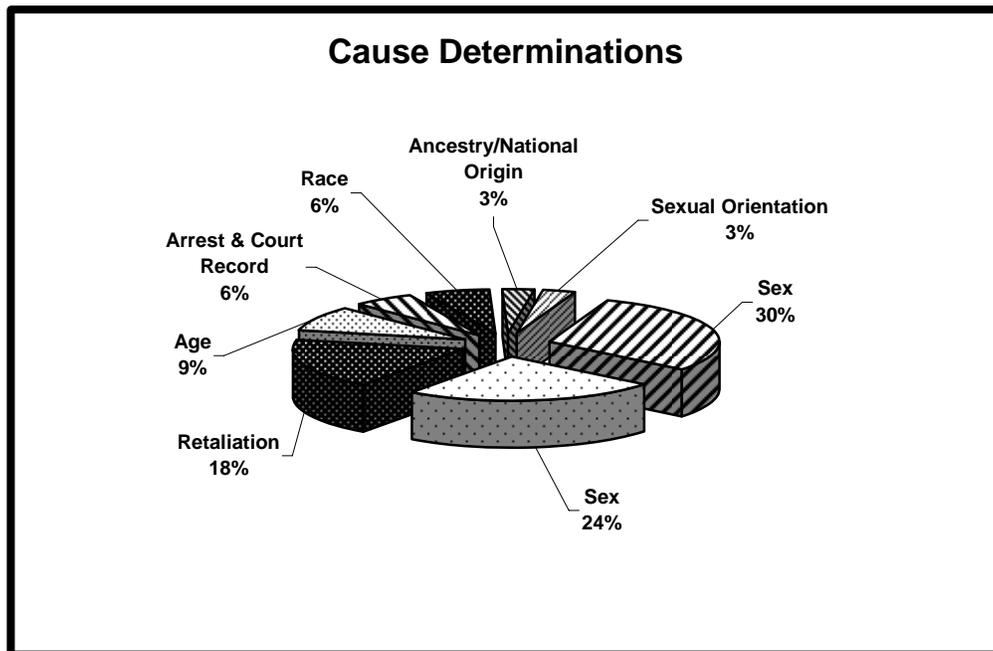
### Cause Cases

When the investigation results in a recommendation that there is reasonable cause to believe that discrimination has occurred, the case is assigned to an HCRC enforcement attorney for legal action. In FY 2006-2007, 33 recommendations for cause determinations were brought forward for legal action. Of these cases, 23 (69.7%) were employment cases, 7 (21.2%) were housing cases, and 3 (9.1%) were public accommodations cases. There were no access to state funded services cases.

Of the 33 investigations where the result was a cause recommendation, 10 involved discrimination due to disability (30.3%), 8 involved discrimination on the

basis of sex (24.2%), 6 involved retaliation (18.2%), 3 involved age (9.1%), 2 involved discrimination due to arrest and court record (6.1%), 2 involved race (6.1%), 1 involved ancestry/national origin (3.0%); and 1 involved sexual orientation (3.0%). There were no cases involving familial status, color, or religion.

During FY 2006-2007, enforcement attorneys closed 21 cases, and 18 of these cases (85.7%) were negotiated settlements. (Total percentage may not equal 100 due to rounding.)



### Case Settlements

The HCRC promotes and encourages settlement during all stages of the complaint process. Through pre-determination settlements, mediation, and conciliation, the HCRC obtains relief and resolves complaints while avoiding unnecessary litigation. These settlements provide closure for the parties and conserve HCRC investigation and litigation resources for complex or precedent setting cases.

During FY 2006-2007 the HCRC continued to successfully obtain monetary relief through settlement of complaints. In the 18 settlements obtained by HCRC attorneys in cases with a finding of reasonable cause, the monetary relief totaled \$265,000.00. In the 27 cases settled prior to an investigative finding, monetary relief exceeded \$238,000.00. This figure includes both pre-determination

settlements obtained through HCRC investigators (\$19,550.00) and investigative settlements obtained through the HCRC mediation program (\$218,480.00).

In addition to monetary relief, significant affirmative relief was also obtained. The HCRC seeks affirmative relief for four basic reasons: to enforce civil rights laws, stop discriminatory conduct, prevent future harm to complainants, and assist respondents in avoiding future violations. HCRC settlements and conciliation agreements routinely include various types of affirmative relief, such as developing and implementing anti-discrimination policies, employee and supervisor training on anti-discrimination policies, posting policies, and publishing notices informing the public of HCRC's role in enforcing state anti-discrimination laws.

In some instances, non-monetary relief can be an important element of a settlement. For example, in FY 2006-2007, there were complainants who received letters of apology pursuant to the terms of a settlement. A simple apology sometimes goes a long way towards healing the rift between a complainant and respondent, and this form of relief is often not available as a court ordered remedy. Some cases are resolved when an employer, housing provider, or public accommodation corrects an unlawful discriminatory policy or practice after notice of the violation. During FY 2006-2007, a significant number of employers, housing providers, and public accommodations voluntarily agreed to correct unlawful employment applications, leave policies, or house rules.

The following are illustrative of the HCRC cases that were resolved through conciliation or mediation and describes the relief that was obtained during FY 2006-2007:

- In a case involving retaliation for complaining about housing discrimination, the complaint was settled for payment of \$20,000 and affirmative relief, including training and posting of non-discrimination policies.
- In a case alleging sex harassment, the complaint was resolved for payment of \$30,000 and affirmative relief.
- In a case alleging sexual harassment, settlement included payment of \$25,000, adoption of anti-discrimination employment policies and training for the employer's staff on compliance with such policies.
- In a case alleging discrimination based on pregnancy, settlement of the complaint resulted in the Complainant receiving \$40,000. Affirmative relief included posting of the employer's written non-discrimination policy and training.
- A housing case alleging a refusal to grant a reasonable accommodation resulted in a settlement of \$7,000 to the complainants.

## **HCRC Warning Letters**

In an effort to prevent future or recurring problems, the HCRC provides respondents with “warning letters” advising them of unlawful or potentially unlawful practices that the HCRC discovers during the course of its investigation of other claims against the respondent. In those instances in which the HCRC investigation does not result in a recommendation of reasonable cause on the claims filed, but the HCRC investigator finds evidence of other unlawful practices (such as a discriminatory written policy or employment application, or conduct in the workplace that could rise to the level of unlawful harassment if repeated), the HCRC will advise the respondent of the potential violations and give the respondent information about how it can correct the possible violation of the law. Warning letters have resulted in policy and application form changes, as well as discrimination prevention training for employees and managers.

## **Case Decisions**

### **Contested Case Hearings**

During fiscal year 2006-2007 two cases were docketed for hearing. One case went to hearing and one case is pending.

Scotto / housing disability case

On June 22, 2007, the Commission issued a final decision in William D. Hoshijo, Executive Director, on behalf of the complaint filed by Del M. Scotto vs. Janene Caracaus, Docket No. 06-001-H-D. This case involved allegations of disability discrimination in housing.

The Commission concluded that Respondent Janene Caracaus discriminated against Complainant Del Scotto because of his disability when she evicted him after he informed her of his prostate cancer. The Commission also found that Respondent had a legitimate non-discriminatory reason for the eviction because Complainant did not legally use medical marijuana on the premises. Although Complainant had a valid marijuana medical use certificate from California, he did not have a marijuana medical use certificate from Hawaii, which is required under H.R.S. Chapter 329 and H.A.R. §23-202-6. Because there were both discriminatory and non-discriminatory reasons for the eviction (“mixed motives”), the Commission did not award damages but ordered equitable relief, requiring Respondent to not discriminate on the basis of disability in the future and to post a non discrimination policy on the premises. In an order denying reconsideration, the Commission clarified that its decision did not foreclose the award of monetary damages in future mixed motive cases.

Both the Complainant and Respondent appealed this final decision to the circuit court.

## **Legislation**

There were no bills related to civil rights which became law during the 2007 legislative session.

## **Rulemaking**

The HCRC engaged in rulemaking on proposed rule changes which were originally petitioned for by the Hawai`i Employers Council. The proposed rules would have deleted: 1) the current H.A.R. §12-46-109(c), which holds an employer responsible for acts of sexual harassment of its agents or supervisory employees; 2) the current H.A.R. §12-46-175(d), which holds an employer responsible for the acts of ancestry harassment of its agents or supervisory employees; and 3) the current H.A.R. §12-46-109(d) which advises that an employee should inform an employer of co-employee sexual harassment, but provides that failure to provide such notice may not be an affirmative defense to a claim of sexual harassment. The HEC claimed that the amendments would result in the adoption by the Commission and state courts of the affirmative defenses available to employers under the United States Supreme Court cases of Burlington Industries Inc. v. Ellerth, 524 U.S. 742 (1998), and Faragher v. City of Boca Raton, 524 U.S. 775 (1998).

In decision-making on November 1, 2006, the Commissioners decided by a 4-0 vote that the proposed rule change would not be adopted. Chair Pietsch and Commissioners Wong and Ueoka voted against adoption of the proposed rules, expressing concern about the effect of deletion of the current rule language without adding new language to clarify a new standard. Commissioner Banks expressed opposition and concern that adopting the change would take away existing civil rights protections.

On January 24, 2007, the Commissioners decided by a 3-1 vote to engage in rulemaking on new proposed rules. The new proposed rule would hold employers liable for acts of sexual/ancestry harassment committed by its agents and supervisors, but, in the absence of a tangible employment action (hiring, firing, failure to promote, reassignment affecting responsibilities, change in benefits, etc.), would allow an employer to establish an affirmative defense, by showing that the employer took reasonable measures to prevent and correct sexual/ancestry harassment and the employee unreasonably failed to avail themselves of the employer's measures.

On July 31, 2007, the three sitting Commissioners agreed to postpone decision making on the proposed rule until a full compliment of five Commissioners would

be available to participate. (At the time of the vote, one Commissioner was working out of the state for an extended period of time and one seat was vacant.)

## **Appendix**

### **Overview**

The Hawai'i 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 HCRC laws.

The HCRC exercises jurisdiction over Hawai'i'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 thirty-two (32) persons who are divided into separate enforcement and adjudication sections.

#### Administrative Procedure

Before the HCRC accepts a complaint of discrimination, a complaining person must allege that:

- 1) She or he has been subjected to unlawful discrimination<sup>1</sup> because of a "protected basis,"<sup>2</sup> and,
- 2) The unlawful discrimination occurred within the previous 180 days.<sup>3</sup>

After a complaint is filed with HCRC, in appropriate cases the parties are offered an opportunity to voluntarily mediate the complaint through the HCRC Mediation

Program. If the parties agree to mediate, the HCRC mediation coordinator refers the parties to a community mediation center, which schedules and holds mediation sessions. Parties may alternatively choose to hire a private mediator.

In cases not referred to mediation, or those in which mediation is unsuccessful, an HCRC investigator conducts an objective, fact-finding investigation. HCRC investigators are impartial and gather evidence to allow the Executive Director to make a determination in each case. The HCRC investigator collects, reviews, and analyzes documents, and contacts and interviews witnesses. Some witnesses questioned may be identified by the complainant or by the respondent, and some are independent witnesses, including experts, who are identified by the investigator, by other witnesses, or are discovered during the investigation. In many cases, the investigator also attempts to settle the complaint prior to an investigative determination (pre-determination settlement).

After an HCRC investigation is completed, H.R.S. 368-13(b)-(c) requires the Executive Director to determine whether reasonable cause exists to believe that discrimination has occurred. Where no reasonable cause is found, the Executive Director dismisses the complaint and issues a right to sue letter to the complainant. Where a determination of reasonable cause is recommended, the complaint is assigned to an HCRC enforcement attorney for legal review and final recommendation to the Executive Director.

Upon the issuance of a finding of reasonable cause to believe that unlawful discrimination has occurred, the HCRC enforcement attorney attempts to conciliate or settle the complaint.<sup>4</sup> If conciliation is unsuccessful, the complaint is docketed for a contested case hearing. An HCRC enforcement attorney presents the case in support of the complainant before an impartial hearings examiner. The respondent (represented by themselves or by counsel or representative of their choice) is also given the opportunity to present his/her case at the hearing. Generally, a complainant may intervene in the contested case process as a party and also be represented by counsel or other representative of their choice.

After the completion of the contested case hearing, the hearings examiner issues a proposed decision based on the evidence. The five-member Commission Board then reviews the proposed decision and the hearing record. 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 decision and order, and awards remedies, if appropriate. This decision is legally binding. If any party disagrees with the decision, she/he has 30 days to file an appeal to the State Circuit Court. Furthermore, a Respondent who appeals a decision of the Commission Board is entitled to a jury trial on any claims that form the basis for an award of common law damages.<sup>5</sup>

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 have often lost their source of income through termination and have little or no control over the evidence needed to prove discrimination.

The HCRC enforcement and adjudication process also funnels cases away from the courts, saving judicial resources and associated costs. Complainants who file suit in court must first exhaust administrative remedies by filing a complaint with the HCRC. The primary reason for this requirement is to prevent the courts from being overburdened with non-jurisdictional or non-meritorious complaints, or with complaints that can be closed or settled in the HCRC's administrative process. In fact, the great majority of complaints filed with the HCRC are resolved or disposed of without resort to the courts.<sup>6</sup>

Although only a small number of cases are brought to administrative hearing and result in final Commission decisions, these cases are important because they create a body of legal precedent. Case law precedents, in Hawai'i and across the United States, provide the basis for anti-discrimination principles, such as the doctrine of sexual harassment. Case law also establishes standards that define the rights and protections under civil rights laws, and give guidance to employers, landlords, and businesses on how to prevent and eliminate discrimination.

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1 "Unlawful discrimination" may occur in any of the following ways:

- a. Disparate Treatment – this is the usual form of discrimination; it occurs when individuals are treated in an unequal manner because of a "protected basis." Examples of disparate (unequal) treatment include: firing an employee because of her race, her age, or because she is pregnant; refusing to serve a person because of his race or his disability; refusing to rent to a person because of her race; or refusing to rent to a family because it has young children.
- b. Reasonable Accommodation – this is the second most common way that discrimination appears; it occurs when an individual is denied a "reasonable accommodation" designed to allow an individual to have equal access or equal benefits. Examples of failure to accommodate include: refusing to allow a seeing impaired customer into a taxicab because he is accompanied by a seeing-eye dog; refusing to allow a pregnant cashier to sit on a stool so that she can work while pregnant; or refusing to make exceptions to a condominium association's "no pets" house rule to allow a disabled resident to keep a service animal.
- c. Disparate Impact -- the least common way that discrimination appears; however, when discrimination occurs in this form, it may impact the greatest number of people. Disparate impact occurs when a policy, practice, or test that has a "disparate impact" on persons with a particular "protected basis." Examples of disparate impact include: a pre-employment test that includes a number of questions that are not job related but have the effect of disqualifying a large number women, or men, or any other protected basis.

<sup>2</sup> "Protected basis" is the criteria that it is unlawful for a respondent to discriminate upon. Protected bases vary depending on the statute involved:

- a. State Funded Services (Chapter 368, H.R.S.) The only protected basis is disability.

- b. Employment (Chapter 378, Part I, H.R.S.) The protected bases that an employer, employment agency, or labor organization may not discriminate on are: race, sex, sexual orientation, age, religion, color, ancestry, disability, marital status, or arrest and court record.
- c. Public Accommodations (Chapter 489, H.R.S.) The protected bases that a public accommodation may not discriminate on are: race, sex, sexual orientation, color, religion, ancestry, or disability.
- d. Housing (Chapter 515, H.R.S.) The protected bases that an owner, a real estate broker or any person engaging in a real estate transaction, may not discriminate on are: race, sex (which includes gender identity and expression), sexual orientation, color, religion, marital status, familial status, ancestry, disability, age or HIV (human immunodeficiency virus) infection.

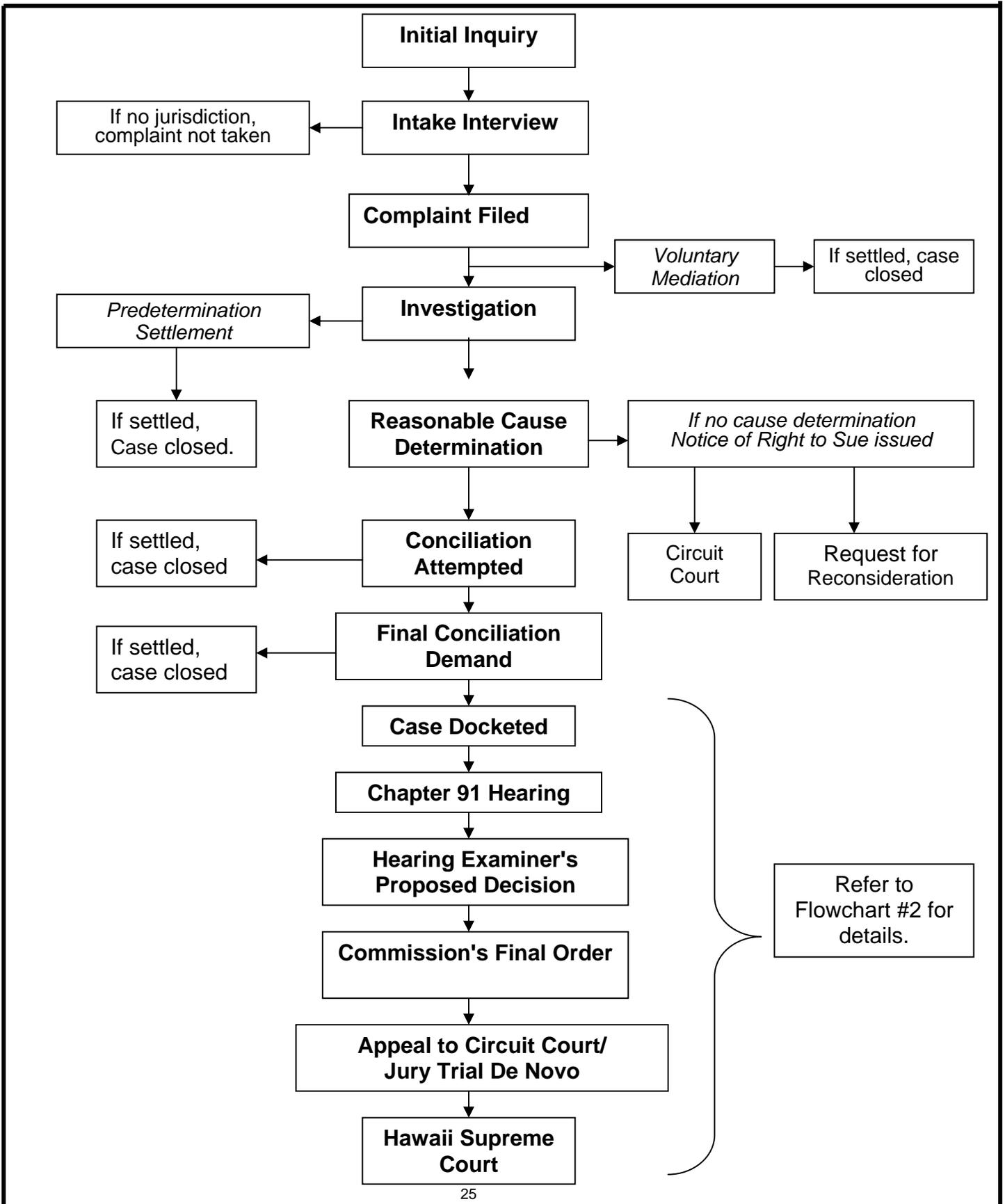
<sup>3</sup> Complaints filed with HCRC usually involve a discrete act – such as termination, eviction, demotion, etc. – or involve acts that are ongoing and constitute a continuing violation. An example of a “continuing violation” is sexual harassment that began more than 180 days before the complaint is filed, but continued or ended less than 179 days before the complaint is filed. When discrimination involves a discrete act, such as termination, the HCRC can only accept a complaint within 180 days of that complained action.

<sup>4</sup> During FY 2006-2007, of all complaints closed (349), 25.5% (89) were closed on the basis of the complainant electing court action or other administrative closure. The remaining cases (260) were closed on the basis of a completed investigation or a pre-determination settlement: in 73.85% (192) the Executive Director found no cause and dismissed the complaint; in 8.08% (21) the case was resolved through settlement or litigation by HCRC enforcement attorney after the issuance of a notice of cause; and 18.07.43% (47) were settled prior to a cause determination.

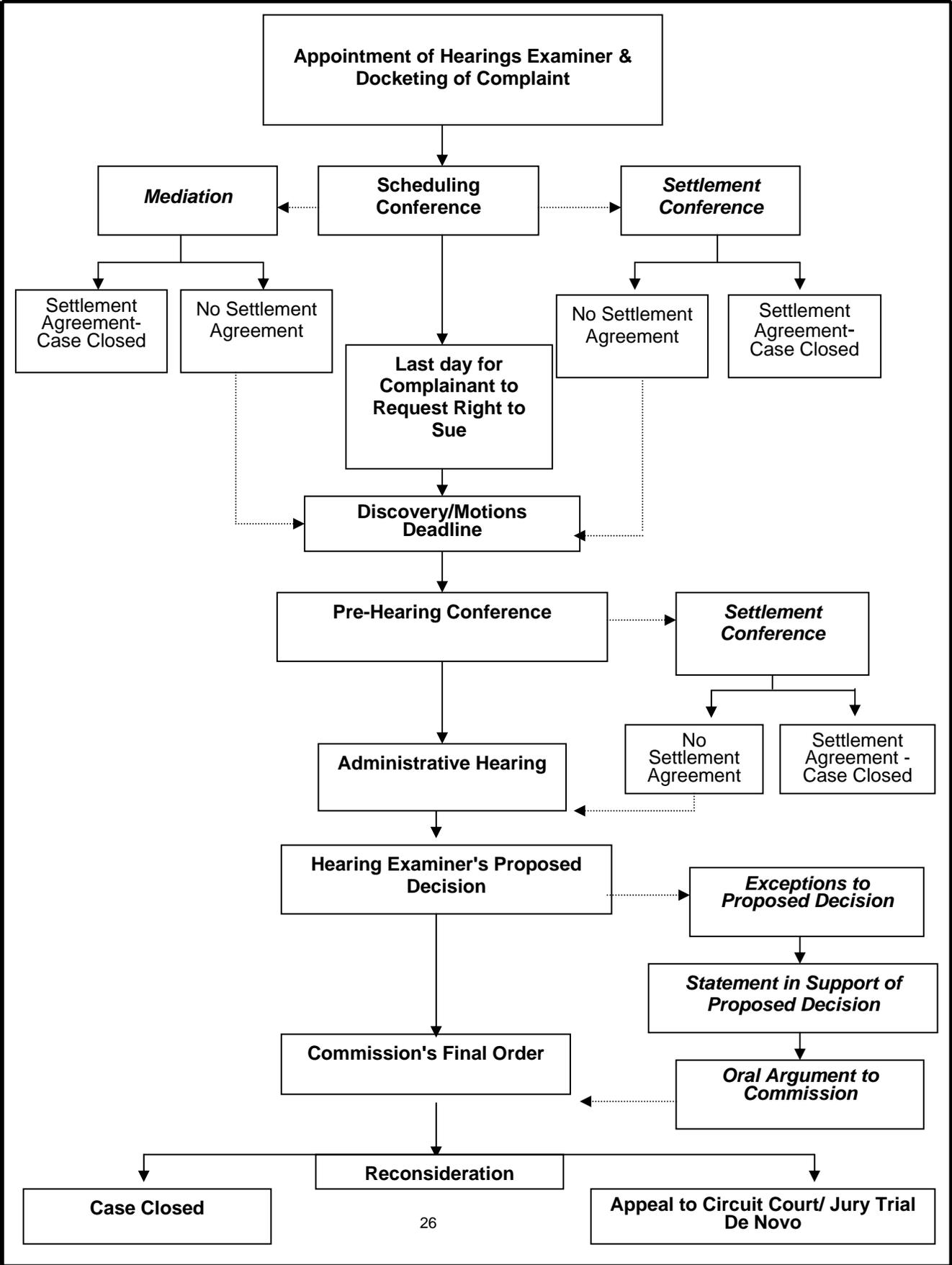
<sup>5</sup> The HCRC administrative procedure and circuit court appeal is illustrated in Flowchart # 1. In *SC/ Management Corporation, et. al. v. Darryllyne Sims, et. al.*, No. 24485, June 18, 2003, the Hawai`i Supreme Court held that “a respondent who appeals a final order of the HCRC, pursuant to HRS § 368-16, is entitled to a jury trial on any claims that form the basis for an award of common law damages by the HCRC.”

<sup>6</sup> HCRC case dispositions are illustrated in Flowchart # 2.

## HCRC Procedural Flowchart #1



**HCRC Contested  
Case Flowchart #2**



## **HCRC Commissioners**

### **Coral Wong Pietsch Chair (term 2007-2011)**

Coral Wong Pietsch is the Senior Civilian Attorney for the U.S. Army Pacific. In this position she oversees the personnel and labor law practice at Headquarters, U.S. Army Pacific Command, as well as the ethics program and the environmental law program. She is also responsible for providing advice and guidance on international law issues in the U.S. Army Pacific Command. Ms. Pietsch is a retired Brigadier General and was the first female general in the 231-year history of the U.S. Army Judge Advocate General Corps. She is also the first Asian American female to reach the rank of Brigadier General in the Army. From 1986 to 1991, she served as Labor Counselor for the U.S. Army Support Command Hawai`i and was responsible for providing training to managers and supervisors on Title VII, the Rehabilitation Act, and sexual harassment.

### **Lisa A. Wong Commissioner (term 2003-2007)**

Lisa Wong was born in Honolulu, Hawai`i, and received her Bachelor of Business Administration, Personnel and Industrial Relations, from the University of Hawai`i. She founded the University of Hawai`i Society of Human Resources Student Chapter. Ms. Wong has been a human resources professional for 34 years, responsible for employee relations, equal employment opportunity programs, affirmative action programs, management and supervisory training, and diversity and compliance programs. She is currently the Human Resources Manager for the Hawai`i Convention Center. She previously served as human resources manager for the Hawai`i division of Affiliated Computer Services, Inc.

Ms. Wong is also Chair of the Society of Human Resources Management Annual State Conference, which provides training to human resources professionals, executives, managers, supervisors and entrepreneurs in such areas as discrimination, sexual harassment, diversity, and dispute resolution. She has been active in numerous organizations and volunteer projects, including the Associated Chinese University Women, Honolulu Chinese Jaycees, Aloha United Way, Junior Achievement, Hawai`i Medical Fellowship Foundation, Hawai`i Bone Marrow Registry, and the Chinese Chamber of Commerce.

Lisa Wong decided not to seek another term as a Commissioner, and at the end of FY 2006-2007 her seat became vacant.

**Sara Banks**  
**Commissioner (term 2004-2008)**

Raised on the island of O`ahu, Sara Banks is a graduate of Kailua High School. She has an undergraduate degree in broadcast communication from San Francisco State University. Ms. Banks remained in the Bay area working in educational media before achieving a Masters of Fine Arts in Film at UCLA. After returning to Hawai`i, Ms. Banks lived on Kaua`i and managed a restaurant at the Kauai Hilton. She transferred to the Hilton Hawaiian Village and was in charge of the training department, overseeing the training for 1,800 union employees and more than 300 managers. She then worked for three years as a volunteer coordinator for the Life Foundation, the AIDS service organization for O`ahu. She left the Life Foundation to become part owner of Wahine Builders, working both in the construction and personnel aspects of this company. Ms. Banks designed and implemented a pre-apprentice construction training program for incarcerated women.

Throughout her management and personnel career, Ms. Banks has pursued her passion for film and video. Since the early seventies, she has produced news magazine shows for public access, documentaries, PSA's and training videos for Hawaii's businesses. She currently works for the Center on Disability Studies under the College of Education at the University of Hawai`i producing a series of videos for a state-wide sixth grade science curriculum which weaves hard science with Native Hawaiian values, culture and accomplishments.

**Leslie Alan Ueoka**  
**Commissioner (term 2005-2008)**

Les Ueoka is Assistant General Counsel for Hawaii Telcom. Prior to that, he was in private practice. He is a trustee for the 442nd Regimental Combat Team Foundation and a member of the Sons and Daughters Chapter of the 442nd Veterans Club. Mr. Ueoka serves on the Oahu Metro Board of the American Heart Association of Hawaii and is a member of the Association's 2008 Heart Ball Committee. He also is a member of the board of Gregory House Programs.

Born and raised in Honolulu, Hawaii, Mr. Ueoka graduated from Iolani School and received his BA degree from Northwestern University in Evanston, Illinois, and his JD degree from Washington University in St. Louis, Missouri.

**Mark G. Valencia**  
**Commissioner (term 2007-2009)**

Mark G. Valencia is a director in the law firm of Case Lombardi & Pettit. His practice includes both plaintiff and defense work in contract, insurance, tort, construction, land use, appellate, product liability, and employment cases. In addition, Mr. Valencia teaches law as an adjunct professor at Hawaii Pacific University. He is also active in the community, volunteering with the Read Aloud America Program, serving as a longtime member of the Kuakini Medical Center Ethics Committee, and is an annual participant in the Professionals for Drug Free Kids Project.

Before joining Case Lombardi & Pettit in 2005, Mr. Valencia served as a policy analyst for Governor Linda Lingle, an attorney in private practice, a law clerk to former Hawaii Intermediate Court of Appeals Judge Walter Kirimitsu, and as a Sergeant in the United States Army.

**HCRC Staff**

The HCRC staff consists of 32 individuals in the following positions:

- Executive Director
- Enforcement Staff:
  - Deputy Executive Director
  - Enforcement Attorneys (4)
  - Attorney Mediation Coordinator
  - Legal Assistant
  - Administrative Services Assistant
  - Investigator-Supervisors V-VI (3)
  - Investigator III-IV (11)
  - Secretary III
  - Legal Stenographer I
  - Clerk Typists (4)
- Adjudication Staff:
  - Chief Counsel
  - Hearings Examiner
  - Secretary II

# **Hawai'i Civil Rights Commission Annual Report**

## **July 1, 2006 – June 30, 2007**

### **Executive Summary**

#### **Overview**

The HCRC enforces 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, and adjudicates complaints of discrimination.

The HCRC is committed to, and has procedural safeguards to ensure fairness to both complainants and respondents. It has a staff of thirty-two (32) people divided into two separate and distinct sections: a) the enforcement section, which receives, investigates, and prosecutes discrimination complaints; and b) the adjudication section which hears and issues final determinations on complaints filed with the HCRC.

#### **FY 2006-2007 Report**

Investigation and charge processing. During FY 2006-2007, 532 discrimination complaints were filed with the HCRC; 318 through HCRC intake and 214 cases originating with the federal Equal Employment Opportunity Commission (EEOC) or Department of Housing and Urban Development (HUD) and dual-filed under state law with the HCRC. The 532 complaints included: 461 (86.7%) employment cases, 23 (4.3%) public accommodations cases, 43 (8.1%) housing cases, and 5 (0.9%) cases involving state-funded services. The number of complaints from each county was proportional to its resident population of the state.

Of the 461 employment complaints filed, the bases most cited were retaliation, in 94 (20.4%) cases, and sex, also in 94 (20.4%) cases. Of those sex discrimination complaints, 41 (43.6% of all sex cases) alleged sexual harassment and 24 (25.5% of all sex cases) were based on pregnancy. Disability was the third most common basis, cited in 79 (17.1%) complaints, followed by age (56 / 12.1%), race (55 / 11.9%), ancestry/national origin (47 / 10.2%), religion (13 / 2.8%), arrest and court record (11 / 2.4%), color (5 / 1.1%), marital status (4 / 0.9%), and sexual orientation (3 / 0.7%). There were no complaints based on National Guard participation or child support obligations.

HCRC investigators and attorneys closed 349 cases during FY 2006-2007, leaving 271 cases pending in investigation at the end of the year. During FY 2006-2007, HCRC investigations resulted in 33 cause determinations; 47 cases closed on the basis of a pre-determination settlement or resolution between the parties; and 192 cases closed on the basis of no-cause determinations upon completion of investigation.

During FY 2006-2007, the HCRC continued to improve its efficiency without sacrificing effective law enforcement by implementing goals designed to reduce the time to complete investigations. Initial efforts focused on completing the investigation of 95% of all complaints within 24 months of filing, as an incremental step towards the goal of completing all case investigations within 18 months of filing.

Mediation. The HCRC's voluntary mediation program completed its eighth year of operation, working with the Mediation Centers of Hawai'i and community mediation centers on Oahu, Hawai'i, Maui, and Kauai. 13 cases were settled by mediation for monetary relief exceeding \$218,000.

Public education. During FY 2006-2007, the HCRC made prevention and elimination of discrimination through public education a high priority. HCRC staff made numerous presentations to labor, business, professional, civil rights, and other community organizations. This included fair housing training on Kauai, Maui, Hawai'i, and Oahu. In May 2007, the HCRC held its annual public training in Honolulu at the Hawai'i Convention Center. At that training, the HCRC also screened a new "Abilities at Work" video, with a discussion of reasonable accommodation in the workplace, and distributed copies of the HCRC's pregnancy discrimination video and study guide.

Settlements, Conciliation, Litigation. During FY 2006-2007, the HCRC settled 27 cases prior to a reasonable cause finding, obtaining more than \$238,000 in monetary relief. In the 18 settlements obtained in conciliation after a finding of reasonable cause to believe that unlawful discrimination has occurred, monetary relief totaled \$265,000. HCRC also obtained affirmative relief, which served four purposes: enforcement of civil rights laws, ending discriminatory conduct, preventing future harm to complainants, and assisting respondents in avoiding future violations. HCRC enforcement attorneys docketed cases for administrative hearing when conciliation efforts failed after a finding of reasonable cause.

Contested cases. During fiscal year 2006-2007, two fair housing cases were docketed for hearing. One case went to hearing and the other was pending at the end of the fiscal year.

On June 22, 2007, the Commission issued its final decision in William D. Hoshijo, Executive Director, on Behalf the Complainant Filed by Del M. Scotto vs. Janene Caracaus, Docket No. 06-001-H-D. The Complainant Del M. Scotto alleged that Respondent Janene Caracaus discriminated against him and terminated his tenancy because of his disability, prostate cancer. In its final decision, the Commission concluded that Respondent discriminated against Complainant because of his disability, but that Respondent also had a legitimate nondiscriminatory reason for terminating Complainant's tenancy because of her suspicion that his use of medical marijuana was not legal. Based on its conclusion that Respondent had mixed motives for terminating Complainant's tenancy, the Commission decided not to award monetary damages to Complainant, but ordered equitable relief to prevent future discrimination. In an order denying reconsideration, the Commission clarified that its decision did not foreclose the award of monetary damages in future mixed motive cases. Both

the Complainant and Respondent appealed the Commission final decision in state circuit court.

Legislation. The 2007 Legislature passed no legislation related to civil rights or HCRC jurisdiction.

Rulemaking. The HCRC engaged in rulemaking on proposed rule changes which were originally petitioned for by the Hawai'i Employers Council. The proposed rules would have deleted: 1) the current H.A.R. §12-46-109(c), which holds an employer responsible for acts of sexual harassment of its agents or supervisory employees; 2) the current H.A.R. §12-46-175(d), which holds an employer responsible for the acts of ancestry harassment of its agents or supervisory employees; and 3) the current H.A.R. §12-46-109(d) which advises that an employee should inform an employer of co-employee sexual harassment, but provides that failure to provide such notice may not be an affirmative defense to a claim of sexual harassment.

In decision-making on November 1, 2006, the Commissioners decided by a 4-0 vote that the proposed rule change would not be adopted. Chair Pietsch and Commissioners Wong and Ueoka voted against adoption of the proposed rules, expressing concern about the effect of deletion of the current rule language without adding new language to clarify a new standard. Commissioner Banks expressed opposition and concern that adopting the change would take away existing civil rights protections.

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On July 31, 2007, the three sitting Commissioners agreed to postpone decision making on the proposed rule until a full compliment of five Commissioners would be available to participate. (At the time of the vote, one Commissioner was working out of the state for an extended period of time and one seat was vacant.)