

# **HAWAI‘I CIVIL RIGHTS COMMISSION**

## **2021-2022 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**

### **The State of Hawai'i's Constitutional Civil Rights Mandate**

Article I, Section 5 of the Hawai'i Constitution is the foundation of our state civil rights laws. It provides that: "No person shall ... be denied the enjoyment of the person's civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry." There is no counterpart to this civil rights mandate in the U.S. Constitution.

### **Hawai'i Civil Rights in 2022: Emerging From the COVID-19 Pandemic Emergency**

The entire 2020-2021 fiscal year was marked by the impact of the COVID-19 Pandemic Emergency. A state of emergency was first declared by Governor David Y. Ige on March 4, 2020; and the emergency officially ended with the expiration of the last Emergency Proclamation related to COVID-19 on March 25, 2022.

The Ke'elikolani Building (which houses the HCRC office) was closed to the public during the pandemic emergency, until it was reopened to public access on December 1, 2021. While the building was closed, the HCRC continued to provide services via telephone, video conference technology, e-mail and electronic signature application via internet, facsimile transmission, and in writing, with no in-person public contact, except if required to provide a disability-related accommodation.

HCRC staffing and capacity was reduced due to a State hiring freeze imposed by an executive memorandum issued on April 3, 2020, which was lifted on July 30, 2021. During FY 2021, 4 of 8 HCRC permanent investigator positions were vacant and subject to the hiring freeze. 1 of 3 permanent enforcement staff attorney positions was also vacant and that position was frozen as well. In addition, the HCRC had a permanent office assistant position that was vacant, frozen, de-funded and not restored, with continuing negative impact on office operations.

During the pandemic emergency, The HCRC implemented safety and social distancing measures, including telework or hybrid telework and in-office work for its mediation program specialist, attorneys, and investigators.

## **Looking Forward: Rebuilding Civil Rights Enforcement Capacity After COVID-19, and Reaffirming State Commitment to Civil Rights**

Even before the COVID-19 pandemic emergency, the HCRC was understaffed, dating back to cuts imposed in 2009-2010, when in response to the Great Recession, the HCRC lost 3 of 11 permanent investigator positions, a loss of 27% of investigator capacity which was never restored.

The earlier 2009-2010 loss of investigator capacity was then compounded by the additional COVID-induced losses in 2020 and 2021. Of the HCRC's remaining 8 permanent investigator positions, 4 were vacant during fiscal year 2021. Those 4 vacant investigator positions were frozen and defunded, leaving the HCRC with only 4 funded, filled permanent investigator positions in the latter half of FY 2021, or 31% of HCRC investigator capacity in 2009.

The loss of capacity continued to impact HCRC productivity in FY 2022.

During FY 2022, the COVID-19 Pandemic Emergency loss of staffing continued to affect HCRC capacity to conduct intake and timely and effectively investigate discrimination complaints. Within those constraints, the HCRC focused its limited staffing resources on investigation of oldest cases. That, in combination with fewer complaint filings, resulted in reduction of the investigation caseload from 361 cases at the end of FY 2021 to 309 at the end of FY 2022. Working on existing caseload did yield some significant results to build on.

FY 2022 yielded the issuance of 10 reasonable cause determinations, and 11 conciliation settlement agreements in cause cases, with monetary settlements totaling \$293,200. In addition to these conciliation settlements in cause cases, the HCRC closed 53 cases based on settlements prior to an investigative finding in FY 2022 with monetary relief totaling \$516,323, including pre-determination settlements obtained through HCRC investigators and settlements between the parties (\$229,750), as well as investigative settlements obtained through the HCRC mediation program (\$286,573). Collectively the HCRC's known monetary settlements for FY 2022 totaled \$809,523. In addition to monetary relief, the HCRC seeks and obtains non-monetary affirmative relief in all settlements to which the HCRC is a party, to stop discriminatory conduct, prevent future harm, and avoid future violations of law.

At the outset of the 2021 legislative session, a drastically pared down Executive Budget identified 7 of 24 HCRC permanent positions to be cut in the HCRC Fiscal Biennium 2021-2023 budget, including 2 of 8 investigator positions and 2 of 3 enforcement staff attorney positions, while restoring funding for 2 other investigator positions that had been frozen and de-funded. If implemented, the

proposed cuts would have effected a dismantling of HCRC staffing and enforcement capacity and an erosion of state commitment to civil rights.

Recognizing that the State of Hawai'i and the Hawai'i Civil Rights Commission stood at a crossroads in our shared commitment to civil rights, the State Legislature acted decisively, restoring HCRC funding and 6 of 7 permanent positions that had been identified for cuts in the Fiscal Biennium 2021-2023 budget. The position that was not restored was an office assistant position, a loss that has negatively affected day-to-day office operations.

With the support of the Legislature and the Administration, in FY 2022 the HCRC began the process of filing vacancies and restoring civil rights enforcement capacity. In an important step toward rebuilding and reaffirming our commitment to enforcement of the civil rights laws that protect all of Hawai'i's people from unlawful discrimination, the HCRC has been able to fill all of the permanent investigator and attorney positions that were vacant and frozen until the end of FY 2021. This has been an ongoing process, as the HCRC, like other state employers are constantly engaging in the recruitment and selection process to fill vacancies as they arise. With this restoration of capacity and hiring of staff, the focus now shifts to training and providing the tools needed for new civil rights enforcement professionals to do the job. It is a new but welcome challenge, as the HCRC and the State of Hawai'i renew our shared commitment to strong civil rights law enforcement.

### **Fair and Effective Enforcement – History and Structure of the HCRC**

The HCRC was organized in 1990 and officially opened its doors in January 1991. For thirty-one years the HCRC has enforced state laws prohibiting discrimination in employment (HRS Chapter 378, Part I), housing (HRS Chapter 515), public accommodations (HRS Chapter 489), and access to state and state-funded services (HRS §368-1.5). The HCRC receives, investigates, conciliates, and adjudicates complaints of discrimination.

The HCRC currently has five (5) uncompensated volunteer Commissioners. (One vacancy was filled by an appointment effective after the end of FY 2022.) 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.

### **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 prosecution of discrimination complaints was virtually non-existent. Nearly all aggrieved were left with litigation of individual lawsuits as their only recourse. For complainants who could not afford private attorneys to seek remedies in court, there was no administrative process to adjudicate their claims. As a result, few employment discrimination cases were brought to court under state law, and there were few court interpretations of state law.

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>

### **A Fair Administrative Process**

The HCRC is committed to, and its procedures are structured to ensure fairness to both complainants and respondents. The HCRC is divided into two separate and distinct sections: a) the enforcement section, which receives, investigates, and prosecutes discrimination complaints; and b) the adjudication section, which conducts hearings, issues orders and renders final determinations on discrimination complaints 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 examiners, and oversee the adjudication section through their Chief Counsel.

The Commissioners, Chief Counsel, and hearings examiners 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, Chief Counsel or hearings examiners about any case.

The HCRC investigates discrimination complaints 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.

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

<sup>2</sup> Id.

The law requires filing of a complaint with the HCRC in most (but not all) cases before filing a discrimination lawsuit in state court.<sup>3</sup> Otherwise, the state courts will dismiss a lawsuit for failure to exhaust administrative remedies. This requirement reduces court caseloads by eliminating claims which are non-jurisdictional, or non-meritorious, or complaints that are closed or settled through the HCRC administrative process. As a result, 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) Office of Fair Housing and Equal Opportunity (FHEO), respectively. Pursuant to work share and cooperative agreements, both EEOC and HUD rely on the HCRC to investigate complaints filed under both state and federal law (“dual-filed” complaints). Both EEOC and HUD contracts require maintenance of state effort and dedication of state resources for investigation of dual-filed complaints.

While Hawai‘i and federal fair employment and fair housing laws are similar, they are not identical. Hawai‘i has more protected bases than federal law, and there are substantial differences in the definition of “employer” and the statute of limitations for filing charges of employment and housing discrimination. In addition to these jurisdictional differences, Hawai‘i law provides stronger protections against pregnancy discrimination and sexual harassment in employment.

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

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<sup>3</sup> Pursuant to HRS § 378-3(10) an employee may file a direct civil action for sexual harassment. Similarly, pursuant to HRS § 515-9(b), an aggrieved person may file a direct civil action for fair housing complaints. While the statutes allow these direct civil actions in these cases, only a small number are filed; the great majority of complaints are still filed with the HCRC.

## **Mediation Program**

The HCRC's voluntary mediation program completed its twenty-third full year on June 30, 2022. The program enjoyed a productive year, but it was also a time of continuing adjustments and changes in adapting to the COVID-19 pandemic emergency.

Complainants, respondents and the HCRC, with the strong support of 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 persons (often a team of two co-mediators with at least one attorney-mediator) help the parties discuss, clarify, and settle complaints.

The HCRC voluntary mediation program uses trained community mediators who are unbiased and do not rule on the merits of the complaint. The HCRC provides the mediators with the basic facts of each case needed to understand the dispute. The mediators then assist the parties to reach voluntary agreements. These agreements may include apologies, policy changes, monetary settlements, or other appropriate solutions. Mediation can save time, money and resources. It also can eliminate the stress of litigation and allow the parties to explain their side of the case and to control the process of resolving the disputes in a non-adversarial manner.

The HCRC works with trained, senior mediators from the Mediation Centers of Hawai'i (MCH), a statewide network of community non-profit mediation centers. MCH utilizes a facilitative approach to mediation. MCH mediators receive training on civil rights laws and settling disputes by HCRC and MCH staff. The HCRC Program Specialist - 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), Maui (Maui Mediation Services), east Hawai'i (Ku'ikahi Mediation Center in Hilo), the West Hawai'i Mediation Center in Kailua-Kona, and Kauai (Kauai Economic Opportunity, Inc. Mediation Program). The centers charge fees on a sliding scale 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. Parties are free to select commercial private mediators who charge market rates or private mediators from the Access ADR program, a reduced fee program of the MCP.

Mediation can occur at any stage of the intake, investigation, conciliation, or hearing process. Mediation is first offered when the complaint is accepted. At this early stage disputes are often easier to resolve because the facts are fresh, damages may not have accumulated, and the positions of the parties may still be fluid. However, parties may voluntarily choose mediation at any time during the HCRC investigative, conciliation or hearing process.

Since the inception of the HCRC's mediation program, all types of complaints have been eligible for voluntary mediation except for housing complaints. After much research and planning, at the end of FY 2017 the HCRC launched a pilot program to offer the mediation of housing complaints for the first time, with the HCRC's Program Specialist - Mediation Coordinator, Sharon Ferguson-Quick, personally conducting those mediations. Since then the HCRC's housing mediation program has flourished under Ms. Ferguson-Quick's leadership, and it has become a standard component of the HCRC's overall mediation system.

Beginning in FY 2020 and continuing through FY 2021 and FY 2022, the COVID-19 pandemic brought about numerous changes in the HCRC's mediation program. In-person mediations were no longer possible due to social distancing requirements, so the HCRC staff worked with their community partners to develop standard procedures for conducting remote mediations. In addition, the HCRC updated its equipment, including acquiring specialized computer software, in order to resume the in-house mediation of housing complaints.

In viewing all the mediation-related events throughout FY 2022, 37 cases were referred into mediation, and 35 mediations were completed (dispositions). Of the 35 dispositions, 19 resulted in mediated settlements (54.3%), and 16 resulted in no agreement (45.7%). Of the mediated settlements, 11 were in employment cases, and 5 of those were dual-filed with the EEOC. There were also 8 mediated settlements of housing cases, all of which were dual-filed with HUD.

The total disclosed monetary value of mediated agreements was \$286,573 with a wide variety of affirmative relief as well. During this period the HCRC had 8 mediation settlements; Mediation Center of the Pacific had 7 settlements; Maui Mediation Services had 2 settlements; and Ku'ikahi Mediation Center and West Hawai'i Mediation Center had 1 settlement each.

The primary bases of discrimination of the 19 settlements were as follows: Arrest and Court Record - 5; Disability - 4; Retaliation - 3; Familial Status - 2; Race - 2; Sex - 2; and Age - 1. Many of the completed mediations also included charges on other protected bases.

Although monetary settlements were achieved in most agreements, almost all mediated agreements also involved some form of non-monetary affirmative relief. Examples of non-monetary relief (here, in an employment context) include:

- 1) frank discussion of disputes, which often lay the groundwork for eventual settlement or restoration of the prior employment relationship;
- 2) reinstatement and/or restoration of employee benefits;
- 3) formal or informal apologies (by either or both sides);
- 4) increasing hours for part-time employees;
- 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.

During FY 2022 the HCRC continued to be an active participant in the fair housing committee, comprised of representatives from the housing departments of each county and the State, HUD Honolulu Field Office, Hawai'i Housing Authority, Hawai'i Housing Finance and Development Corporation, Legal Aid Society of Hawai'i, Hawai'i Disability Rights Center, and other housing-related private and public entities. The committee met to learn and discuss the latest fair housing cases, legal issues, and recent developments in fair housing from a federal, state and local perspective, to corroborate on local fair housing issues and concerns, and to work together to promote fair housing throughout the islands.

During FY 2022 the HCRC continued to work with HUD, state and county housing agencies, community fair housing organizations, non-profit and for-profit organizations, and businesses to co-sponsor fair housing trainings throughout the state. Representative trainees in the housing area have included members of the Board of Realtors, Property Managers Association, National Association of Residential Property Managers, Community Associations Institute (CAI) Hawai'i,

Hawai'i Center for Independent Living (HCIL), landlords, tenants, homeless veterans, emergency shelter and transitional housing management/staff, case management staff, housing assistance/referral management/staff, and various property management companies and community associations. The largest fair housing training effort came in April, which is National Fair Housing Month. Instead of the usual full-day in-person trainings held on various islands, this year's training was conducted statewide through video conferencing and was spread out in shorter sessions over four consecutive Thursdays. Each session had its own theme and unique team of presenters, allowing for a broader range of information and perspectives.

During FY 2022 many regularly scheduled public education and outreach events had to be cancelled due to the pandemic, and others had to change their format in order to avoid person-to-person contact. The HCRC's limited participation in such events in FY 2022 included the following:

"Neighbors Helping Neighbors" community outreach forum organized by State Senator Bennette Misalucha

Community Associations Institute – Hawai'i Chapter Seminar

Joint EEOC/HCRC webinar: "Workplace Discrimination is Illegal"

The HCRC website is part of a consolidated website that includes all divisions of the Department of Labor & Industrial Relations. The HCRC relies on the DLIR webmaster for maintenance and updating of the HCRC website, as well as ongoing efforts to improve user-friendliness of the site. The webmaster's detailed monthly index indicates that the site continues to attract broad public interest, particularly to those pages on administrative rules, case decisions, and the mediation program.

## **Caseload Statistics**

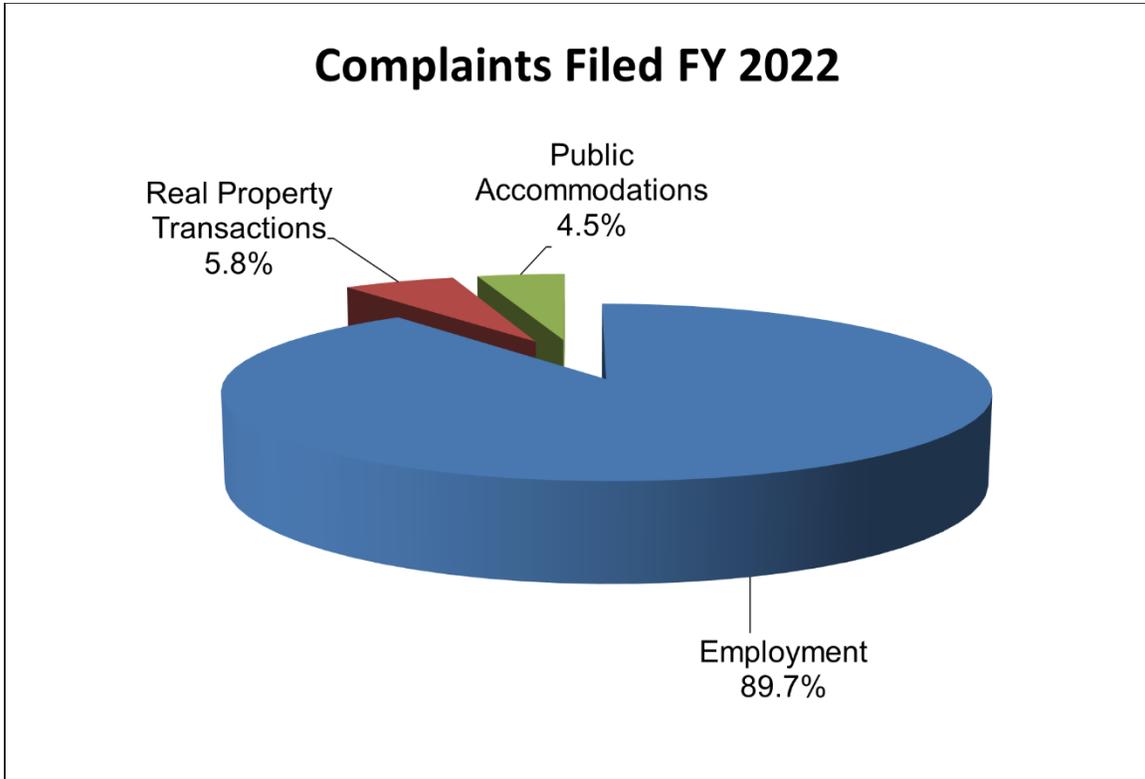
### **Intake**

During FY 2022, the HCRC received 1376 telephone and walk-in inquiries. HCRC investigators completed 470 intakes, and 710 discrimination complaints were filed with the HCRC, an average of 59.1 complaints a month.

Of the 710 complaints that were filed with the HCRC, 200 complaints originated with HCRC investigators (averaging 16.6 per month), and another 510 cases originated with the federal EEOC or HUD. These 510 cases were dual-filed under state law with the HCRC. Of these 510 cases, 497 charges were originally

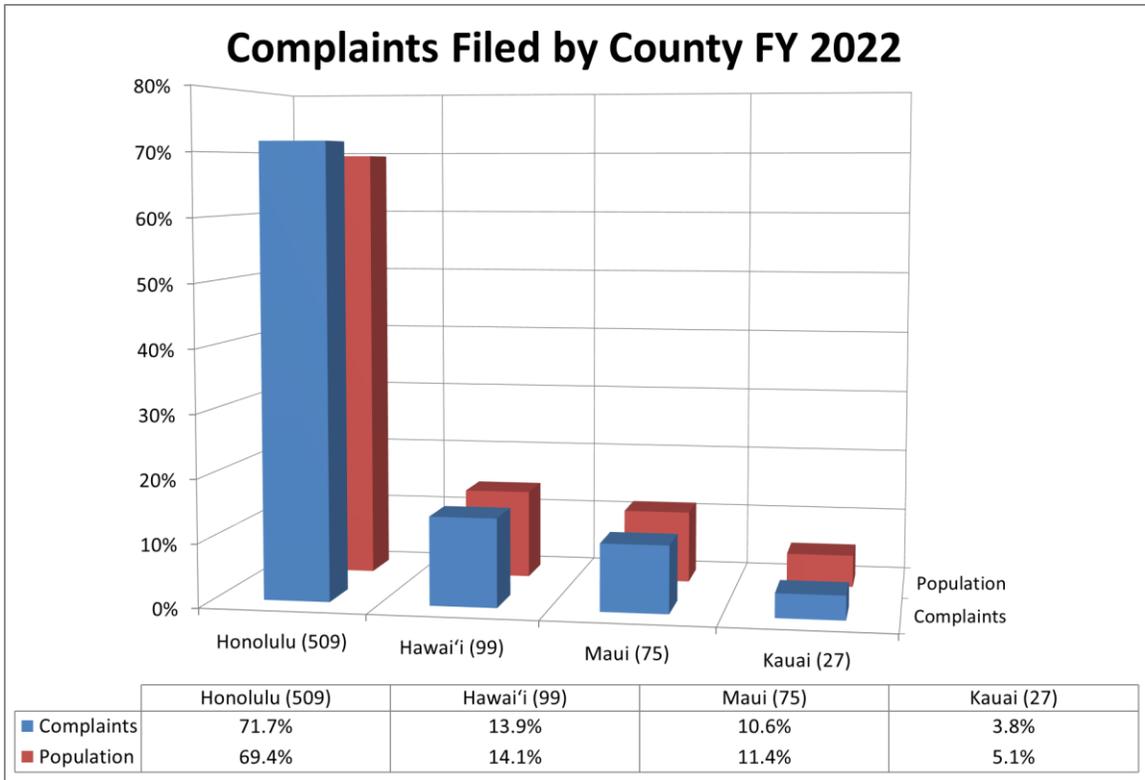
filed with the EEOC, including a large number of religious accommodation claims objecting to employer COVID-19 vaccination mandates.

The 710 cases included 637 employment cases, 32 public accommodations cases, 41 real property transactions (housing) cases, and 0 access to state and state-funded services cases. 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 bases; or c) the complainant's decision not to pursue the complaint.



1 Graph of Complaints Filed in Fiscal Year 2022

The 710 complaints accepted by the HCRC consisted of 509 Honolulu County complaints, 99 Hawai'i County complaints, 75 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 (Honolulu County 69.4%; Hawai'i County 14.1%; Maui County 11.4%; and Kauai County 5.1%).



2 Complaints filed by County FY 2022

## Closures<sup>4</sup>

HCRC investigators and attorneys closed 258 cases during FY 2022 (an increase

<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 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 2022, HCRC investigations resulted in 10 cause determinations, and 53 cases were closed on the basis of pre-determination settlement or resolution between parties. 143 cases were closed on the basis of no-cause determinations upon completion of investigation.

from 209 cases in FY 2021) for an average closure rate of 21.5 cases per month. HCRC investigations resulted in cause determinations in 10 cases, a decrease from 20 cause determinations in FY 2021. As of June 30, 2022, there were 309 cases pending with HCRC investigators; on June 30, 2021, there were 361 pending cases.

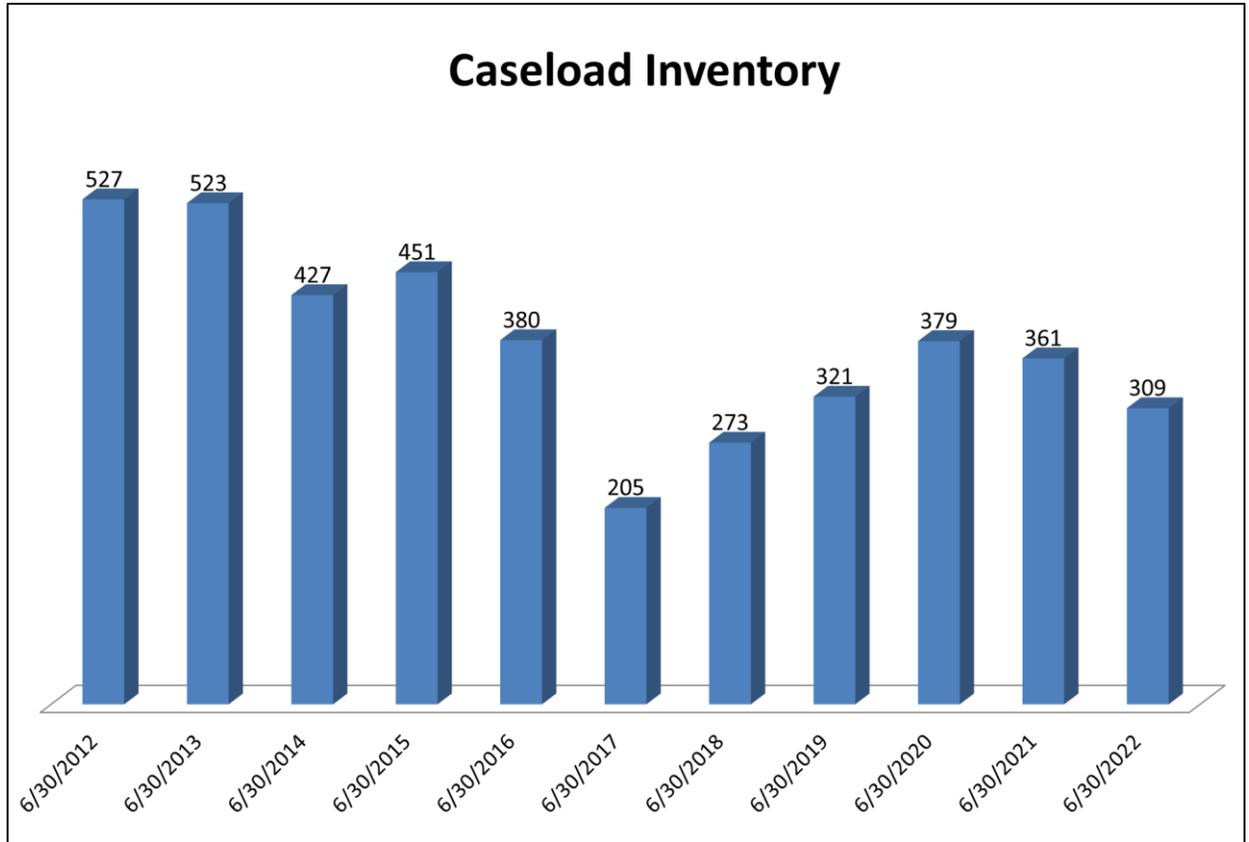


Figure 3 Caseload Inventory

The average period for case closure by investigators was 475 days, as compared to 419 days for FY 2021, 319 days for FY 2020, and 341 days for FY 2019. A review of this fiscal year shows the following reasons for investigative closures:

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The ratio of cause determinations and predetermination settlements/resolutions (63) 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 (206) for this fiscal year is 30.5%.

<b>Merit Closures</b>	<b>No. of Cases</b>	<b>% of Subtotal</b>	<b>% of Total Closures</b>
Resolved by Parties	20	9.62%	7.75%
Pre-Determination Settlements	33	15.87%	12.79%
Cases Resolved by Attorneys	12	5.77%	4.65%
No Cause Determinations	<u>143</u>	<u>68.75%</u>	<u>55.43%</u>
<b>Subtotal</b>	<b>208</b>	<b>100.0%</b>	<b>80.62%</b>
<b>Non-merit Closures</b>	<b>No. of Cases</b>	<b>% of Subtotal</b>	<b>% of Total Closures</b>
Complainant Elected Court Action	25	50.00%	9.69%
Complainant Failed to Cooperate	11	22.00%	4.26%
Complaint Withdrawn	9	18.00%	3.49%
Administratively Closed	2	4.00%	0.78%
Complainant Not Available	2	4.00%	0.78%
No Significant Relief Available	<u>1</u>	<u>2.00%</u>	<u>0.39%</u>
<b>Subtotal</b>	<b>50</b>	<b>100.00%</b>	<b>19.38%</b>
<b>Total Number of Closures</b>	<b>258</b>		<b>100.00%</b>

## Employment Cases

H.R.S. Chapter 378, Part I prohibits discriminatory employment practices based on race, sex (including gender identity or expression), sexual orientation, age, religion, color, ancestry, disability, marital status, arrest and court record, reproductive health decision, domestic or sexual violence victim status, credit history or credit report, assignment of income for child support obligations, National Guard participation, and breastfeeding/expressing milk. Examples of such practices are outlined in H.R.S. §378-2. A complaint can contain more than one basis for the alleged discriminatory conduct, but for statistical purposes each complaint is identified by only one designated “primary basis”.

The HCRC has a work-share agreement with the EEOC. Under the work-share agreement, a case is filed with both agencies where there is concurrent jurisdiction. However, only the intake agency conducts the investigation, thereby eliminating duplicate enforcement activity. During the fiscal year a total of 637 employment cases were accepted by the HCRC. The HCRC was the intake agency for 140 of these cases, and the HCRC dual-filed another 497 cases originating with EEOC. Of the HCRC-originated cases, 84.2% were also filed with EEOC.

Of the 637 employment complaints filed, the primary bases most cited were religion, in 291 cases (45.7%)(the large number can be attributed to EEOC original charge filings claiming denial of religious accommodation for objection to employer vaccination mandates); disability, in 121 cases (19.0%); age, in 63 cases (9.9%); retaliation, in 49 cases (7.7%); and sex, in 49 cases (7.7%). Of the sex discrimination complaints, 14 (28.6% of all sex cases) alleged sexual harassment as the primary basis, and 7 (14.3% of all sex cases) were primarily based on pregnancy.

The next most cited primary bases were race, in 34 cases (5.3%); ancestry/national origin, in 11 cases (1.7%); arrest and court record, in 8 cases (1.3%); color, in 5 cases (0.8%); sexual orientation, in 4 cases (0.6%); and breastfeeding, in 2 cases (0.3%). There were no cases primarily based on child support obligations, credit history or credit report, domestic or sexual violence victim status, marital status, National Guard participation, or reproductive health decision.

The case closure period averaged 489 days for the 179 employment cases that were closed or caused by HCRC investigators during FY 2022.

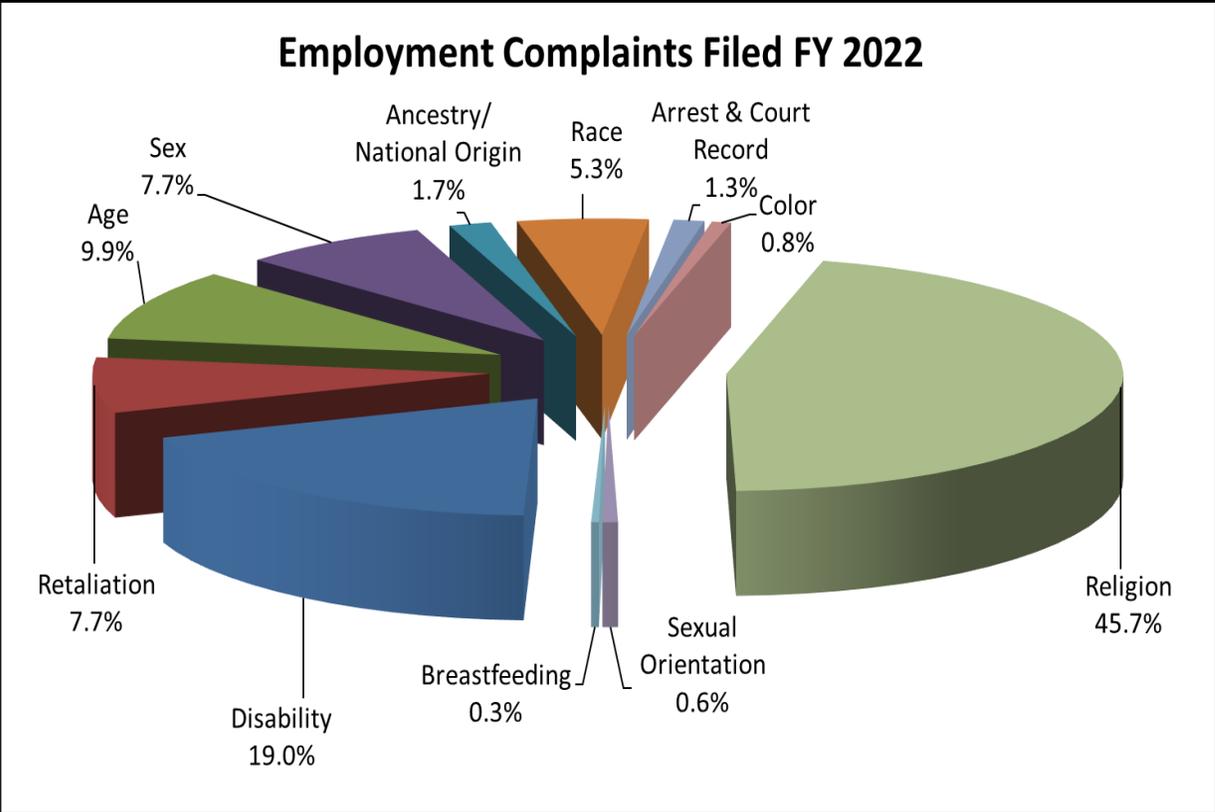


Figure 4 Employment Complaints Filed FY 2022

## Real Property Transactions (Housing) Cases

During FY 2022, the HCRC accepted 41 cases of housing discrimination. The primary bases most cited were disability, in 14 cases (34.1%); followed by retaliation, in 13 cases (31.7%); familial status, in 7 cases (17.1%); sex, in 3 cases (7.3%); and ancestry/national origin, marital status, race, and religion, in 1 case (2.4%) each. There were no cases primarily based on age, color, HIV infection, or sexual orientation.

Housing case closures averaged 459 days for the 42 cases closed or caused during FY 2022.

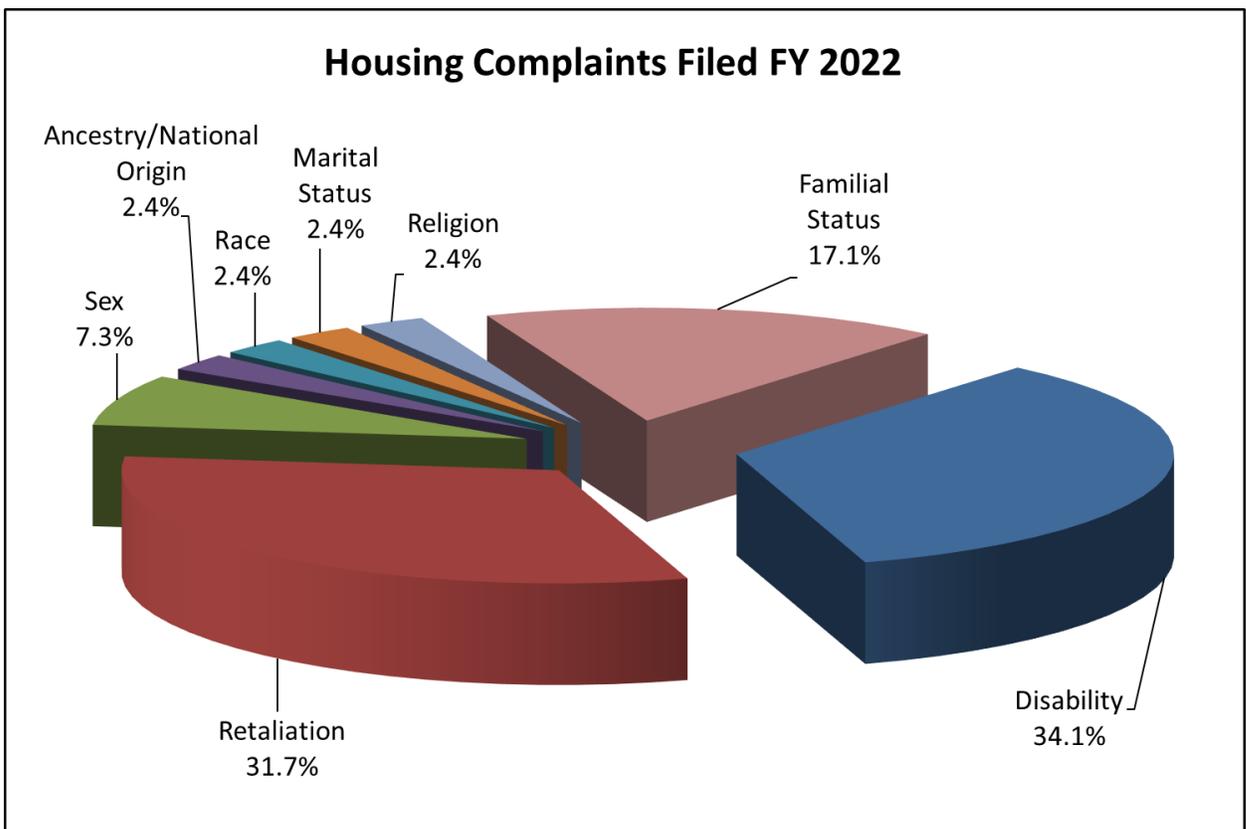


Figure 5 Housing Complaints Filed FY 2022

## Public Accommodations 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, 32 new cases of public accommodations discrimination were accepted. Of these, the primary basis most cited was disability, in 19 cases (59.4%); followed by race, in 6 cases (18.8%); religion, in 5 cases (15.6%); and retaliation and sex, in 1 case (3.1%) each. There were no cases primarily based on ancestry, color, or sexual orientation.

Public accommodations case closures averaged 428 days for the 34 cases closed or caused during FY 2022.

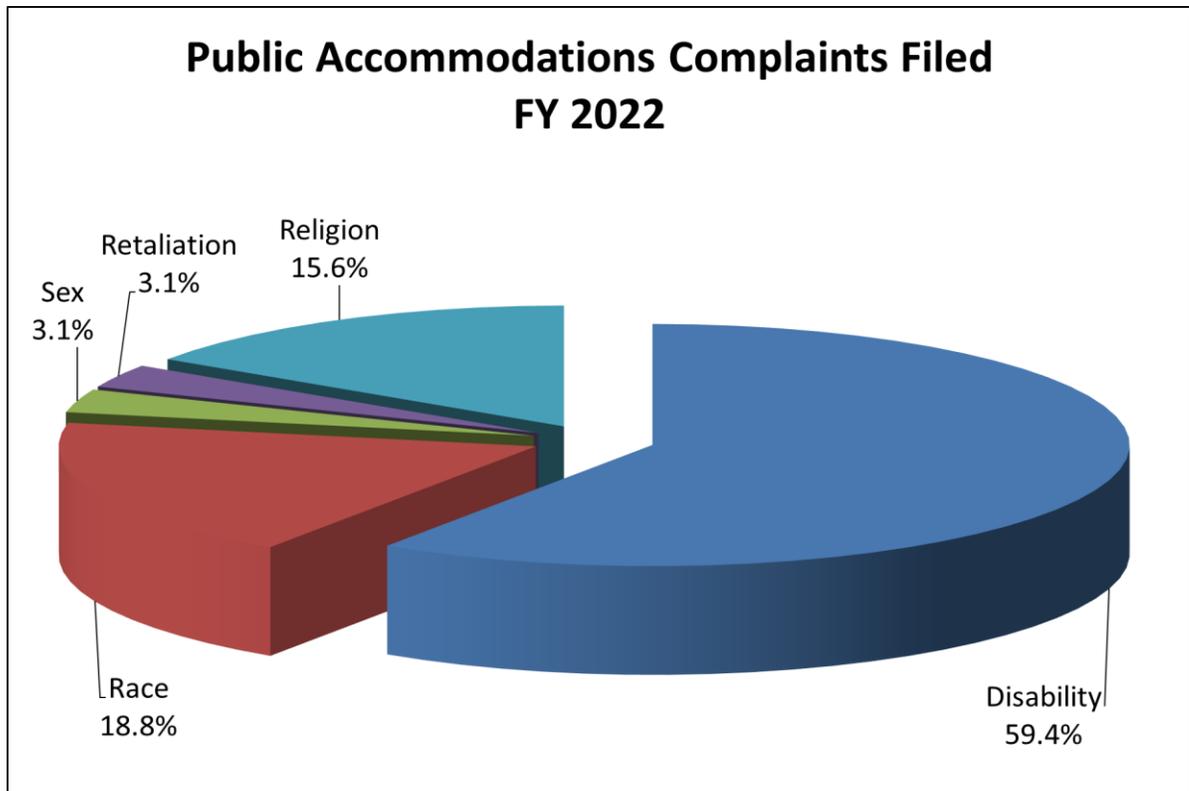


Figure 6 public Accommodation Complaints Filed FY 2022

## 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 FY 2022, there were no cases filed under § 368-1.5. There was 1 case filed under § 368-1.5 that closed during the fiscal year.

From 2017 through the end of FY 2022 the HCRC has had limited jurisdiction over very few cases in this category based on the 2017 decision in *Hawaii Technology Academy and the Department of Education v. L.E. and Hawaii Civil Rights Commission*, 141 Hawaii 147, 407 P.3d 103 (2017), which held that the legislature did not intend the HCRC to have jurisdiction over disability discrimination claims under section 368-1.5, Hawaii Revised Statutes, if protections under federal law, specifically section 504 of the Rehabilitation Act, P.L. 93-112, are applicable (*i.e.*, if the state agency, program or activity received *any* federal funds). However, pursuant to Act 164, L. 2021, **effective July 1, 2022**, the HCRC now has restored H.R.S. § 368-1.5 jurisdiction over all state agencies and programs or activities that receive state financial assistance, regardless of whether that state agency, program or activity also receives federal financial assistance.

## Cause Cases

When an 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 2022, 10 recommendations for cause were brought forward for legal action. Of these cases, 4 (40%) were employment cases, and 6 (60%) were housing cases.

Of the 10 investigations with a cause recommendation, the primary bases most cited were retaliation, in 4 cases (40%); followed by disability, in 2 cases (20%); and arrest and court record, familial status, race, and sex, in 1 case (10%) each.

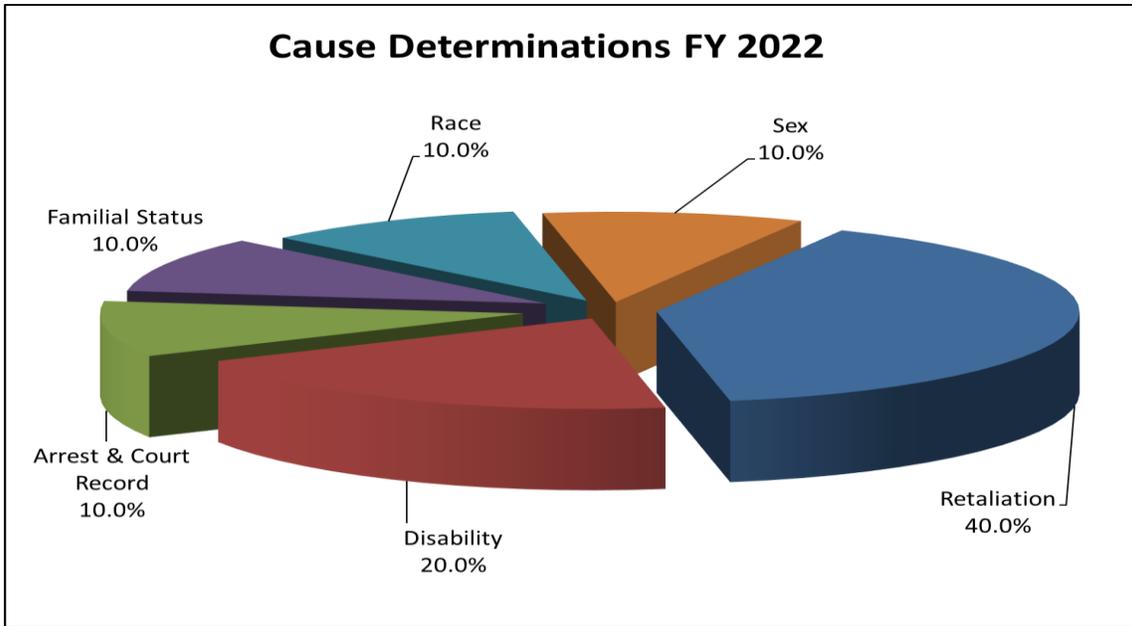


Figure 7 Cause Determinations FY 2022

## 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 2022 the HCRC continued to successfully obtain monetary relief through settlement of complaints. In the 11 cause cases that were settled, HCRC attorneys obtained monetary settlements totaling \$293,200. Of the 53 cases settled prior to an investigative finding, 10 of those cases involved confidential settlements, the terms of which were not disclosed to the HCRC. Of the remaining 43 cases settled prior to an investigative finding, monetary relief totaled \$516,323. This figure includes pre-determination settlements obtained through HCRC investigators and settlements between the parties (\$229,750), as well as investigative settlements obtained through the HCRC mediation program (\$286,573). Collectively the HCRC's known monetary settlements for FY 2022 totaled \$809,523. Since the settlement terms are unknown for 10 closed cases,

the actual total figure for all monetary settlements in FY 2022 is probably significantly higher than \$809,523.

In addition to monetary relief, significant affirmative relief was 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 contain various types of affirmative relief including the development and implementation of non-discrimination policies, employee and supervisor training on non-discrimination policies, posting non-discrimination policies, and publishing notices informing the public of the HCRC's role in enforcing state non-discrimination laws.

In some instances, non-monetary relief can be an important element of a settlement. For example, some complainants have received a letter 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 were resolved when an employer, housing provider, or public accommodation corrected an unlawful discriminatory policy or practice after notice of the violation. During FY 2022, 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 describe the relief obtained during FY 2022:

- The complainants in a housing case (a couple with a minor child) alleged that the respondent housing providers refused to rent to them and made discriminatory statements on the basis of their familial status. The case was resolved prior to an investigative finding through a pre-determination settlement. The terms included a payment of \$2,500 to the complainants, the respondents' adoption of an anti-discrimination policy and dissemination of the policy to all current and future tenants, and mandatory anti-discrimination training for the respondents.
- The complainant in an employment case alleged that after making him a conditional job offer, the respondent employer subjected him to illegal inquiries on the basis of his arrest and court record, ultimately leading to his constructive discharge. The case was resolved prior to an investigative finding through a pre-determination settlement. The terms included a payment of \$15,000 to the complainant, mandatory anti-discrimination training for the respondent's supervisors and managers, and the respondent's adoption, posting and

dissemination of an anti-discrimination policy (including an informational flyer regard arrest and court record law).

- The complainant in an employment case alleged that the respondent employer denied her a reasonable workplace accommodation for her disability and unlawfully placed her on an involuntary leave. The case was resolved prior to an investigative finding through a pre-determination settlement. The terms included a payment of \$55,500 to the complainant, mandatory anti-discrimination training for a number of the respondent's employees, and the respondent's adoption, posting, and dissemination of an anti-discrimination policy.
- The complainant in an employment case alleged that the respondent employer terminated her on the basis of age, sex, and retaliation. Prior to an investigative finding the case was successfully mediated through the HCRC's mediation program. The terms of the mediated settlement included a neutral letter of reference and a payment of \$75,000 to the complainant.
- The complainant in a housing case alleged that the respondent housing providers refused to rent to him on the basis of his disability, failed to make a reasonable accommodation for his disability, and subjected him to retaliation. Prior to an investigative finding the case was successfully mediated through the HCRC's mediation program. The terms of the mediated settlement included a payment of \$6,000 to the complainant, mandatory anti-discrimination training for the respondents, the respondents' adoption of an anti-discrimination policy, and the respondents' dissemination of a fair housing poster and anti-discrimination policy.
- The complainant in an employment case alleged that the respondent employer terminated him on the basis of his age, national origin/ancestry, race, and sex. The HCRC investigated the case and issued a Notice of Cause, finding that the respondent had unlawfully subjected the complainant to discriminatory practices. Thereafter, the case was settled for a payment of \$40,000 to the complainant, mandatory anti-discrimination training for the respondents' managers and supervisory employees, and the respondent's review, posting, and dissemination of an anti-discrimination policy.
- The complainant in a housing case alleged that the respondent housing providers discriminated against her on the basis of her disabilities by failing to provide her with a reasonable accommodation and subjecting her to unequal terms and conditions. The HCRC investigated the case and issued a Notice of Cause, finding that the respondents had unlawfully subjected the complainant to discriminatory practices. Thereafter, the case was settled for a payment of \$9,500 to the complainant, the provision of a reserved accessible parking stall

with appropriate signage, mandatory anti-discrimination training for the respondents, and the respondents' review, adoption, and dissemination of an anti-discrimination policy.

### **HCRC Warning Letters**

To prevent future or recurring problems, the HCRC provides respondents with "warning letters" advising them of potentially unlawful practices that the HCRC discovers during the course of its investigation of claims against the respondent. In those instances when the HCRC investigation does not result in a recommendation of reasonable cause on the claims filed, and the HCRC investigator finds evidence of other unlawful practices (such as a discriminatory written policy, 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 provide 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.

### **Contested cases**

#### **Circuit Court**

*Van Putten v. City and County of Honolulu, and State of Hawai'i, Hawai'i Civil Rights Commission, and William Hoshijo, in his Official Capacity as Executive Director; Civil No. 21-0000006.* Complainant Van Putten, represented by the Legal Aid Society of Hawai'i, brought a civil action framed as an agency appeal from a notice of dismissal and right to sue. Respondent City and County of Honolulu's motion to dismiss was granted and an order entered dismissing the City and County from the case with prejudice. The case was docketed for trial in state circuit court, albeit without the respondent to the case on appeal, the court having dismissed the City and County.

The primary issue on appeal in *Van Putten* was whether the HCRC has HRS chapter 515 jurisdiction over complaints against Public Housing Agencies (PHAs) alleging discriminatory administration of the federally funded HUD Section 8 (Housing Choice) Program, which provides financial assistance not relating to a covered real estate transaction (*i.e.*, the rental of real property).

Or, more generally, whether the HCRC has HRS chapter 515 jurisdiction over complaints against federally funded housing programs that do not involve real estate transactions and real property.

In its decision, "...the Court [found] that there was no sale, exchange, rental or lease of real property at issue. Thus, there was no real estate transaction and HRS § 515-3 does not apply. The Court also [found] that the applicable statutory provisions are clear on their face. Moreover, Hawaii Administrative Rule 12-46-302 provides in relevant part that: "Real estate transaction" means the advertising, sale, exchange, rental, lease, management, or use of real property, including, but not limited to, . . . the imposition of rules, policies, and practices affecting the terms, conditions, enjoyment, and privileges of using real property." This definition does not provide the HCRC with jurisdiction over the inspection at issue."

Complainant Van Putten filed a motion to reconsider the court's order affirming the agency dismissal of the of the Van Putten complaint for lack of jurisdiction. In its memorandum in support of the motion, counsel for Van Putten squarely argued its position that the HCRC has HRS chapter 515 statutory jurisdiction over the City and County of Honolulu with respect to its administration of the City and County's Section 8 Housing Choice Voucher Program. The court denied the motion to reconsider.

In its order affirming the agency dismissal of the complainant's HCRC complaint for lack of jurisdiction, and its subsequent denial of Van Putten's motion to reconsider, the court affirmed that the HCRC did not have jurisdiction over the City and County of Honolulu with respect to the administration of its Section 8 Program, specifically their conduct of an inspection, because it does not involve a "real estate transaction."

### **Administrative Hearing**

The Enforcement section of HCRC docketed a housing case involving Kauai homeowners and real estate manager who allegedly refused to rent to a Deaf woman with a service dog, and later retaliated against her verbally. The case remained pending at the end of the FY 2022.

### **Legislation**

Two bills were passed and enacted into law in 2022 which affect the statutes which the Hawai'i Civil Rights Commission enforces.

**Act 288**, H.B. No. 2495, H.D. 1, S.D. 1, relating to employment practices, amended HRS § 378-22 to prohibit an employer from entering into or requiring an employee to enter into a non-disclosure agreement pertaining to sexual harassment or sexual assault occurring at work, or at work related events, between employees, or between the employer and an employee. Hawai'i joins a

number of other states which have passed similar legislation in response to the #MeToo movement.

**Act 154**, S.B. 2002, S.D.2, H.D. 2, relating to fair housing reasonable accommodation, amended HRS § 515-3, by codifying two administrative rules regarding assistance animals. The measure defines "assistance animal" in real property transactions, and codifies the definition found in HAR § 12-46-302. Language from HAR § 12-46-306 is now statutory, regarding the process a housing provider can use for verifying that a person requesting a reasonable accommodation that includes the use of an assistance animal has a disability and the assistance animal is needed to alleviate one or more symptoms of the person's disability. The amended statute allows a housing provider to request information by letter or other communication from the requestor's health care professional, mental health professional or social worker. A housing provider may not request medical records or access to health care providers, nor can they inquire as to a person's diagnosis, nature or severity of a person's disability. The act further specifies that possession of a vest or other distinguishing animal garment, tag, or registration document commonly purchased online and purporting to identify an animal as a service animal or assistance animal does not constitute valid verification.

**Act 41**. S.B. 2670, S.D.2, H.D.2, C.D.1, in 2022, after several years of consideration, the legislature created a Hawai'i State Lesbian, Gay, Bisexual, Transgender, Queer, Plus Commission..

In 2021, the Legislature adopted **S.C.R. 66**, S.D. 1, H.D. 1, Condemning and Denouncing all Forms of Anti-Asian Sentiment and all Acts of Racism, Xenophobia, Intolerance, Discrimination, Hate Crime, and Hate Speech Against Asian Americans and Asian Individuals in the United States And Requesting the Hawaii Civil Rights Commission to Analyze And Report on Anti-Asian Sentiment and Acts in the State. On December 9, 2021, the HCRC submitted its report to the Legislature, titled *Addressing Racism in Hawai'i: History, During the Covid-19 Pandemic, and Moving Forward*. The report is posted on the HCRC website at <http://labor.hawaii.gov/hcrc/files/2021/12/SCR-66-Report-to-2022-legislature.pdf>.

### **S.C.R. 5 Request for Disaggregated Data**

And, finally, the 2021 Legislature adopted **S.C.R. 5**, Recognizing the Importance of 21st Century Data Governance for Fact-Based Policymaking. This concurrent resolution urged a number of State departments to share existing and disaggregated data on Native Hawaiians and Pacific Islanders with the Office of Hawaiian Affairs (OHA) and the general public. Pursuant to S.C.R. 5, in a letter

dated October 15, 2021, OHA requested that the HCRC report on an annual basis on the number of HCRC discrimination complaints, with data breakouts including:

- Native Hawaiian (including individuals of multiple racial identity) and non-Native Hawaiian
- Pacific Islander (excluding Native Hawaiian) and non-Pacific Islander
- By Industry
- By County

### **HCRC Reporting in Response to OHA's S.C.R. 5 Data Request**

As addressed elsewhere in this FY 2022 Annual Report, the HCRC has jurisdiction over complaints of discrimination in employment (HRS chapter 378, part I), housing (HRS chapter 515), and public accommodations (HRS chapter 489). The HCRC database does not break down complaints by industry. The number of complaints filed by county for FY 2022 can be found under Caseload Statistics at pages 10-11.

The primary focus of OHA's S.C.R. 5 request is for the HCRC to share disaggregated data for the number of discrimination complaints filed by Native Hawaiians, non-Native Hawaiian Pacific Islanders, and non-Native Hawaiian/non-Pacific Islanders (everyone else).

These numbers for FY 2022 are reported below, with the following notes and limitations:

The HCRC does have disaggregated data for non-Native Hawaiian Pacific Islanders. However, HCRC data does not fully capture and reflect the number of discrimination complaints filed by Native Hawaiians, for two reasons: ancestry/national origin data is based on self-identification; and, data on part-Hawaiians is skewed because part-Hawaiian complainants may identify with a different primary ancestry/national origin, or may identify as "other" or "mixed."

Also, the HCRC database does not have disaggregated data for employment discrimination complaints that are initially filed with the U.S. Equal Opportunity Commission (EEOC) and dual-filed with the HCRC. For this reason, employment discrimination complaints initially filed with the EEOC are not counted in the numbers of employment discrimination complaints reported below.

**FY 2022 disaggregated data on HCRC discrimination complaints**

<b>HCRC-initiated employment discrimination complaints</b>	<b>Number of Complaints</b>
Employment discrimination complaints filed by Native Hawaiians filings (not including EEOC-initiated filings)	9
Employment discrimination complaints filed by non-Native Hawaiian Pacific Islanders (or, conversely, Pacific Islanders excluding Native Hawaiians)	1
Employment discrimination complaints filed by non-Hawaiian/non-Pacific Islanders (everyone else)	123
<b>Total Complaints</b>	<b>133</b>

<b>HCRC housing discrimination complaints</b>	<b>Number of Complaints</b>
Housing discrimination complaints filed by Native Hawaiians filings	0
Housing discrimination complaints filed by non-Native Hawaiian Pacific Islanders (or, conversely, Pacific Islanders excluding Native Hawaiians)	1
Housing discrimination complaints filed by non-Hawaiian/non-Pacific Islanders (everyone else)	39
<b>Total Complaints</b>	<b>40</b>

<b>HCRC public accommodations discrimination complaints</b>	<b>Number of Complaints</b>
Public accommodations discrimination complaints filed by Native Hawaiians filings	1
Public accommodations discrimination complaints filed by non-Native Hawaiian Pacific Islanders (or, conversely, Pacific Islanders excluding Native Hawaiians)	0
Public accommodations discrimination complaints filed by non-Hawaiian/non-Pacific Islanders (everyone else)	31
<b>Total Complaints</b>	<b>32</b>

## **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 (including gender identity and expression), 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 (one position was vacant during FY 2022, and was filled by an appointment effective after the end of FY 2022) who are appointed by the Governor, with the consent of the Senate, based on their knowledge and experience in civil rights matters and their commitment to preserve the civil rights of all individuals.

The HCRC is attached to the Department of Labor & Industrial Relations (DLIR) for administrative purposes. During FY 2022 the HCRC had 29 positions (24 permanent and 5 temporary), divided into separate enforcement and adjudication sections.

### **Administrative Procedure**

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

She or he has been subjected to unlawful discrimination<sup>5</sup> because of a protected basis,<sup>6</sup> and,

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<sup>5</sup> “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 of women, or men, or any other protected basis.

<sup>6</sup> “Protected basis” is the criteria upon which it is unlawful for a respondent to discriminate. Protected bases vary depending on the statute involved:

- a. State Funded Services (HRS Chapter 368) The only protected basis is disability.
- b. Employment (HRS Chapter 378, Part I) The protected bases on which an employer, employment agency, or labor organization may not discriminate are: race, sex (which includes gender identity and expression), sexual orientation, age, religion, color, ancestry, disability, marital status, arrest and court record, domestic or sexual violence victim status, credit history, reproductive health decision or lactating employees.
- c. Public Accommodations (HRS Chapter 489) The protected bases on which a public accommodation may not discriminate are: race, sex (which includes gender identity and expression), sexual orientation, color, religion, ancestry, or disability.
- d. Housing (HRS Chapter 515) The protected bases on which an owner, a real estate broker or any person engaging in a real estate transaction, may not discriminate are race, sex (which includes gender identity and expression), sexual orientation, color, religion,

1) The unlawful discrimination occurred within the previous 180 days.<sup>7</sup>

Where appropriate, after a complaint is filed with the HCRC, 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 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 course of 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>8</sup> If conciliation is unsuccessful, the complaint is docketed for

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marital status, familial status, ancestry, disability, age or HIV (human immunodeficiency virus) infection.

<sup>7</sup> Complaints filed with the HCRC usually involve a discrete act, such as termination, eviction, demotion, 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>8</sup> During FY 2022, of all 258 investigative and attorney case closures, 9.69% (25) were closed on the basis of the complainant electing court action. The remaining cases (233) were closed on the following bases: in 55.43% of the cases (143), the Executive Director found no cause and dismissed the complaint, 20.54% (53) of the investigation cases were settled prior to a cause determination or were resolved by the parties, 4.65% (12) of the cases were resolved by staff attorneys, and the remaining 9.69% of the cases (25) were

a contested case hearing. An HCRC enforcement attorney presents the case in support of the complaint before an impartial hearings examiner. The respondent (represented by themselves or 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>9</sup>

The HCRC enforcement and administrative hearing 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

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closed because the complaint was withdrawn, the complainant failed to cooperate, the complainant was not available, no significant relief was available, or due to administrative closure or lack of jurisdiction.

<sup>9</sup> The HCRC enforcement, hearing and appeal procedures are illustrated in Flowchart # 1. In *SCI Management Corporation, et. al. v. Darryllynne Sims, et. al.*, 101 Hawai'i 438, 71 P.3d 389 (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." This does not apply to respondents in housing cases, who can elect to take the case to circuit court after a finding of reasonable cause under HRS §515-9.

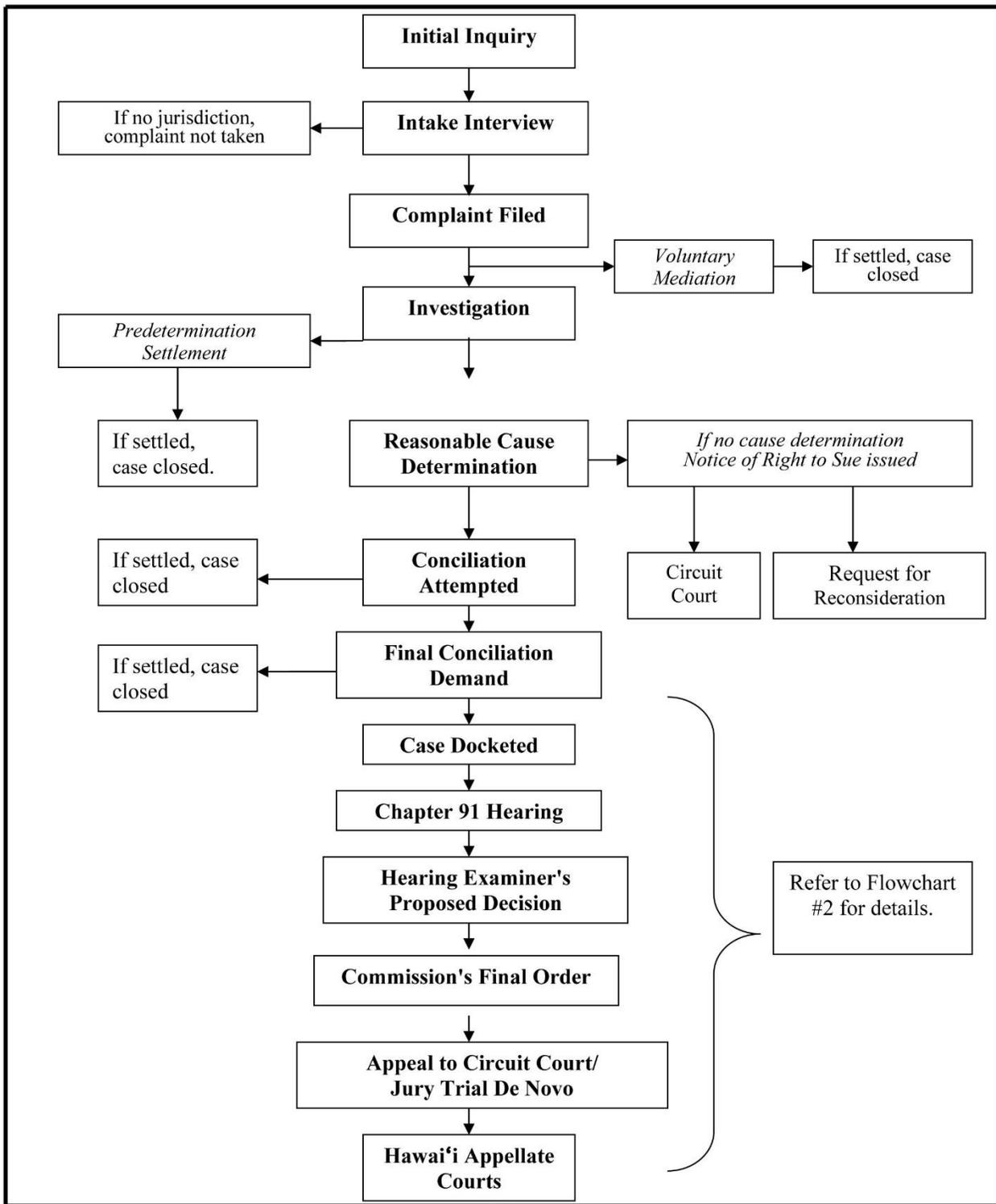
process. In fact, the great majority of complaints filed with the HCRC are resolved or disposed of without resort to the courts.<sup>10</sup>

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.

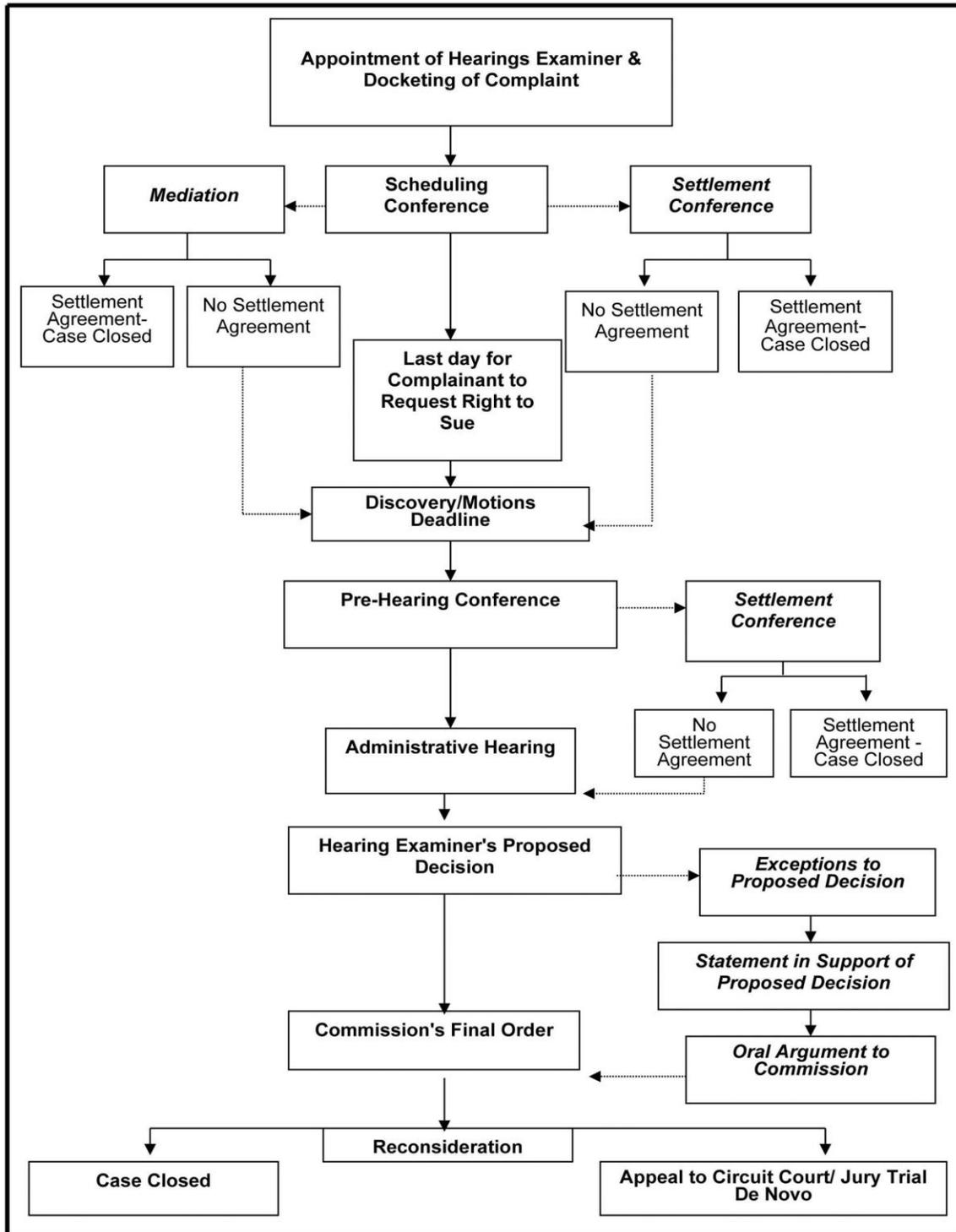
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<sup>10</sup> HCRC contested case procedures are illustrated in Flowchart # 2.

## HCRC Procedural Flowchart #1



## HCRC Contested Case Flowchart #2



## **Commissioners**

### **Liann Ebesugawa**

#### **Chair (term: 2017-2024)**

Liann Ebesugawa was designated by the Governor to serve as the Chair of the Commission beginning July 1, 2020. She is Assistant General Counsel for Hawaiian Electric Industries, Inc. Previously she served as an Associate General Counsel for Hawaiian Electric Company, Inc. where she provided legal support to personnel and management and advice in obtaining regulatory approvals for various projects. She also served as Executive Director of the Hawai'i State Board of Education, where she provided legal and administrative services for matters before or involving the Board of Education.

Ms. Ebesugawa is currently the Second Vice President of the Honolulu Chapter of the Japanese American Citizens League's Board of Directors. During her tenure as the JACL's past Board President, she addressed issues related to marriage equality, homelessness, Native Hawaiian self-determination, and other civil rights issues that face the community. She also currently serves on the Board of Directors of the National Asian Pacific American Bar Association and has coauthored several academic publications and presentations regarding privacy in the workplace, Japanese American redress, and racial discrimination.

#### **Joan Lewis (term: 2017-2024)**

Joan Lewis is a 30 year Hawai'i public school teaching veteran and a long time education advocate. Ms. Lewis has been a part of the teaching staffs of Nānākuli High and Intermediate School and Kapolei High School where her work with Native Hawaiian and Pacific Island students shaped her approach to teaching and learning. Ms. Lewis is one of the founders of the Hō'ola Leadership Academy, a 9-12th grade academy within the Kapolei High School community that provides a safe learning space for students that face many obstacles that can undermine their success. Graduation rates for students in this program have been in the upper 90 percentile.

Ms. Lewis has also served as a school, district and state leader for the Hawai'i State Teachers' Association. Her work as part of the HSTA has provided culturally sensitive training and support for teachers in the Leeward District of the DOE, the development and delivery of courses to support students of diverse economic backgrounds, and the expansion of the teacher voice in support of Hawai'i's students. Ms. Lewis' other experiences include service as: a foster parent for Hale Kipa Inc.; an educational staff member for Palama Settlement's In-Community Treatment Program; a house parent for Child and Family Services

Ila Humphrey home for girls recovering from sexual assault; and as a trustee for the Hawai'i Employer-Union Health Benefits Trust Fund. These have been instrumental in developing Ms. Lewis' belief that we must work together to provide the Aloha that all citizens, but especially the most vulnerable among us, need to survive and thrive. Ms. Lewis earned her Bachelor's degree at Drake University (B.S. in Education) and her Master's degree from the University of Hawai'i at Mānoa.

**William J. Puette (term: 2019-2025)**

Dr. Puette was recruited from the mainland to teach English at a public school in 1969 just as public sector collective bargaining was enacted. In his first two years of teaching, he became a delegate at the founding convention of the Hawai'i State Teachers' Association, and organizer for the teachers first representation election, and picket captain on Maui in the union's first strike.

He holds an M.A. from the University of Pennsylvania at Edinboro and a Ph.D. from the University of Hawai'i at Mānoa.

He is currently Director of the Center for Labor Education & Research at the University of Hawai'i – West O'ahu in Kapolei. For more than thirty-five years, he has been teaching Labor Studies classes, and is the author of the books: The Hilo Massacre; Through Jaundiced Eyes: How the Media View Organized Labor; A Readers Guide to the Tale of Genji, and the co-author with Dr. Keao NeSmith of Nā Lula Hālāwai: A Parliamentary Guide to Conducting Meetings in Hawaiian. In addition he has written numerous booklets and pamphlets, including *CLEAR Guide to Hawai'i Labor History* and *Pa'a Hui Unions: the Hawai'i State AFL-CIO, 1966-1991*.

Over the years he has worked with the HCRC on many joint educational programs, and was the volunteer webmaster that created the first website for the HCRC (1997-2003) before it was able to afford a professional webmaster. Likewise, he helped the Executive Director and staff at the local office of the EEOC to design PowerPoint presentations used in HCRC public education programs between 2000 and 2008.

Dr. Puette is also a labor arbitrator; a Professional Registered Parliamentarian, a member of the Association of Hawai'i Archivists, and the Hawaiian Historical Society. Winner of Penn State's Lowell-Mellett Award for Outstanding Media Criticism in 1993, he received the George Meany Award for Outstanding Service to Youth by the Hawai'i State AFL-CIO and the Aloha Council of the Boy Scouts of America in 1994; and in 2005 the University of Hawai'i awarded him the Hung Wo and Elizabeth Lau Ching Foundation Award for Faculty Service to the Community.

### **Jon Matsuoka (term: 2019-2023)**

Dr. Jon K Matsuoka completed his graduate studies in social work and psychology at the University of Michigan in 1985 and in the same year assumed a faculty position at the University of Hawai'i Myron B. Thompson School of Social Work. In 2010 he became dean of the school and remained in the position for 10 years until becoming President of Consuelo Foundation. He is currently the Vice Chancellor at Hawai'i Tokai International College. He serves on the boards of Native Hawaiian Legal Corporation, InPeace, Project Dana, Living Treasures of Hawai'i, and Papakolea Community Development Corporation. He has been a resident of Papakolea for 25 years and enjoys backyard farming and raising bees.

### **Arsima Muller (term: 2022-2023)**

Ms. Muller is a partner with the law firm of Carlsmith Ball LLP in Honolulu. Her practice includes administrative/regulatory law, with an emphasis on environmental and land use law. She actively practices in Hawaii, Guam, and the Marshall Islands, where she is originally from. She received her J.D. from The George Washington University Law School in Washington, DC and a B.A. in Economics and Political Science from Boston College in Massachusetts.

Ms. Muller is the current President of the Board of Directors of We Are Oceania, a non-profit organization providing support services to the Micronesian and Pacific Island communities in the State. She is also on the Board of Directors of the Legal Aid Society of Hawaii.

### **HCRC Staff**

During FY 2022 the HCRC staff consisted of 29 positions: <sup>11</sup>

#### **Enforcement Staff:**

- Executive Director
- Deputy Executive Director
- Enforcement Attorneys (5)
- Program Specialist V – Mediation Coordinator
- Program Specialist IV
- Legal Clerk

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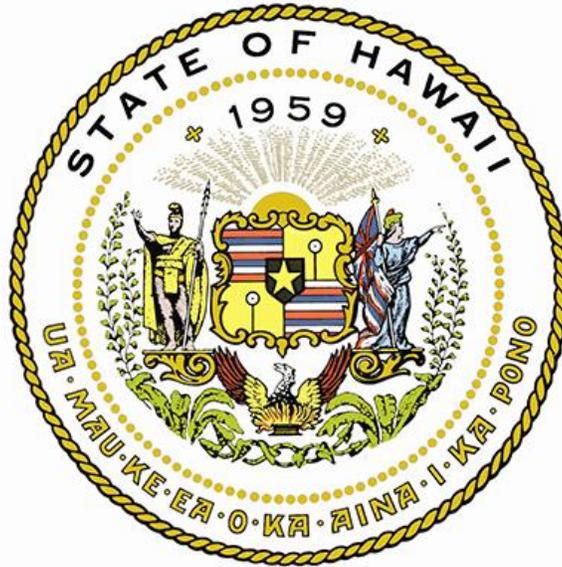
<sup>11</sup> Staffing levels reflect permanent (24) and temporary (5) positions which were either filled or vacant during FY 2022.

- Investigator-Supervisors V (2)
- Investigator IV (8)
- Investigator III-IV (temporary) (2)
- Secretary III
- Office Assistants (III-IV) (3)

Adjudication Staff:

- Chief Counsel
- Secretary II





**HAWAII CIVIL RIGHTS COMMISSION**

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