

CIVIL RIGHTS COMMISSION

98 SE 15 P135

STATE OF HAWAII

In the Matter of)	DR 98-0013
)	
FEP NO. WH-5137)	
FEP NO. 6827)	
EEOC NO. 37B-95-0011,)	
_____)	

ORDER SUMMARILY GRANTING PETITION FOR DECLARATORY RELIEF

On August 13, 1998, Petitioner, who is a Complainant in the above-numbered complaints, filed a Petition for Declaratory Relief seeking a ruling that he is a party entitled to be heard and represented by his counsel in a contested case hearing, or, in the alternative, that he should be allowed to intervene as a party. On September 1, 1998, Respondent filed a Memorandum in Opposition to Petition. On September 1, 1998, the Executive Director filed an Ex Parte Motion for Leave to Submit Memorandum in Support of Motion [sic] for Declaratory Relief, requesting leave to file by September 4, 1998; and on September 4, 1998, the Executive Director filed the Memorandum. The Commission hereby grants the Motion.

The Petition was filed before the complaints were docketed for a contested case hearing because of a concern that Petitioner-Complainant may be forced to exercise his right to sue option before the Commission can decide whether he is entitled to be represented by counsel at the contested case hearing¹. The cases

¹Under H.A.R. § 12-46-19, the Hearings Examiner must order a scheduling conference within thirty days after being appointed and docketing the complaint for contested case hearing. A complainant

have since been docketed for hearing.

The Petition and Respondent's Response contain references to factual matters which are unnecessary to the disposition of the Petition. The Commission's Chief Counsel redacted pages 4-5 of the Petition and portions of page 3 of the Response before copies were sent out to the Commissioners. The official copy of the Petition and Response in the Commission file will not include these pages or portions thereof.

ORDER

Pursuant to H.A.R. § 12-46-63(b)(1), the Commission summarily grants the Petition for Declaratory Relief on the grounds that a complainant is entitled to be granted party status and be represented by counsel of his or her choice in a contested case hearing, if a timely motion for intervention is made to the Hearings Examiner.

Ordinarily, a complainant is not required to be a party or retain counsel to represent his or her interests in a contested case. H.R.S. § 368-14(a) provides, "The case in support of the complaint shall be presented at the hearing by counsel provided by the commission." (Emphasis added.) This provision indicates that the Executive Director is the party bringing the action based upon the complaint filed by the complainant.

However, if a complainant wishes to participate as a party through counsel of his or her choice that option is available. The

has three days after the conclusion of the scheduling conference to request a right to sue. H.A.R. § 12-46-20(b)(1).

Commission statute recognizes this possibility by allowing "[p]ayment to the complainant of all or a portion of the costs of maintaining the action before the commission, including reasonable attorney's fees and expert witness fees, when the commission determines the award to be appropriate." H.R.S. § 368-17(a)(9).

Because of a complainant's clear and direct interest in the proceeding, party² status should be freely granted if sought. The Commission believes that a complainant would be an aggrieved person permitted to participate in the proceeding before the commission³, if a timely application for intervention is filed⁴.

Petitioner is directed to file an appropriate motion with the Hearings Examiner.

Commissioner Claudio Suyat did not participate in the decision.

DATED: Honolulu, Hawaii September 15, 1998

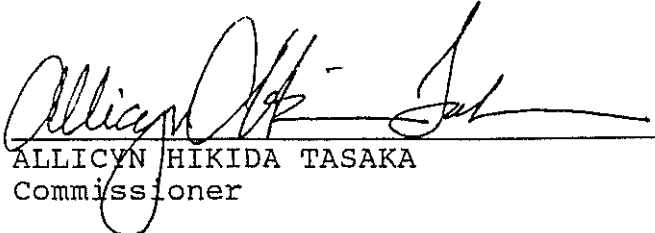


JACK LAW
Commissioner


²"Party" is defined in H.A.R. § 12-46-1 as: "any interested or aggrieved person permitted or entitled as of right to participate in the proceeding before the commission in the capacity of a petitioner, complainant, respondent, intervenor, or in a capacity other than that of a witness."

³Under H.A.R. § 12-46-25, a complainant should be allowed to intervene because "the intervention shall be conducive to effectuating the ends of justice and to achieving the goals and purposes of the commission[.]"


⁴Under H.A.R. § 12-46-25, the Hearings Examiner retains the power to refuse to let a complainant intervene "if the intervention shall unduly delay the proceeding or harass, hinder, or prejudice the rights of any party to the proceeding."



ALLICYN HIKIDA TASAKA
Commissioner



FAYE KENNEDY
Commissioner



HARRY YEE
Commissioner

NOTICE: An aggrieved party may seek reconsideration under H.A.R. § 12-46-38 by filing a motion within ten days of receipt of this order. An aggrieved party may seek judicial review in the circuit court under H.R.S. §§ 91-8 and 14 within thirty days after service of the final decision and order.