

jm

Law Offices Of:
HARRISON & MATSUOKA

WILLIAM A. HARRISON #2948
841 Bishop Street, Suite 800
Davies Pacific Center
Honolulu, Hawaii 96813
Telephone Number: (808) 523-7041
Facsimile Number: (808) 538-7579
E-mail: wharrison@hamlaw.net

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII
SEP 10 2008
at 3 o'clock and 0 min. PM.
SUE BEITIA, CLERK

CRAIG M. SADAMOTO #3749
234 Waianuenue Avenue, Suite 105
Hilo, Hawaii 96720
Telephone Number: (808) 935-0033
Facsimile Number: (808) 935-0050
E-mail: cmsada@hawaiiantel.net

ORIGINAL

Attorneys for STACY HIGA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

STACY HIGA,

Plaintiff,

vs.

NAOMI EARP, in her official capacity as
Chair and Head of the
UNITED STATES EQUAL
EMPLOYMENT OPPORTUNITY
COMMISSION;

LINCOLN ASHIDA, in his official
capacity as Corporation Counsel, County
of Hawaii,
Defendants.

CIVIL NO. CV 0'8-004 11
JMS LEK
**COMPLAINT FOR DECLARATORY
JUDGMENT; SUMMONS**

COMPLAINT FOR DECLARATORY JUDGMENT

COMES NOW PLAINTIFF STACY HIGA, by and through his attorneys above-named, and for complaint against NAOMI EARP, in her official capacity as Chair and Head of the UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ["EEOC"]; and LINCOLN ASHIDA, in his official capacity as Corporation Counsel, County of Hawaii, allege and aver as follows:

THE PARTIES

1. Plaintiff STACY HIGA [hereinafter "Plaintiff"], is and at all times relevant herein, has been a resident of Hilo, Hawaii, which is within the District of Hawaii, is a member of the Hawaii County Council, was its chairperson, and a present candidate for Mayor of the County of Hawaii.

2. Defendant NAOMI EARP [hereinafter Defendant "EARP"], is the Chair and Head of the EEOC and is named as a Defendant in this action in her official capacity. EEOC is headquartered in Washington, DC and is an independent agency of the United States of America. As head of the EEOC, Defendant EARP directs, approves and/or is responsible for all official actions of the EEOC.

3. Defendant LINCOLN ASHIDA [hereinafter Defendant "ASHIDA"], is the Corporation Counsel for the County of Hawaii and is named as a Defendant in this action in his official capacity. The Office of the Corporation Counsel for the County of Hawaii is headquartered in Hilo, Hawaii.

JURISDICTION AND VENUE

4. This court has subject matter jurisdiction of this complaint and the claims against Defendant EARP pursuant to 28 U.S.C. § 1331 because this action arises under the Constitution of the laws of the United States, including but not limited to the Fifth Amendment to the United States, and the Declaratory Judgment Act, 28 U.S.C. § 2201. This court also has subject matter jurisdiction over the claims against Defendant LINCOLN ASHIDA, in his capacity as Corporation Counsel of the County of Hawaii, pursuant to 28 U.S.C. § 1367, as they are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

BACKGROUND ALLEGATIONS

6. On or about October 2, 2006, a Melissa M. Chang [hereinafter "Complainant"] filed an Employment Pre-Complaint Questionnaire with the Hawaii Civil Rights Commission [hereinafter "HCRC"].

7. On or about November 6, 2006, Complainant filed a Charge of Discrimination with the HCRC.

8. The Charge of Discrimination alleged sex discrimination and retaliation against the County of Hawaii and the Hawaii County Council and was assigned Case Numbers FEPA No. H-13746 and EECO No. 37B-2007-00006.

9. The particulars alleged by Claimant in the Charge of Discrimination included claims against, inter alia, Plaintiff herein.

10. The HCRC served the Charge of Discrimination on the Hawaii County Council.

11. Corporation Counsel for the County of Hawaii, Lincoln Ashida, and deputies in his office [hereinafter collectively "Corporation Counsel"] entered appearances in the HCRC and the EEOC proceedings on behalf of Respondents Hawaii County and Hawaii County Council.

12. Corporation Counsel failed, refused, or neglected to: advise Plaintiff as to their potential conflict; obtain an informed waiver of potential conflict; and advise Plaintiff of his right to obtain independent counsel, all as required by the Hawaii Rules of Professional Conduct governing the conduct of lawyers in the State of Hawaii.

13. Corporation Counsel also failed, refused or neglected to obtain party status for Plaintiff on the Charge of Discrimination, effectively denying Plaintiff the right to present his own case, cross-examine and confront witnesses, be present at all proceedings, and review all of the evidence.

14. Upon information and belief, the HCRC waived jurisdiction over the Charge of Discrimination and referred the matter to the EEOC for further processing

15. The EEOC then apparently referred the matter for hearing before an administrative law judge.

16. The administrative law judge held hearings on the Charge of Discrimination between November 27, 2007, and November 30, 2007, in Hilo, Hawaii.

17. Upon information and belief, the administrative law judge issued a decision on April 2, 2008 [hereinafter the "April 2 Decision"] which decision was sealed upon motion of Complainant.

18. The April 2 Decision contained findings adverse to Plaintiff who has been denied even the right to review and share it with independent counsel.

COUNT I

DECLARATORY RELIEF

19. Allegations 1 - 18 are realleged and incorporated herein by reference as though fully set forth herein.

20. The April 2 Decision contains finding adverse to Plaintiff which may be utilized against him by the Complainant in other civil proceedings. It is also being utilized against him by parties unknown by way of press "leaks," likely for political purposes in his mayoral campaign.

21. The April 2 Decision was obtained in violation of Plaintiff's right to due process of law guaranteed by the Fifth Amendment to the United States Constitution.

22. The April 2 Decision was also obtained while ostensibly being represented by Corporation Counsel in violation of the Hawaii Rules of Professional Conduct.

23. By reason of the foregoing, an actual controversy exists as to the validity of the April 2 Decision which Plaintiff hereby seeks to have declared void *ab initio*.

COUNT II

INJUNCTIVE RELIEF

24. Allegations 1 - 23 are realleged and incorporated herein by reference as though fully set forth herein.

25. Since Corporation Counsel failed, refused, or neglected to obtain party status for Plaintiff, he has no standing to appeal the April 2 Decision, does not have access to the records and files of the proceedings and cannot even review and share the April 2 Decision with independent counsel.

26. In addition, Corporation Counsel is now attempting to force a settlement with Complainant without the consent of Plaintiff.

27. In the event the EEOC attempts to enforce the April 2 Decision and/or the Corporation Counsel is successful in forging a settlement with Complainant without Plaintiff's consent, in further violation of the Hawaii Rules of Professional Conduct, Plaintiff will suffer additional irreparable injury for which he has no adequate remedy at law.

28. As such, the EEOC should be permanently enjoined from enforcing the April 2 Decision and Corporation Counsel should be permanently enjoined from attempting to settle any matters with Complainant without Plaintiff's consent. Corporation Counsel should also be enjoined from acting or purporting to act on Plaintiff's behalf with respect to the claims of Complainant.

WHEREFORE, Plaintiff respectfully request that this Honorable Court enter judgment for Plaintiff as follows:

1. Declaring the April 2 Decision void *ab initio* as having been obtained in violation of Plaintiff's Due Process Rights guaranteed by the Fifth Amendment of the United States Constitution and based further on Corporation Counsel's violation of the Hawaii Rules of Professional Conduct;
2. A permanent injunction prohibiting Defendant EARP and the EEOC from enforcing or attempting to enforce the April 2 Decision;
3. A permanent injunction against Corporation Counsel from attempting to settle any matters with Complainant without Plaintiff's consent and from acting or purporting to act on behalf of Plaintiff with respect to the claims of Complainant;
4. An award to Plaintiff of attorneys' fees and costs; and
5. An award of such other relief as the Court may deem just and proper.

Dated: Honolulu, Hawaii 9/04, 2008.



WILLIAM A. HARRISON
CRAIG M. SADAMOTO

Attorneys for Plaintiff
STACY HIGA