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FILED

MAY 19 2022

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

ORIGINAL

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IN THE  
Supreme Court of the United States

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CLAUDIA ROHR,  
Petitioner,

v.

CRIME VICTIMS COMPENSATION  
COMMISSION, of the State of Hawaii,  
Respondent.

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On Petition for a Writ of Certiorari  
to the United States Court of Appeals  
for the Ninth Circuit

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PETITION FOR A WRIT OF CERTIORARI

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crohr4@gmail

Petitioner, Pro Se

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## QUESTION PRESENTED

This action is brought by Petitioner Claudia Rohr, as sole beneficiary and legal representative of Scott Andrews' estate against Respondent Crime Victims Compensation Commission of the State of Hawai'i for discrimination on the basis of disability in program and services in violation of Title II of the Americans with Disabilities Act, as amended by the ADA Amendments Act of 2008,<sup>1</sup> ("ADAAA") and the Title II implementing regulations, 28 C.F.R. Part 35.

Following a hearing de novo, respondent's three-member Board of Commissioners took action on petitioner's deceased husband's applications for program benefits *behind closed doors*.

The questions presented are:

- (1) Under federal law, 28 U.S.C. § 1658(a), did the four-year statute of limitations accrue upon service of Commission Decision and Orders that were reviewed and approved by only one member of the board and not by the concurring vote of the two members necessary to take action under respondent's own law—Haw. Rev. Stat. § 351-13? Or, did the four-year statute of limitations accrue upon first communication of the concurring vote of all three members that occurred by delivery of the minutes of the hearing de novo on April 20, 2012?

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<sup>1</sup> Public Law 110-325, codified as 42 U.S.C. §§ 12131-12134.

- (2) Did respondent's counsel, an officer of the court, *present and use* falsely made and completed Commission Decision and Orders created June 30, 2011, with intent that they be taken as genuine action, and did counsel's conduct undermine the fair and impartial judicial process?
- (3) The respondent conceded for summary judgment that the statute of limitations accrued on April 24, 201[2]<sup>2</sup> for an application for a December 12, 2008 assault. Did the courts below err by contradicting undisputed fact in favor of movant, respondent?

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<sup>2</sup> This date was corrected by *Second Errata To Amended Complaint*, Case 1:16-cv-00162-LEK-RT Document 36 Filed 12/08/16 Page 1 of 2. [ECF #36.]

## **PARTIES TO THE PROCEEDINGS**

Petitioner, Claudia Rohr, was the plaintiff in the District Court proceedings and appellant in the Ninth Circuit proceedings.

Respondent, Crime Victims Compensation Commission, of the State of Hawaii was defendant in the district court proceedings and appellee in the Ninth Circuit proceedings.

## **RULE 29 STATEMENT**

Petitioner Claudia Rohr has no corporate affiliation.

## **RELATED PROCEEDINGS**

United States Court of Appeals, Ninth Circuit:

No. 20-15051

Claudia J. Rohr, Plaintiff-Appellant v. Crime  
Victims Compensation Commission of the  
State of Hawaii, Defendant-Appellee

Judgment filed February 18, 2022

Unreported.

United States District Court, District of Hawaii:

D.C. No. 1:16-cv-00162-LEK-RT

Claudia J. Rohr, Plaintiff v. Crime Victims  
Compensation Commission of the State of  
Hawaii, Defendant

Judgment filed August 27, 2019

Unreported.

United States Court of Appeals, Ninth Circuit

No. 18-15249

Claudia J. Rohr, Plaintiff-Appellant v. Crime  
Victims Compensation Commission of the  
State of Hawaii, Defendant-Appellee

Judgment filed December 3, 2018

Not reported.

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**OPINIONS BELOW**

The Ninth Circuit's memorandum opinion in No. 20-1505 (FEB 18 2022) was not published but is reproduced in the Appendix-A at A-1.

The U.S. District Court for the District of Hawaii's Order Denying Plaintiff's Motion for Relief from Judgment, in CIV. NO. 16-00162 LEK-RT (DEC 10, 2019), was not published but is reproduced in the Appendix-B at A-4.

The U.S. District Court for the District of Hawaii's Court Action: Eo: Court Order Regarding Plaintiff's Second Motion For Relief From Judgment, in CIV. NO. 16-00162 LEK-RT (NOV 7, 2019) was not published but is reproduced in the Appendix-C at A-16.

The U.S. District Court for the District of Hawaii's Order: 1) Granting Defendant's Second Motion For Summary Judgment; and 2) Denying Plaintiff's Motion For Summary Judgment, in CIV. NO. 16-00162 LEK-RT (July 22, 2019) was not published but is reproduced in the Appendix-E at A-20.

The Ninth Circuit's memorandum opinion in No. No. 18-15249 (DEC 3, 2018) was not published but is reproduced in the Appendix-F at A-52.

## INTRODUCTION

Petitioner, Claudia Rohr petitions pro se for a writ of certiorari to review the judgment of the Ninth Circuit in her claim under Title II of the Americans with Disabilities Act as amended in 2008 ("ADAAA") brought on behalf of the estate of Scott Leland Andrews, her deceased husband.

During the course of the district court proceedings, it became known in the record that, following the Commission's hearings de novo and a vote taken behind closed doors, as a matter of practice the Chairperson of the Board of Commissioners reviews and signs Commission Decision and Orders alone-- an unlawful procedure and in violation of statutory provisions, Haw. Rev. Stat. § 351-13: "*Any two members shall constitute a quorum, but the concurring vote of the two members shall be necessary to take any action.*" (emphasis added)

Under Hawaii Supreme Court precedent, the falsely made and completed Commission Decisions and Orders are void as a matter of law. Nonetheless, respondent's counsel, and officer of the court, unlawfully<sup>3</sup> *presented and used* the two falsely

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<sup>3</sup> Haw. Rev. Stat. §710-1017 **Tampering with a government record.** (1) A person commits the offense of tampering with a government record if: (b) The person knowingly presents or uses a government record or a purported government record, or a true copy thereof, knowing that it has been falsely made, completed, or altered, or that a false entry has been made therein, with intent that it be taken as genuine; (2) For the purpose of this section, "government record" means all records created, issued, received, or kept by any governmental office or agency or

made and completed Commission Decision and Orders issued in Mr. Andrews' cases, with intent that they be taken as genuine, to support respondent's statute of limitations defense in summary judgment.

The District Court erred by determining accrual of the statute of limitations of petitioner's ADAAA cause of action based on the service of the falsely made and completed Commission Decision and Orders on Andrews. The district court's Order on summary judgment made findings that petitioner judicially admitted Andrews received notice of an injury in the "discovery rule" context in the Amended Complaint:

Defendant argues that, in Case 857, Plaintiff knew by August 5, 2011 that Andrews's request for an extension of the application period was denied because the Amended Complaint alleges "[t]he July 30 2011 adverse Commission Decision and Order for CVCC Case No. 09-0857 was served upon Andrews and on August 5, 2011 Andrews timely appealed to the Third Circuit Court of Hawaii." [Amended Complaint at ¶ 43 (emphases added).] The thrust of Defendant's argument is that Plaintiff has judicially admitted that Andrews received notice of his injury, i.e., the denial of his untimely application in Case 857, and therefore knew of, or had reason to know of, his injury on or before August 5, 2011.<sup>13</sup>

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required by law to be kept by others for the information of the government. (3) Tampering with government records is a misdemeanor.

.....

Based on the information in Plaintiff's Exhibit I, Andrews and Plaintiff knew or should have known of the injury that forms the basis of her Title II Claim as to Case 858 as of August 5, 2011.

.....

Since Plaintiff judicially admitted the June 30, 2011 decision in Case 858 was served on Andrews before he filed his appeal in the State Action on August 5, 2011, [Amended Complaint at ¶ 53,] Andrews knew or had reason to know of his injury by that date.

[Appendix-E starting at A-34.]

The District Court and the Ninth Circuit hearing panel overlooked or misapprehended the qualifying statements in ¶¶ #26, #42, and #52 of the Amended Complaint that *former Chair Lisa Dunn adopted and signed McCullen's draft of the Commission Decision and Orders for the board without further due process procedure*, and #6 of petitioner's Concise Statement of Material Fact In Support of Cross Motion For Summary Judgment:

(6)The fact that Chair Lisa Dunn signed the Commission Decision and Order does not imbue the document with the Board of Commissioners' authority that it purports to have. Lisa Dunn alone is not a quorum as required by HRS §351-13. [Exhibit "K".] [See also, Exhibit "L" at pgs. 1-5.]

That respondent's counsel would present and use falsely made and completed Commission Decision and Orders, created June 30, 2011, with intent they be taken as genuine government records and action, to support respondent's statute of limitations defense in summary judgment in this federal action is a deceptive litigation tactic that undermines the fair and impartial judicial process. ***Equity bars a defendant from setting up such a fraudulent defense.***

## **JURISDICTION**

The judgment for the Ninth circuit was entered on February 18, 2022. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

## **STATUTORY PROVISIONS INVOLVED**

Title II of the Americans with Disabilities Act, as amended by Public Law 110-325, (hereafter referred to as "ADAAA"), codified as 42 U.S.C. §§ 12131-12134, and the Title II implementing regulations, 28 C.F.R. Part 35.

28 U.S.C. § 1254

Haw. Rev. Stat. §351-13.

Haw. Rev. Stat. §710-1017.

Due Process clause of the US Constitution.

## STATEMENT

In its Second Motion For Summary Judgment, ECF #134, respondent wrote:

Plaintiff alleges that the Commission violated the ADA by concluding in its July 8, 2010 Administrative Decision and Order that good cause did not exist for Andrews to submit an application regarding the April 21, 2008 assault after the eighteen month period in HRS § 351-62 had already passed. See Amended Complaint at ¶ 36. A hearing de novo was held thereafter, resulting in the Commission's "adverse" Decision and Order which Plaintiff has admitted was served on Andrews on August 5, 2011. Id. at ¶¶ 39, 43. Thus, Plaintiff's claim against the Commission for this application accrued no later than August 5, 2011, whereas Plaintiff brought this action nearly five years later on April 5, 2016. See ECF No. 1. Plaintiff's claim regarding this application is barred by the expiration of the two-year statute of limitations.

Next, Plaintiff alleges that while the Commission voted to pay Andrews' medical bills related to his application for the December 12, 2008 assault, investigator Sonya McCullen allegedly reduced the Commission's award on her own. See Amended Complaint at ¶45. Plaintiff



admits that Andrews received the agency minutes reflecting the Commission's vote on April 2[0], 201[2],<sup>4</sup> which had previously been part of the sealed record on appeal. Id. at ¶¶ 46-48. Plaintiff's claim regarding this application too is barred by the expiration of the two-year statute of limitations because this claim accrued on April 24, 2013, three years before suit was filed on April 5, 2016.

All of Plaintiff's claims are barred by the expiration of the statute of limitations, and summary judgment should therefore enter in favor of the Commission.

Contrary to the district court's Order: 1) Granting Defendant's Second Motion For Summary Judgment; and 2) Denying Plaintiff's Motion For Summary Judgment, [Appendix - E, pg. A-20], Rohr's Answer did not simply rely on her pleadings to create a genuine issue of material fact on a motion for summary judgment. Her Answer included reference to ECF #66, **Pl. Concise Statement of Facts, #3-#7**, which in turn cites to Exhibits, H, K, L, and M:

Furthermore, the Amended Complaint makes allegations that the Commission introduced a fraudulent government record - the Commission Decision and Order, CVCC Case No. 09-0858 issued June 30, 2011, purporting to be the Commissioners'

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<sup>4</sup> See Second Errata to Amended Complaint, Case 1:16-cv-00162-LEK-RT Document 36 Filed 12/08/16 Page 1 of 2.

decision, factual findings and conclusions of law as voted on June 23, 2011 in closed session, and launched a deliberately planned scheme to defraud the court and undermine the impartiality of the Judicial system. [See, ECF #137-2, Motion For Summary Judgment, pg. 25, part c. "Overt Discrimination And Interference With Access To The Courts."] [ ECF #65, Cross Motion For Summary Judgment, pg. 13, part III, B-iii, "it is not an authentic government record or an accurate accounting of the Commissioners' June 23, 2011 vote and decision that it purports to be, as a matter of law, and because it contradicts the vote of the Commissioners and the settlement of issues and facts necessarily considered and decided June 23, 2011." *United States v. Lee*, 622 F.2d 787, 790 (5<sup>th</sup> Cir. 1980)] [ECF #66, **Pl. Concise Statement of Facts, #3-#7.**] [ECF #14, Amended Complaint, at PP 48-51.] [ECF #66-9, Commission Decision and Order, Exhibit I.] See, *Gius v. Brooklyn Eastern Dist. Terminal*, 359 U.S. 231 (1959) (adversary's misrepresentation caused plaintiff to let filing period lapse); *Holmberg v. Armbrecht*, 327 U.S. 392 (1946).

The district court erred when it found judicial admissions of notice of an injury in the “discovery rule” context in the Amended Complaint:

The Ninth Circuit has stated that “the ‘discovery rule,’ which postpones the beginning of the limitations period from the date the plaintiff is actually injured to the date when he discovers (or reasonably should discover) he has been injured, . . . is already incorporated into federal accrual law.” *Lukovsky v. City & Cty. of S.F.*, 535 F.3d 1044, 1048 (9th Cir. 2008) (citations omitted).

.....

Defendant argues that, in Case 857, Plaintiff knew by August 5, 2011 that Andrews’s request for an extension of the application period was denied because the Amended Complaint alleges “[t]he July 30 2011 adverse Commission Decision and Order for CVCC Case No. 09-0857 **was served upon Andrews and on August 5, 2011** Andrews timely appealed to the Third Circuit Court of Hawaii.” [Amended Complaint at ¶ 43 (emphases added).] The thrust of Defendant’s argument is that Plaintiff has judicially admitted that Andrews received notice of his injury, *i.e.*, the denial of his untimely application in Case 857, and therefore knew of, or had reason to know of, his injury on or before August 5, 2011.

.....

Based on the information in Plaintiff's Exhibit I, Andrews and Plaintiff knew or should have known of the injury that forms the basis of her Title II Claim as to Case 858 as of August 5, 2011. .... Since Plaintiff judicially admitted the June 30, 2011 decision in Case 858 was served on Andrews before he filed his appeal in the State Action on August 5, 2011, [Amended Complaint at ¶ 53,] Andrews knew or had reason to know of his injury by that date. [Appendix E -- Order: 1) Granting Defendant's Second Motion For Summary Judgment; and 2) Denying Plaintiff's Motion For Summary Judgment, United States District Court for the District of Hawaii (July 22, 2019), pg. A-21.]

The District Court plainly believed the Commission Decisions and Orders to be genuine government records of action because the Court's Order on summary judgment discusses them at great length. [Appendix E, starting at bottom of pg. A-35.]

The district court and the Ninth Circuit hearing panel overlooked or misapprehended the qualifying statements in ¶¶ #26, #42, and #52 of the Amended Complaint **that former Chair Lisa Dunn adopted and signed McCullen's draft of the Commission Decision and Orders for the board without further due process procedure**, and #6 of petitioner's Concise Statement of Material Fact In Support of Cross Motion For Summary Judgment:

(6) The fact that Chair Lisa Dunn signed the Commission Decision and Order does not imbue the document with the Board of Commissioners' authority that it purports to have. Lisa Dunn alone is not a quorum as required by HRS §351-13. [Exhibit "K".] [See also, Exhibit "L" at pgs. 1-5.]

The district court and the Ninth Circuit hearing panel overlooked or misapprehended petitioner's Concise Statement of Material Fact in Support of Cross Motin for Summary Judgment, #3 - #7:

3. Collateral estoppel applies: With regards to CVCC Case No.: 09- 0858 for a December 12, 2008 assault, the Commissioners unanimously voted to agree that Andrews was a victim of a HRS §351-32 covered crime and to pay his medical bills based on the merits of his claim. [Id. at ¶¶46.] [Exhibit "H".]

4. When the Commissioners unanimously voted to agree that Andrews was a victim of a HRS §351-32 covered crime and to pay his medical bills on the merits of his claim, after a full and meaningful hearing de novo, the Commissioners necessarily rejected those conclusions of law and findings of fact not adopted by vote. [Declaration of Claudia Rohr at #29, Exhibit "AA"]

5. The conclusions of law and factual findings in the June 30, 2011 "Commission

Decision and Order", [Exhibit "I",] are inconsistent with the conclusions of law and factual findings which the Commissioners intentionally incorporated into their decision and adopted by vote on June 23, 2011. [Exhibit "H".] Similarly, the June 30, 2011 "Order" varies in scope from the Commissioners' June 23, 2011 decision to pay Andrews medical bills as represented in the minute transcript of the vote. See HRS §91-12. [Exhibit "J", at "Case notes"]

6. The fact that Chair Lisa Dunn signed the Commission Decision and Order does not imbue the document with the Board of Commissioners' authority that it purports to have. Lisa Dunn alone is not a quorum as required by HRS §351-13. [Exhibit "K".] [See also, Exhibit "L" at pgs. 1-5.]

7. Collateral Estoppel operates to bar the Defendant from introduction and use of the "Commission Decision and Order" in CVCC Case No. 09-0858 because it was the result of unlawful procedure, it is not an authentic government record or an accurate accounting of the Commissioners' June 23, 2011 vote and decision that it purports to be, as a matter of law, and because it contradicts the vote of the Commissioners and upsets settled issues and facts necessarily considered and decided June 23, 2011. See, relevant portion of the June 28-29, 2011 email exchange between the CVCC

investigator Sonya McCullen and Lisa Itomura discussing malicious edits of the Commission Decision and Order. [Exhibit "M"<sup>5</sup>, bracketed material.]

See Footnote.<sup>6</sup>

The district court and the Ninth Circuit also overlooked or misapprehended petitioner's Exhibits in support of petitioner's cross motion for summary judgment-- Exhibits H, K and L, in support of Plaintiff's Concise Statement of Material Fact #6 above.

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<sup>5</sup> [Exhibit M, Case 1:16-cv-00162-LEK-RT Document 66-13 Filed 03/14/17 Page 2 of 2.]

<sup>6</sup> [Concise Statement of Material Fact in Support of Cross Motion For Summary Judgment, Case 1:16-cv-00162- LEK-KSC Document 66 Filed 03/14/17 Page 2 to 4 of 15; Errata to Concise Statement of Material Fact in Support of Cross Motion For Summary Judgment, Case 1:16-cv-00162-LEK-RT Document 88-1 Filed 06/23/17 Page 2 of 3; and Second Errata to Concise Statement of Material Fact in Support of Cross Motion For Summary Judgment, Case 1:16-cv-00162-LEK-RT Document 146 Filed 04/15/19 Page 1 of 3.] It should be noted that petitioner incorporated and cited to the 2017 Concise Statement of Material Fact in Support of Cross Motion For Summary Judgment, Declarations and Exhibits in her second Motion For Summary Judgment and Answer to Defendant's Motion For Summary Judgment, which Judge Kobayashi allowed. [Case 1:16-cv-00162-LEK-RT Document 137-2 Filed 03/08/19 Page 3 of 32, last part of last sentence: "is accompanied by and cites to Concise Statement of Material Facts In Support Of Cross Motion For Summary Judgment, [ECF #66], including the attached Declaration of Claudia Rohr and Exhibits."]

Exhibit H is from the transcript of the hearing de novo and it is the vote of the Commissioners held behind closed doors:

And in case number 09-0858...the Commission finds in case no. 09-0858, *the applicant was the victim of an H.R.S. 351-32 covered crime and the Commission is awarding funds to cover medical expenses only*. Do Commissioners concur? Tom Watts: This is Commissioner Watts. I concur. Dew Kaneshiro: This is Commissioner Kaneshiro. I concur. Lisa Dunn: As does Commissioner Dunn. (emphasis added)

Exhibit K is a copy of Haw. Rev. Stat. § 351-13 Powers and procedures of Commission, with the following part underlined for emphasis: “*Any two members shall constitute a quorum, but the concurring vote of the two members shall be necessary to take any action.*”[Case 1:16-cv-00162-LEK-RT, Document 66-11 Filed 03/14/17 Page 2 of 3.]

Exhibit L is a copy of Defendant Crime Victim Compensation Commission of The State of Hawaii's Answers To Plaintiff's First Request For Answers To Interrogatories And First Request For Production Of Documents And Tangible Things To Defendant. The pertinent part, Interrogatory 1:

#### INTERROGATORY NO. 1

- a) Who drafted the Administrative Decision and Order, each of the de novo hearing



notices, the de novo hearing summary, the de novo hearing script, and the Commission Decision and Order in CVCC No. 09-0857?

Answer: Sonja McCullen.

- b) Who drafted the Administrative Decision and Order, each of the de novo hearing notices, the de novo hearing summary, the de novo hearing script, and the Commission Decision and Order in CVCC No. 09-0858?

Answer: Sonja McCullen.

- c) Did the signature page of the Commission Decision and Order in CVCC Nos. 09-0857 and 09-0858 contain Chair Lisa Dunn's original signature or was it a pre-signed signature page which was inserted?

Answer: Original signature.

- d) Please explain the CVCC'S procedure for obtaining a signature for a draft Commission Decision and Order in detail, including any use of pre-signed signature pages?

Answer: *The Commission's procedure is to have the Chair review the entire draft document, sign it if she agrees that it accurately reflects the commissioners' decision, and return the document to the Commission. If the Chair wishes to make*

*changes, she would let the Commission know.* Pre-signed signature pages are never used. (emphasis added)

- e) Which of the Commissioners (including the Chair) reviewed the final form of the Commission Decision and Orders in CVCC Nos. 09- 0587 and 09- 0858 before they were signed and served on Andrews?

Answer: Chair Lisa Dunn on behalf of the commissioners. See Haw. Rev. Stat. § 351-13.

- f) Which of the Commissioners (including the Chair) reviewed and voted to accept the final form of the Commission Decision and Orders in CVCC Nos. 09-0957 and 09-0585? Please explain when this vote occurred if it did and whether it was before or after Chair Lisa Dunn signed it?

Answer: The Chair reviews the orders and determines whether they accurately reflect the commissioners' decisions. The commissioners voted on June 23, 2011 before the Chair signed.

[Case 1:16-cv-00162-LEK-RT, Document 66-12, Filed 03/14/17, Pages 3 and 4 of 11.]

Exhibit M is a June 28-29, 2011 email chain between the Commission's investigator, a licensed attorney named Sonja McCullen ("investigator McCullen"), the Commission's Deputy Attorney General Lisa Itomura ("DAG Itomura"), and copied to the Commission's

Administrator, Pamela Ferguson-Brey who was at one time a licensed attorney.

Investigator McCullen wrote:

Here is a draft of the D&O. Any suggestions are welcomed. Initially I went with vague, *but the possibility of them using this decision and order in their civil and criminal cases concerned me*. I dunno, this was a tough one to write.

DAG Itomura wrote back:

You did a great job with almost nothing. Is the commission issuing orders affirming the denials of Andrews' two other cases? The two things I would change: on pg. 2, second full paragraph, second sentence, change the underlined word to Mr. Lewis – the applicant and Ms. Rohr argued that the statements from the Applicant's friends are unreliable... " On page 3, section 3 entitled "Commission's Findings, where you say there is insufficient evidence that Mr. Lewis caused Andrews' bruises, I would add something like the underlined - "there is insufficient evidence to determine whether Mr. Lewis or any other individuals present caused" the bruises.

## ARGUMENT

At bottom, Haw. Rev. Stat. § 351-13 mandates that a concurring vote of at least two members is necessary

for the Board to act. In the absence of Board action, the question of whether to approve or disapprove the draft 'Commission Decision and Orders' was not decided pursuant to Haw. Rev. Stat. § 351-17(b). This is consistent with Hawaii Supreme Court precedence under the principles enunciated by *Hawaii Electric Light Co., Inc. v. DLNR*, 75 P. 3d 160 - Haw: Supreme Court 2003—a Hawaii Supreme Court decision confined to the question of whether the DLNR acted at all:

For the reasons stated supra, HRS § 171-5 mandates that a vote of a majority of the entire board is necessary for the Board to act; hence, a vote of less than such a majority does not amount to Board action. In the absence of a board action, the question of whether to approve or disapprove of the application was not decided.

See also, *Kepoo v. Kane*, 103 P. 3d 939, 945-946 - Haw: Supreme Court (2005):

[Intervenors] Growney and Mauna Kea orally moved to dismiss, arguing that because only the chairperson had issued a negative declaration, the HHC had not voted on the matter, and therefore, there was no viable agency decision for the court to consider.

....

The court in conclusion #7 declared the negative declaration void. Chairperson Drake did not have legal authority to approve the EA or to order a negative declaration for

Defendant[s]-Intervenors' use of state lands for their proposed power plant. The Chairperson's acceptance of the EA and issuance of the negative declaration are void because they were made upon unlawful procedure and in violation of statutory provisions.

Likewise, in the State action, the 'Commission Decision and Orders' did not rise to the level of Board action or notice of Board action on Mr. Andrews' applications, having not been approved by concurring vote of at least two members. The Orders were a nullity and they had no legal effect on the accrual of a statute of limitations for any claim.

**The Statute of Limitations Accrued on April 20, 2012.**

Importantly the district court's and Ninth Circuit's decisions concerning the issue of accrual of the statute of limitations in the discovery rule context conflicts with an authoritative decision of the United States Supreme Court which addressed the issue. In *Delaware State College v. Ricks*, 449 US 25, (1980) - the Supreme Court decided that the statute of limitations for an adverse discriminatory action claim accrued when two things happened:

In sum, the only alleged discrimination occurred—and the filing limitations periods therefore commenced—at the time the tenure decision was made *and communicated* to Ricks.") Id. at 258. (emphasis added by the court in *Cada v. Baxter Healthcare Corp.*,

920 F. 2d 446 - Court of Appeals, 7th Circuit  
1990.) Id., at 258.

Only on April 20, 2012, when the Commission's counsel served the agency transcript of the unanimous vote of the Commissioners taken on both of Mr. Andrews applications—e.g. Board action, did the statute of limitations accrue on petitioner's husband's claim, under the principles enunciated in *Ricks, Cada, Hawaiian Electric Light Co., Inc., and Kepoo v Kane*.

## REASONS FOR GRANTING THE PETITION

This case raises a question of considerable importance in enforcing liability under federal equitable enactments. The subject matter of this case and this appeal is a matter of public importance both to Hawaii's Crime Victims Compensation program but to crime victims everywhere that are having difficulty accessing their state's crime victims program because of their disabilities under the ADAAA. The question of whether the State of Hawaii has an obligation to broaden their crime victims program to include those persons disabled by post-traumatic stress syndrome from crime victimization—an impairment previously barred after 1999 by the disability requirements enunciated by the Supreme Court in *Sutton v. United Air Lines, Inc.*, (1999), *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, (2002) and companion cases and only made possible by passage of the ADA Amendments Act of 2008. Matters of public importance should not be decided on questionable evidence in summary judgment.

Moreover, there has been an ongoing egregious attack on the integrity of our unbiased judicial process by the respondent's presentation and use of falsely made and completed Commission Decision and Orders, with intent they be taken as genuine government records, which cannot complacently be tolerated. It is only good federal housekeeping to address fraud on the court at the earliest practicable time. Petitioner has not delayed in presenting the matter to the court to the best of her ability since

receiving respondent's Answers to Interrogatories, January 2017. This case must be remanded to district court and Petitioner should be granted leave to file a second amended complaint to add a cause of action for fraud on the court. See, *Hazel-Atlas Co. v. Hartford Co.*, 322 US 238 - Supreme Court 1944, dissenting opinion suggesting Hazel delayed bringing the fraud to the court's attention.



**CONCLUSION**

For the reasons above, this court should grant the petition for writ of certiorari

Respectfully submitted,

Claudia Rohr, Petitioner, Pro Se

May, 18, 2022