



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I  
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## Testimony of the Department of Commerce and Consumer Affairs

Before the  
Senate Committee on Commerce and Consumer Protection  
Tuesday, March 21, 2023  
9:55 a.m.

On the following Senate Concurrent Resolution:  
**S.C.R. 131, REQUESTING THE REGULATED INDUSTRIES COMPLAINTS  
OFFICE TO REPORT THE ITEMIZED TOTAL AMOUNT OF FINES OR  
JUDGMENTS COLLECTED AND UNCOLLECTED EACH YEAR, FROM 1983  
TO PRESENT, AND TO INCLUDE THAT INFORMATION IN THE DIRECTOR  
OF COMMERCE AND CONSUMER AFFAIRS' ANNUAL COMPLIANCE  
RESOLUTION FUND REPORT**

Chair Keohokalole and Members of the Committee:

My name is Esther Brown and I am the Complaints and Enforcement Officer of the Regulated Industries Complaints Office (RICO), an agency within the Department of Commerce and Consumer Affairs (Department). RICO **offers comments** on S.C.R. 131.

The resolution requests two things: (1) “a report itemizing the total amount of fines or judgments collected or uncollected each year, from 1983 to the present,” to be included in the Director’s annual compliance resolution fund report, and (2) submission of the same information via a report to the Legislature no later than twenty days prior to the convening of the Regular Session of 2024. The SCR’s purpose is “government transparency and efficiency.”

1. Background. During the Department’s budget informational briefing before the Senate Committees on Ways and Means and Commerce and Consumer Protection

in January 2023, concern had been raised about the amount of outstanding fines RICO had not yet collected, purported to be in the millions. A similar inquiry about a potentially sizable amount of uncollected fines came to the Department a few weeks later, this time from the House of Representatives. Attached and incorporated herein as Exhibit 1 is a letter to the Honorable Representative Micah Aiu, from the Department, which responded to the concern.

Sometime around March 2023, the Department was again asked about the amount of uncollected fines in RICO, as well as revenues collected in the previous five years. The Department responded with this information:

Unpaid fines/judgments from 1983 – current:

\$2,264,189, or, \$56,604 per year

Paid fines/judgments in the last 5 years:

2018 (calendar year):	\$523,579
2019:	\$579,821
2020:	\$512,802
2021:	\$478,675
2022:	\$951,839

Respectfully, therefore, RICO submits that the information requested by the SCR has been provided to select members of the Legislature already. In the spirit of transparency, RICO is pleased to be able to share the same information with the Committee. Going forward, the Department has no issue with providing a summary of the total dollar amount of RICO's collected and uncollected fines each year, as part of the Department's compliance resolution fund report.

However, if the SCR seeks an itemization in the form of a list of every case with a fine or judgment imposed since 1983, and whether the fine/judgment was collected in full or not per case, then RICO would not be able to produce such a report without a substantial investment of time and effort, and possibly additional fiscal resources too. The information that is currently housed in the agency in closed and stored case files would have to be reviewed, confirmed and catalogued by staff, and resources would also have

to be devoted to reviewing information on aged cases in RICO's newer electronic complaints management system too.

2. Transparency. During my tenure as Complaints and Enforcement Officer, RICO has not, until this year, been asked to provide the Legislature with summary information about collected versus uncollected fines. If there is a lingering concern that the agency is opaque about the end result of its enforcement efforts, we note for the Committee that there is an abundance of transparent, concrete and publicly-available information regarding the agency's efforts.

The Department issues press releases on a regular basis that summarizes the most recent legal actions imposed on licensees, including fines.

The Real Estate Commission issues bulletins each quarter which summarize legal actions imposed on licensees, including fines imposed.

RICO's website is searchable by party name and provides information on complaints as well as discipline imposed on licensees, including fines and whether they were paid or not. Here is an example of such a search showing a \$7,500.00 fine imposed and a compliance date directly under it.

The screenshot shows a search results page from the Regulated Industries Complaints Office website. At the top right, there are navigation links: "Back to results", "New search", and "Print". The main content area is divided into three sections:

- SUMMARY OF NAMES:** A light blue box containing a person icon and a redacted name.
- Complaint Details:** A white box with a red double arrow icon and a redacted name.
- COMPLAINT NO: REC-[REDACTED] L**
  - OUTCOME:** LEGAL ACTION IMPOSED
  - DATE:** 8/23/2019
  - MONETARY SANCTIONS:** FINE: \$7,500.00
  - COMPLIANCE DATE:** 8/29/2019
  - ACTION:** PRE-PETITION SETTLEMENT AGREEMENT FILED

At the bottom of the page, there is a footer with the following information:

**Regulated Industries Complaints Office**  
Department of Commerce and Consumer Affairs  
235 S. Beretania Street  
Ninth Floor  
Honolulu, HI 96813

Navigation links: [Glossary of Terms](#), [Search Instructions](#), [Terms of Use](#), [Accessibility](#), [Disclaimer](#)

Information regarding lawsuits filed by RICO against unlicensed persons and fines imposed in such lawsuits, is public information filed in the State court system. RICO also provides quarterly reports on RICO's website that summarize actions and settlements that resulted in fines.

If a lawsuit is filed by RICO against someone and the person pays the fine, the payments are documented in court records, including satisfactions filed with the state court in which the lawsuit was filed. Court records are open to the public.

As a matter of practice, RICO also records unpaid judgments as well as satisfactions of the same, with the State of Hawaii Bureau of Conveyances, whose records are public too.

3. Efficiency. If the concern is RICO is inefficient because it does not have a 100% collections rate for fines that are imposed, I would again ask the Committee to carefully review the Department's response in Exhibit 1. RICO would also add that the vast majority of regulated persons aren't large corporate entities with deep pockets. They are most often individual kamaaina or small, local companies that are just trying to earn a living in our state. Some may not have access to surplus funds to instantly pay a fine, in which case a payment plan can be arranged and the fiscal obligation may not be satisfied in full until months or possibly years down the road.

Thank you for the opportunity to testify.



# EXHIBIT 1

**JOSH GREEN, M.D.**  
GOVERNOR | KE KIA'ĀINA

**SYLVIA LUKE**  
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA

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February 7, 2023

Honorable Micah P.K. Aiu  
State Capitol, Room 326  
415 S. Beretania Street  
Honolulu, HI 96813

Dear Representative Aiu:

Thank you for your time to meet on January 27, 2023 to discuss the Department of Commerce and Consumer Affairs. Transmitted herewith is the response to your question:

In the Regulated Industries Complaints Office (RICO) division, why are there sizeable uncollected fines?

Uncollected fines are not unique to the RICO; unpaid fines accumulate in any agency that has the ability to impose them for violations of the law. Here are reasons why unpaid fines can accumulate at RICO:

1. RICO is an enforcement agency. RICO is an enforcement agency that is responsible for processing licensing law complaints through intake, investigation, and prosecution. The legislature in its wisdom foresaw how busy the agency would be in meeting its comprehensive mandate because of the variety and number of industries, professions and occupations it oversees. Almost all of the agency's resources, therefore are devoted to complaints processing rather than "collections work" at the back end. RICO has been averaging between 2500 – 3000 new complaints each year for many years now,

and more and more of them involve nonroutine or complex issues such as allegations of fraud, conversion, sexual improprieties, improper accounting, withholding of funds, trust account violations, insolvency, lack of integrity and trustworthiness, not honoring contractual obligations, criminal conduct, professional misconduct, incompetency, and so forth. Processing these important complaints through prosecution will always take priority over collecting on an unpaid fine.

2. Fines are not the exclusive remedy for licensing law violations. RICO's mandate is not to collect money, but to enforce the licensing laws. To ensure fairness and integrity during the process, RICO can recommend to the licensing boards or courts in the case of unlicensed conduct, a variety of remedies inclusive of fines. RICO can ask for a limitation on the license through probation, suspension and revocation, or conditioning the licensee's scope of practice, or even rehabilitative measures too in the form of taking courses or classes or further monitoring. RICO can seek equitable relief in the case of unlicensed workers. When fines are sought and imposed by a board or the court, most good-behaving licensees and businesses will pay them almost immediately because they care about their business and reputation. Those who don't care won't pay.
3. In limited cases, large fines are imposed intentionally to broadcast bad behavior and deter re-licensure. RICO has deliberately recommended large fines knowing a respondent or defendant cannot possibly pay it, and boards have adopted them. The fine amount signals to the public that the person is really bad news. It also serves as a deterrent to entering the profession since fines must be satisfied in full for re-licensure.
4. Many judgment debtors are not who they say they are, they don't care, and/or they are insolvent. The question assumes that fines are imposed against only those persons who can or will pay them. Unfortunately, that is not the case. Many, if not most, of the "uncollected fines" involve persons and businesses who did not or do not care about their business, reputation or license if they ever had one. They are often judgment-proof and/or flee the jurisdiction and/or change identities and/or cannot be found. They have no address to be served at, their last transactions were almost always in cash, and they are insolvent or hide assets in someone else's name. It would take a tremendous amount of resources to even find such persons, verify their identities, locate assets, institute legal collections proceedings, and then collect on yet another judgment

resulting from those efforts, and as an agency RICO was never set up to or mandated to engage in such work.

5. Collections is a full-time practice not formally within RICO's mandate. As noted in section 4 above, collections work requires a full-time legal practice, and such an incredible scope of work is not formally within RICO's statutory mandate given the important work the agency does in processing and prosecuting licensing law violations. This does not mean that RICO has neglected collections. It is said that a former CEO of RICO tried to refer a few cases to a firm for collections evaluation but that did not happen, was too costly, or was not fruitful. RICO has also relied on the tools available through the state to help collect on unpaid fines.
6. Routine filing of unpaid judgments and semi-annual referrals to DOTAX. As a matter of practice, RICO's legal section engages in the ministerial act of filing every unsatisfied judgment with the Bureau of Conveyances. The judgments are, therefore, publicly accessible and notify the world that the person is indebted to the State. RICO's legal section also submits a semi-annual updated list of all unpaid fines to the Department of Taxation because, by law, any unpaid fines are subject to being recouped by the state from tax refunds.
7. The present and moving forward. In addition to the practices mentioned in section 6 above, in 2021 and 2022, under the leadership of RICO's current CEO Esther Brown, RICO re-described and filled two attorney positions that now include active collections evaluation work in addition to the attorneys' primary responsibility to enforce the licensing laws through prosecutions.

Should you have any further questions for the department, please do not hesitate to contact me at 808-586-2850 or [nando@dcca.hawaii.gov](mailto:nando@dcca.hawaii.gov) .

Sincerely,



Nadine Y. Ando  
Director