

2007 ANNUAL REPORT



Deval Patrick, Governor
Tim Murray, Lieutenant Governor

Malcolm S. Medley, Chairman
Martin Ebel, Commissioner
Sunila Thomas-George, Commissioner

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A Message from Chairman Malcolm S. Medley

The end of calendar year 2007 marked a new beginning for the Massachusetts Commission Against Discrimination (MCAD). I was honored to be appointed a Commissioner of the MCAD by Governor Patrick and was sworn in as Chairman on November 30, 2007. As I took my place at the head of this agency, I was joined by newly sworn Commissioner, Sunila Thomas-George, and by incumbent Commissioner Martin Ebel. Together our new administration made a commitment to build on the progress made by the Commissioners who preceded us and to advance a sixty-four year old mandate *to eradicate discrimination in the Commonwealth*.

In 2007 Governor Patrick also reconstituted the MCAD Advisory Board. In so doing, he appointed Boston litigator Thomas Gallitano to Chair the Board, and appointed Vice-Chairs Tani Saperstein, and Albert Toney III. The Advisory Board is statutorily charged with reviewing and reporting on MCAD policies and we look forward to their input.

As the new Commission commenced our plan to move the agency forward, we recognized the great work done by MCAD's immediate past Chairman, Walter Sullivan. Generally speaking, this 2007 Annual Report reflects the accomplishments of the MCAD under Chairman Sullivan's leadership. Included below, however, is a vision for 2008 under our new administration. Our 2008 MCAD Annual Report will provide more details about those plans, many of which are already underway.

As the Commonwealth's primary Civil Rights law enforcement agency, the MCAD's core responsibilities are its enforcement and adjudicatory functions. In 2007 the MCAD took in 3,413 cases, with disability constituting the majority (20.5%). The MCAD closed 2,845 cases, of which 710 resulted in findings of Probable Cause, the highest probable cause rate in recent history. Employment remained the largest category of complaint types at the end of 2007. Although there was a slight reduction in the number of conciliations held and settled, MCAD Conciliators reached settlement amount far in excess of the preceding year. The MCAD was also extremely active in hearing and litigating discrimination claims. Several noteworthy MCAD hearing decisions are included in the report.

Pursuant to its statutory obligation, the MCAD re-opened its Worcester office in December 2007. The MCAD also held public hearings on December 17 and 19, 2007 in Boston and Springfield, respectively, regarding proposed amendment to regulations governing non-discrimination in places of public accommodation based on disability.

As we look ahead, we recognize the need to develop and improve the MCAD's core functions of enforcement and adjudication. That is underway. However, we will also devote significant focus and resources to prevention and outreach. We will continue to employ proactive prevention strategies such as testing and increased use of the Commissioner Initiated Complaint process. We will continue to extend jurisdiction into areas such as predatory and discriminatory lending, discriminatory conduct which impacts admission to students in educational facilities, and allegations of discriminatory conduct by police officers on roadways and other places of public accommodations.

We recognize that partnerships are essential to our continued efforts. Therefore, even while we take all necessary steps to improve and increase our relationships with the Equal Employment Opportunity Commission (EEOC) and Housing and Urban Development (HUD) – our Federal partners – we look forward to continuing our hard work to establish relationships with local human rights and civil rights agencies, other state agencies, community groups, and groups comprised of practitioners of civil rights and employment law. We will embark upon a legislative agenda to assist our legislature in identifying and addressing statutory deficiencies that impact civil rights in the Commonwealth.

Finally, as always, we recognize that our employees are our most important resource. We will continue to ensure that employees are treated in a fair and equitable manner and that they receive all necessary training and guidance in the performance of their jobs. I sincerely thank each member of the MCAD staff for their individual achievements and efforts.

I hope that you will find our report useful and I encourage you to join us in our mission.

Sincerely,

Malcolm S. Medley
Chairman
Massachusetts Commission Against Discrimination



2007 MCAD Annual Report: Conciliations

Annual Statistics 2007

	Scheduled	Held	Settled	Monetary Amt.
TOTAL 2007	311	196	118	\$3,058,517
Total 2006	348	210	135	\$2,800,309

During this year 311 cases were scheduled at least once. This includes probable cause conciliations, post-discovery mediation, and the cases in the voluntary pre-determination mediation project which have attorneys.

The Conciliations Unit held 196 sessions, of which 118 settled. This yielded a settlement rate of about 60%, which is comparable to last year. It translates into only 78 cases continuing on to the adjudication phase. Many of those 78 cases continue the dialogue begun at conciliation and settle before certification or the pre-hearing state, so it is estimated that less than half that number will actually advance to the adjudication state out of last year's probable cause dispositions.

MCAD held about 60% of the sessions scheduled and efforts continue to keep the number of reschedules as low as possible.

Broken down at the various stages of case processing, the probable cause conciliation sessions held still constitute the overwhelming majority of sessions. Of the 196 total sessions, 5 were post-discovery sessions and 40 were voluntary represented pre-disposition mediations.



2007 MCAD Annual Report: Enforcement

During 2007, the MCAD Enforcement Division processed over 3,400 complaints filed in the Boston and Springfield offices. The Commission completed and resolved over 2,800 cases through mediation, investigation or adjudication. Over 700 of those investigations led to a probable cause determination.

In 2007, the MCAD's Enforcement Division was comprised of 16 investigators, 6 supervisors, 6 attorney advisors and 3 administrative assistants. Each investigator maintained and investigated a caseload of over 180 cases.

In February of 2007, the Commission issued a new Standing Order that gives parties the opportunity to engage in pre-determination discovery during the investigation stage. The 2007 Standing Order ensured that every complaint filed at the MCAD and each recommended disposition was reviewed by a staff attorney. In addition, the Standing Order granted both parties equal access to information and pleadings filed and received by the Commission.

In October 2007, the Enforcement Division held the first in a series of internal training sessions for Enforcement staff. The first sessions focused on Intake and the Initial Complaint Process. The second sessions addressed Case and Time Management. We look forward to sessions on Disposition Writing and Customer Service during early 2008. The training sessions have provided an opportunity for our staff members to hone their knowledge and gain additional skills.

The Enforcement Division continues to seek and mentor interns through our established programs with both undergraduate colleges and law schools. Students are trained by MCAD staff, and receive hands on experience assisting with or conducting case intake and investigations. Participating colleges and universities include: Bunker Hill Community College, Brandeis University, University of Massachusetts (Amherst), Suffolk University School of Law, Harvard Law School, Northeastern Law School, Western New England School of Law, Boston College School of Law and New England School of Law. The George Napolitano Scholarship, awarded each year to a student who shows both academic achievement and a dedication to work in public service, was awarded to Erin Romp from Boston University School of Law.

To fulfill our statutory mandate, the Commission reopened an office in Worcester in December. Residents of central Massachusetts the opportunity can now file discrimination complaints without travelling to Boston or Springfield. The Commission plans to open a New Bedford office in 2008.



2007 MCAD Annual Report: Legal Department

The MCAD Hearings Unit issued 33 Hearing Officer Decisions in 2007. The Full Commission issued 25 Decisions in 2007. The following are summaries of some of the more significant Hearings Decisions in 2007.

Attorney General v. Fung Wah Bus Company 29 MDLR 95 (2007)

The Attorney General brought this public accommodations case on behalf of Albert and Mary Sten-Clanton, both of whom are legally blind and who were attempting to travel by bus from Boston to New York, using Respondent's low-cost bus service. Mr. Sten-Clanton uses a service dog to assist him with mobility, and his wife uses a cane. The Sten-Clantons attempted to purchase bus tickets from Respondent. Initially they were told that Mr. Sten-Clanton could not purchase a ticket because Respondent did not allow dogs on its buses. When the Sten-Clantons agreed that Mrs. Sten-Clanton would purchase a bus ticket and Mr. Sten-Clanton would travel by train, Respondent refused Mrs. Sten-Clanton a bus ticket because she would travel alone. During the time they attempted to purchase tickets, the Sten-Clantons were forced to wait outside on a cold January day, and ultimately were forced to take a train to New York, at considerably more cost than Respondent's bus service.

The Commission Hearing Officer found that the Respondent unlawfully denied the Sten-Clantons access to travel on their bus in violation of the Massachusetts Public Accommodation Law, c. 272 §§ 92 and 98A. The Hearing Officer found that Respondent's reasons for denying Mr. Sten-Clanton a ticket; that the dog would block the center aisle on the bus and could be a danger to someone with a pet allergy, were not credible. Further, Respondent gave no legitimate reason why Mrs. Sten-Clanton could not take the bus. The Hearing Officer ordered Respondent implement rules regarding service animals, establish a method for passengers to complain about handicap issues and to provide training on handicap discrimination for its employees. She also ordered Respondent to pay Mr. Sten-Clanton \$35,000.00 in damages for emotional distress and pay Mrs. Sten-Clanton \$25,000.00 in damages for the emotional distress.

Susan Rottenberg v. the Massachusetts State Police 29 MDLR 77 (2007)

Complainant was a long time employee of the State Police who had attained the rank of Sergeant and was transferred to Respondent's barracks at Logan Airport in the months following the September 11th terrorist attacks. Complainant was the sole female Sergeant assigned to work at Logan. Complainant filed a complaint against Respondent after learning that the male sergeants had, years earlier, created an unofficial break room and locker room. Complainant was effectively denied access to the room because the male sergeants sometimes changed their clothes there. After Complainant complained, Respondent reconfigured the room. However, Complainant still had to pass by the men's lockers to get to the break area. After two years, Respondent again reconfigured the room so that Complainant had a private changing area and

did not have to pass the men's lockers in order to reach the break area. The hearing officer found that during the two years that the locker/ break area effectively precluded Complainant from enjoying the same amenities as the men, that she was subjected to unlawful gender discrimination in the terms and conditions of her employment and that she was made to feel like a second-class citizen. The Hearing Officer awarded Complainant \$20,000.00 in damages for emotional distress.

Troy v. Lynn School Department 29 MDLR 67 (2007)

Complainant, a Lynn School Department administrator who was a devout Roman Catholic, claimed that he was subjected to religious discrimination when the Lynn School Department denied him two days paid leave for Holy Thursday and Ascension Thursday but granted Jewish, Greek Orthodox, and Russian Orthodox administrators paid leave for religious observance over and beyond paid religious holidays granted to all employees. The Hearing Officer concluded that the stipulated evidence constituted religiously-based disparate treatment discrimination and awarded Complainant \$4,857.00 as reimbursement for unpaid religious leave over a four-year period. Complainant waived emotional distress damages.

Flanagan v. Lawrence School Department 29 MDLR 107 (2007)

Complainant, a fifty-five year old teacher at Lawrence High School, applied for but was denied several guidance counselor positions. The successful applicants were substantially younger and uncertified as guidance counselors, but they spoke Spanish, as did most of the student body which was 87% Hispanic. Complainant was not bilingual, but had uniformly positive performance evaluations, was certified as a guidance counselor, had worked for thirteen years as a job placement counselor at the school, and had an unblemished personnel record spanning a career of thirty-one years. The Hearing Officer determined that the Principal's acknowledged desire for counselors who were "energetic" and "flexible" constituted a veiled reference to youth and, as such, was direct evidence of age bias. The Hearing Officer also determined that the Principal retaliated against Complainant because she filed an MCAD complaint and a labor grievance alleging age discrimination after she was denied the first guidance counselor position. As relief, Complainant was awarded \$111,833.33 in back and front pay plus interest and \$40,000.00 in emotional distress damages. The Lawrence School Department was ordered to participate in age discrimination training.

Thaifa v. White Hen Pantry 29 MDLR 31 (2007)

Complainant, a pregnant employee at the White Hen Pantry who was fired after she announced her pregnancy, claimed that she lost her job as a result of sex discrimination. According to her credible testimony, she had an excellent relationship with the store's owner prior to becoming pregnant, but after she told him she was pregnant, the owner gave her more work, was demanding, and became unfriendly. Complainant's employment ended after the owner unfairly criticized Complainant for mishandling cheese, told her that she didn't deserve

her pay, and shouldn't come back. The owner's credibility suffered from the fact that he gave conflicting testimony about the quality of Complainant's work and why she stopped working at his store. His position statement was inconsistent with his testimony at trial. Although evidence that the owner refused to consider applicants for positions when they came into the store with small children cannot be deemed direct evidence of sex discrimination against Complainant, it supports a conclusion of sex discrimination through the inferential method. The Hearing Officer concluded that Complainant should prevail on her sex discrimination claim and awarded Complainant \$9,471.00 in back pay and \$20,000.00 in emotional distress damages.

Delaney v. One Stop Business Center 29 MDLR 71 (2007)

Complainant brought a claim against his former employer for unlawful termination on account of his age. Complainant was an office machine salesman with many years of sales experience who was terminated from One Stop at age 64 after he failed to meet his sales quotas for a couple of months. Respondent asserted that Delaney was terminated for poor performance and for refusing to adapt to new technology and the use of a software package. Complainant produced evidence that the sales force of the company was overwhelmingly made of up young people significantly under the age of 40, that there were ageist comments made to him, and that younger sales reps were not terminated under similar circumstances when they failed to meet their sales quotas. The Hearing Officer found that Complainant was the victim of age discrimination and to pay Complainant \$20,600 for lost wages and \$25,000 for emotional distress.

Sims v. Starmet Corporation 29 MDLR 185 (2007)

Complainant filed a claim of age discrimination against her former employer when her employment was terminated ostensibly as part of a reduction in force. Complainant was a long term custodian for Respondent and was 60 years old when her employment was terminated. Respondent, a defense contractor, claimed that due to a significant decline in business, downsizing was required and that custodial services were determined to be one area where cuts could be made. Respondent further asserted that Complainant had neglected her duties for some time while running a coffee shop for employees on the premises while charging the company unnecessary overtime. The Hearing Officer found that the articulated reasons for Complainant's termination were a pretext for age discrimination, since Complainant's position was not eliminated and her position was subsequently filled by a succession of younger and some times higher paid males. The Hearing Officer also discredited the claim that poor performance was the reason for Complainant's layoff. Complainant was awarded \$70,654 for lost wages and \$25,000 for emotional distress.



2007 MCAD Annual Report: SPRINGFIELD OFFICE

Several changes to report from the MCAD office in Springfield in 2007...

Resources were dramatically redeployed in Springfield in 2007. Instead of having all cases subject to investigative conferences conducted by commission counsel, the investigators are now largely responsible for this task. Additionally, the investigative conference is employed selectively in those cases where the investigator believes it will provide meaningful information.

The investigative structure in Springfield was changed to more closely resemble the Boston structure. The investigative unit is overseen by a supervisor of investigations and an agency attorney provides legal analysis on each case and reviews each disposition before it is submitted for approval. All investigations are now controlled by the investigators who oversee the implementation of pre-determination discovery orders and associated discovery.

Also changed to conform with the Boston practice is the transition to a paperless office. In 2007, Springfield's scanning equipment and all of its computers were upgraded. All documents associated with a case are now scanned into the Commission's case management system (CMS) for online availability. By using CMS, case reviewers need never see the paper file, as all of the materials are available on their desktop computers.

The Springfield office has also greatly expanded its use of the Commission's video teleconferencing system. This system has allowed Springfield staff to participate in in-house training conducted in Boston, allowed parties to participate in conferences where one part (or sometimes the Commission's participant) is in Boston, and allowed the Commissioners to have more frequent face-to-face meetings, without being in the same building. This has allowed the commission to better share its resources—for example, the neutrals employed in Boston have effectively resolved Springfield cases without the need to drive to Springfield.

Approximately 10 public hearings were conducted in 2007 by Commission Hearing Officers and Commissioners. Although this represents a lower percentage of the post-probable cause docket than is advanced for public hearing in Boston, it signifies the end of a hiatus for public hearings in Springfield, dating back a few years.

All of the above has contributed to the Springfield office being more productive over the last year. The number of cases filed and processed in the Springfield office in 2007 rose to nearly 700. Compared to the 600 cases processed in 2006, 2007 saw a significant increase. The staff in Springfield remains devoted and committed to the agency's mission to prevent and eradicate discrimination.



2007 MCAD ANNUAL REPORT Training

During 2007, the MCAD training unit and other MCAD staff conducted 119 external employment and housing discrimination prevention training sessions, by far the most we have ever provided in one year. An additional part-time trainer was added early in the year to help satisfy the demand.

In addition to providing interactive training, the Commission delivered four presentations to attorneys this year, primarily through Massachusetts Continuing Legal Education.

In June 2007, the MCAD launched our new outreach program, “Spreading Education to End Discrimination” or “S.E.E.D.” Four summer student interns and three fall student interns participated this year. The interns attended intensive training in discrimination law, the MCAD case process, and outreach and presentation skills. The interns then established contacts at organizations that serve populations likely to experience discrimination, and scheduled and conducted free presentations on discrimination in employment, housing and public accommodations. The interns were also prepared to conduct initial intake interviews as needed following presentations. By the end of 2007, the S.E.E.D. program had completed 108 presentations reaching 1,048 individuals in a variety of settings, including English as a Second Language classes, transitional shelters, and disability organizations.

Since 1999, the Commission has held an annual employment Discrimination Prevention Train-the-Trainer course. The MCAD was the sole sponsor of the course for the first time in 2007, expanding the reach of the course to include many more human resources professionals and generating more revenue to support our training and outreach efforts.

The training unit also designed, facilitated and managed numerous internal training sessions for the Commission’s staff this year, providing new employees and interns with three-day initial training, and conducting continuing education for staff at all levels. The 2007 internal training programs included sessions on Intake and the initial complaint process, successful case and time management, and case closure procedures.

In the late 1990’s, the MCAD began incorporating training requirements and other affirmative relief into hearing decisions and settlements. To date, the training unit has monitored compliance in 242 cases in which the hearing decision or settlement included a training requirement. Of those, 189 cases have completed compliance, generally because the training was completed or, occasionally, because the employer no longer exists.

In November 2007, the MCAD finalized a revised regulation and program instruction authorizing an increase in training fees to closer approximate the Commission's delivery costs. The increased revenues will enable the training unit to continue to expand our services, particularly the S.E.E.D. program.

MCAD's played a key role in supporting the City-Wide Dialogues on Boston's Ethnic and Racial Diversity through its providing training and coaching Dialogue facilitators.

MCAD BUDGET
For Fiscal Year 2007
July 1, 2006 – June 30, 2007

Budgetary Direct Appropriation:

State Appropriation	
1150-5100	\$2,313,830

Retained Revenues:

HUD and EEOC Revenues for Closing Cases Private Sector and State Agency Trainings Fees from Public Record Requests & Copying	
1150-5104	\$1,901,000*

Training: Train the Trainer	
1150-5116	\$ 14,089

Total	\$4,228,919
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Revenues collected:

HUD	\$ 707,740
EEOC	\$1,096,450
Training: Train the Trainer	\$ 74,464
State Agency Trainings	\$ 15,050
Private Sector Trainings	\$ 33,805
Fees from Public Record Requests & Copying	\$ 12,020

Total	\$1,939,529
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MCAD Budget:

State Appropriation	\$2,313,830
Retained Revenues	\$1,939,529

Total	\$4,253,359
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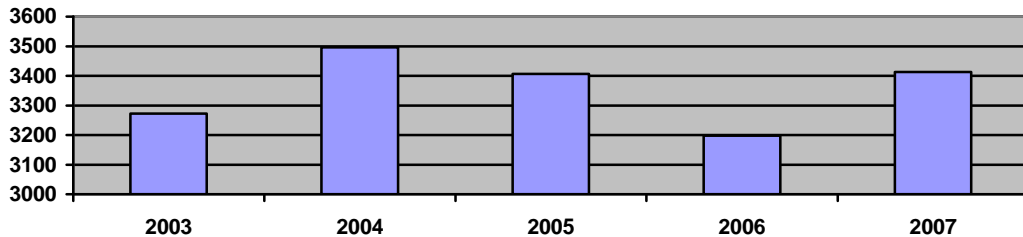
***This retained revenue account allows the MCAD to retain and spend revenues from HUD, EEOC, private sector and state agency trainings, as well as fees from public record requests and copying. The account is capped at \$1,901,000; allowing the MCAD to retain and spend only up to said amount. Any revenues received in excess of that amount are deposited in the general fund. The MCAD cannot spend more than the monies it receives.**

2007 Facts and Figures

Five Year Trend – Cases Filed

Case Filed in 2007: 3,413

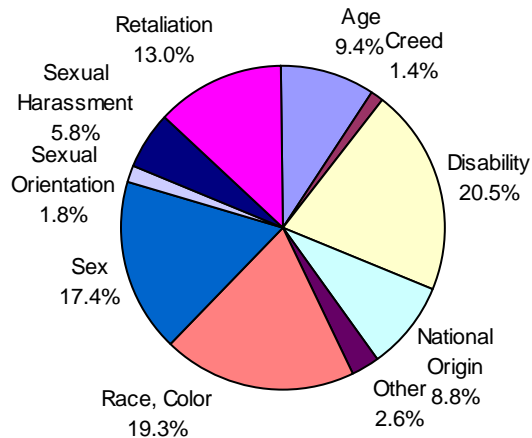
Cases Filed



Complaints by Protected Class

Top six categories of complaints filed by protected class were:

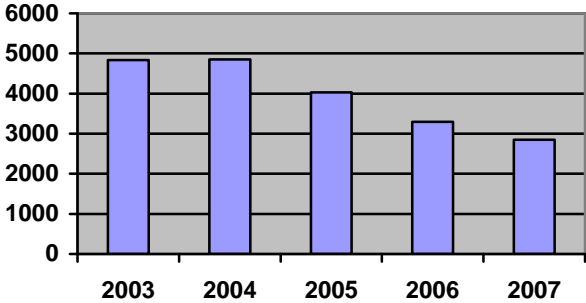
Disability	20.5%	(1,283)
Sex	17.4%	(1,087)
Race	19.3%	(1,203)
Retaliation	13%	(809)
Age	9.4%	(585)
National Origin	8.8%	(556)



Cases Resolved

Cases Resolved in 2007: 2,845

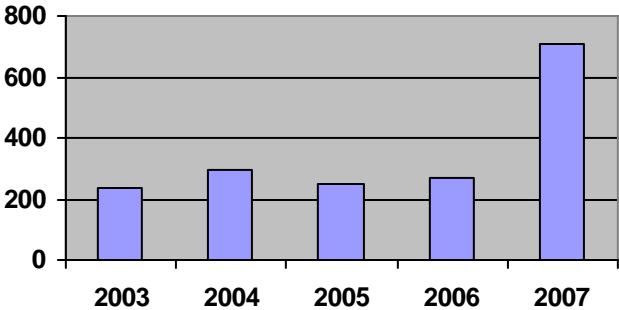
Cases Resolved



Probable Cause Findings

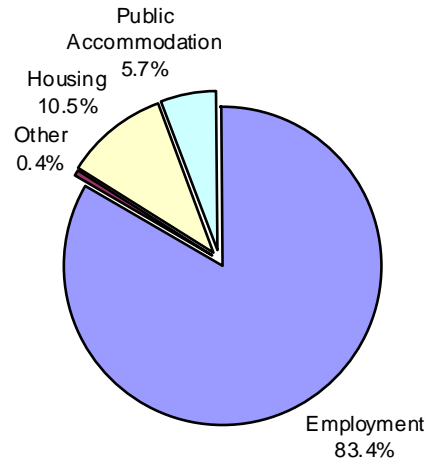
PC Findings in 2007: 710

Probable Cause Found



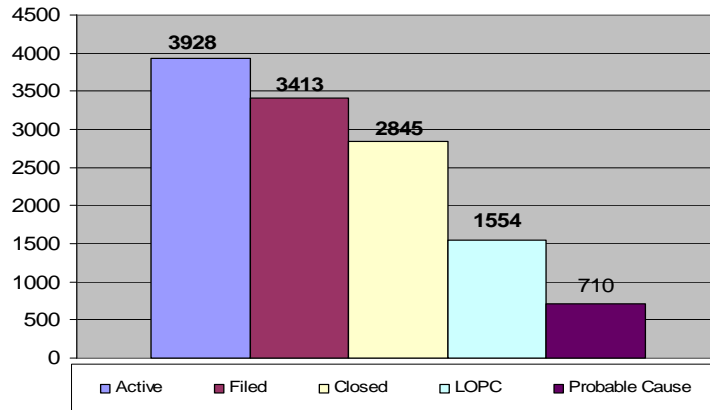
Complaints by Type

Employment	83% (2,848)
Housing	10% (357)
Public Accommodation	6 % (194)
Other:	1 % (14)



Case Detail

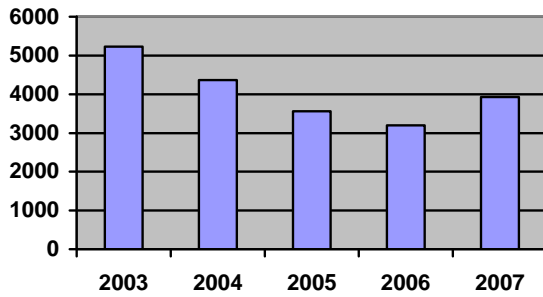
Active 3,928
 Filed 3,413
 Closed 2,845
 LOPC 1,554
 PC 710



Cases Inventory

Case Inventory: 3,928

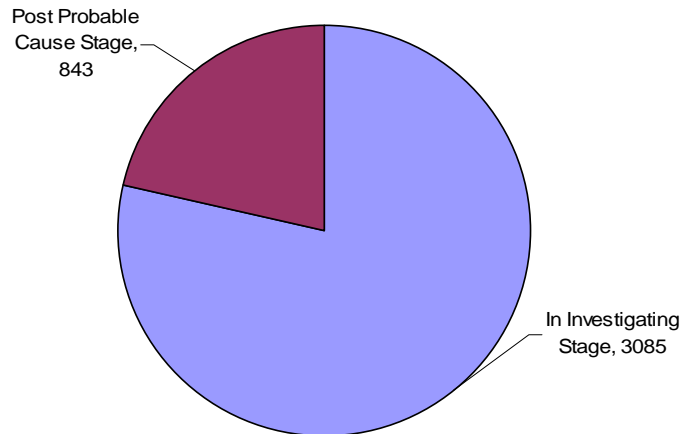
Inventory of Cases



Inventory by Stage

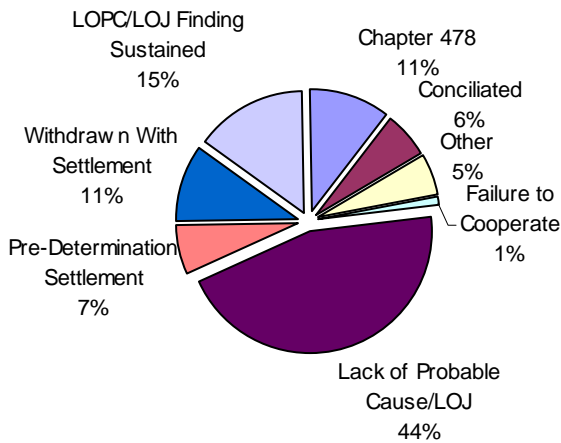
Post Probable Cause: 843

Under investigation: 3,085



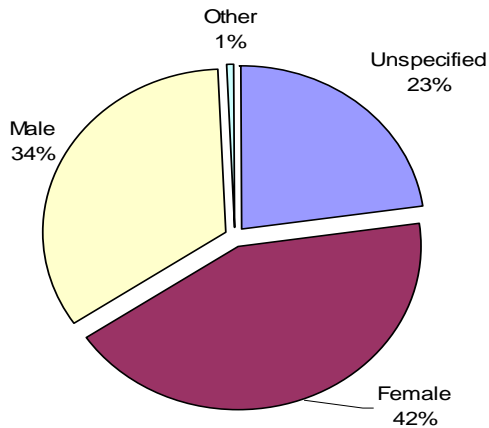
Cases Closed Before Public Hearing

LOPC/LOJ Sustained:	15%	(424)
Chapter 478	11%	(311)
Conciliated	6%	(170)
Withdrawn w/ Settlement	11%	(301)
Pre-Determination Settlement	7%	(193)
Lack of Probable Cause/LOJ	44%	(1,262)
Failure to Cooperate:	1%	(30)
Other:	5%	(154)



Complaints by Gender

Female	43%	(1,452)
Male	34%	(1,160)
Other	1%	(19)
Unspecified	23%	(782)



2007 STAFF
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Commissioner Martin S. Ebel
Commissioner Sunila Thomas-George

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Lynn Goldsmith
Dorca Gomez
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Elizabeth Hickey
Marzella Hightower
Judith Kaplan
Theresa Kelly
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Shirley Lee
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