



Massachusetts Commission Against Discrimination



Annual Report 2013



MCAD Annual Report 2013

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Jamie R. Williamson

Letter from the Commissioners



Sunila Thomas-George

Dear Governor Patrick, Members of the Legislature, and People of the Commonwealth:

Pursuant to our statutory mandate, it is with great enthusiasm that we present the 2013 Annual Report for the Massachusetts Commission Against Discrimination (MCAD).

Founded in 1946 as a Fair Employment Practice Commission, the Massachusetts Commission Against Discrimination is the second oldest state civil rights enforcement agency in the United States. The Commission's statutory charge is to eradicate discrimination in employment, housing, places of public accommodation, credit, and education. The Commission is invested with the power to investigate, prosecute, adjudicate, and resolve cases of discrimination. Through its robust program of outreach and training, the Commission promotes tolerance, equality, and inclusion. Since its inception, the MCAD has been a national leader in civil rights enforcement. The people of the Commonwealth should be proud that the civil rights laws enforced by the MCAD remain among the most far-reaching and progressive in the country.

This 2013 Annual Report is a reminder of the daily diligence that MCAD employees bring to each case, and the agency's dedication to the thousands of Massachusetts citizens who need and count on our efforts each year. We work under challenging circumstances, and our undaunted staff continues to do more with less.

We would like to acknowledge and thank the committed staff of the MCAD without whom none of this would be possible. Much of the work of civil rights enforcement is performed by a group of unsung heroes: employees, volunteers, and interns who toil daily for justice with little or no recognition. We would like to acknowledge their professionalism, devotion, and unwavering work ethic.

We would also like to thank former Chairman Julian T. Tynes, who spent much of his time and great efforts in community outreach and education. Many of the accomplishments the Commission had in 2013 were related to his leadership.

In addition, we would like to recognize the many municipal and state agencies, groups, organizations, and individuals across the Commonwealth who tirelessly support our mission. We are deeply grateful for our partnerships with the members of the Massachusetts Bar, the business community, the MCAD Advisory Board, and many others who actively promote the Commission's goals.

Finally, a special thanks to Governor Deval Patrick and the members of the Legislature and the Executive Branch who have steadfastly championed and sustained the Commission's imperative role in eradicating discrimination throughout the Commonwealth.

Jamie R. Williamson
Commissioner

Sunila Thomas-George
Commissioner

Glossary of Terms

Alternative Dispute Resolution: ADR is a process in which a third party neutral assists the disputants in reaching an amicable resolution through the use of various techniques. ADR describes a variety of approaches to resolve conflict which avoid the cost, delay, and unpredictability of the traditional adjudicatory process.

Administrative Resolution: A complaint that is resolved at the MCAD other than through completion of the investigative process or final adjudication. Such cases may be resolved through the actions of the parties or action by the Commission.

Chapter 30A Appeals: State Administrative Procedures Act governing judicial review of a final agency decision of the Full Commission.

Chapter 478: Case closure where the complaint has been removed to the Court and withdrawn from the MCAD.

Conciliation: Mandatory post-probable cause resolution process in which the Commission attempts “to achieve a just resolution of the complaint and to obtain assurances that the Respondent will satisfactorily remedy any violations of the rights of the aggrieved person, and take such action as will assure the elimination of discriminatory practices, or the prevention of their occurrence, in the future.”

Disposition: Investigating Commissioner’s determination with respect to the allegations in the complaint made upon completion of the investigation.

EEOC: U.S. Equal Employment Opportunity Commission. The agency of the United States government that enforces the federal employment discrimination laws.

HUD: U.S. Department of Housing and Urban Development. Within the Department of Housing and Urban Development, the Office of Fair Housing and Equal Opportunity (FHEO) administers and enforces federal laws and establishes policies to ensure equal access to housing.

Lack of Jurisdiction: A determination that the MCAD lacks the statutory authority to investigate, adjudicate, or otherwise address the allegations listed.

Lack of Probable Cause: A determination of the Investigating Commissioner that there is insufficient evidence “upon which a fact-finder could form a reasonable belief that it is more probable than not that the Respondent committed an unlawful practice.”

Mediation: Voluntary pre-disposition process in which the parties in the dispute attempt to resolve the outstanding issues and arrive at a settlement agreement with the assistance of MCAD personnel.

Pre-Determination Settlement: Settlement arrived at by the parties prior to the issuance of a disposition.

Probable Cause: A determination of the Investigating Commissioners that there is sufficient evidence upon which a fact-finder could form a reasonable belief that it is more probable than not that the Respondent committed an unlawful practice.

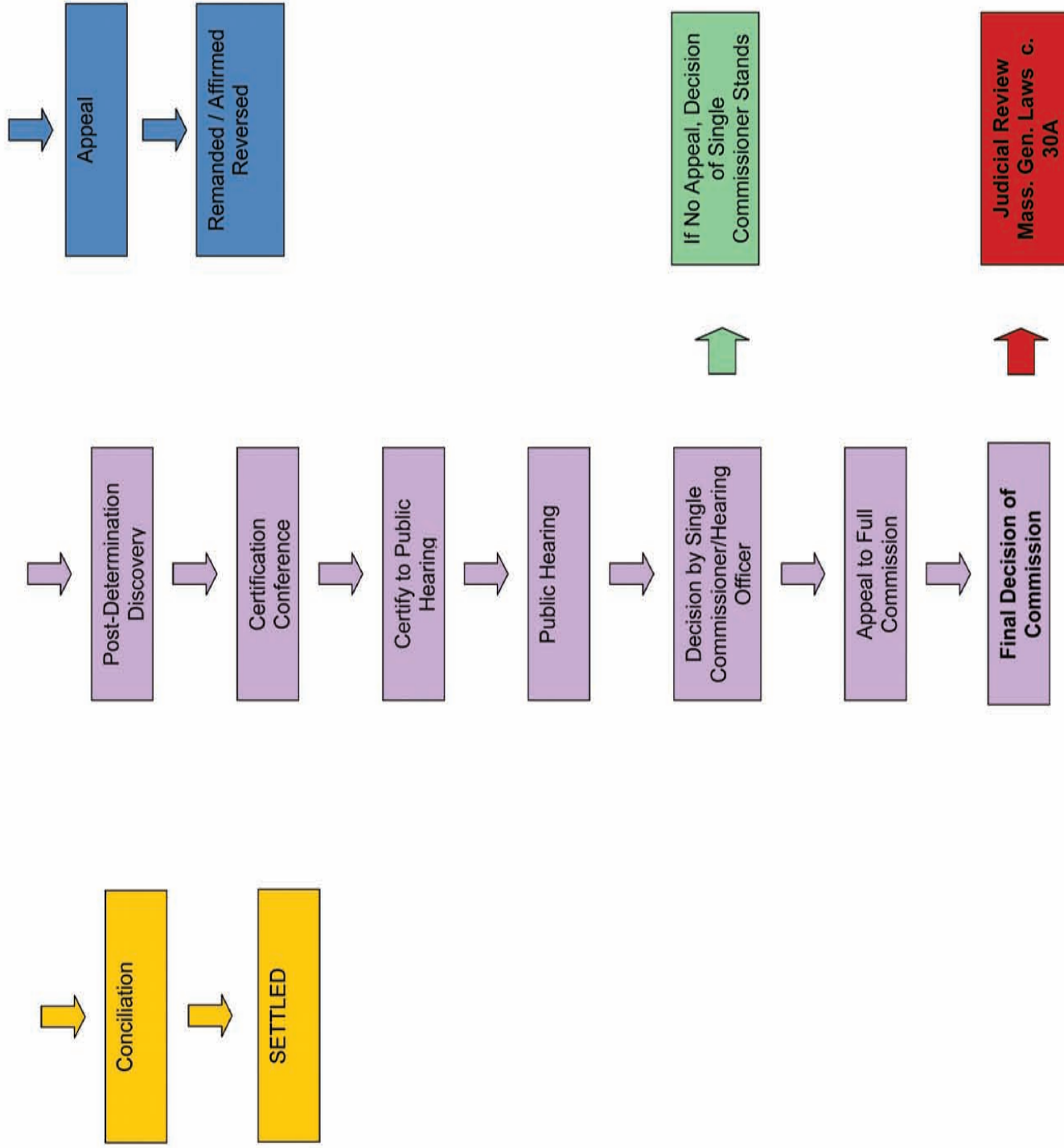
Regulations: Includes the whole or any part of every rule, regulation, standard or other requirement of general application and future effect, including the amendment or repeal thereof, adopted by an agency to implement or interpret the law enforced or administered by it. (M.G.L. c, 30A §, 1).

Substantive Disposition: Disposition of a complaint upon conclusion of the investigation resulting in a finding of either “Probable Cause” or a “Lack of Probable Cause.”


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graph TD
    A[Complaint Filed] --> B[Review & Authorization]
    B --> C[Authorized]
    C --> D[Complaint Served on Complainant]
    D --> E[Complaint Served on Respondent(s)]
    E --> F[Enforcement Unit Investigation Investigative Conference]
    F --> G[Cause Determination Issued]
    G --> H[Probable Cause]
    G --> I[Lack of Probable Cause / Lack of Jurisdiction]
    I --> J[Not Authorized Lack of Jurisdiction]
    J --> K[Appeal]
    K --> L[Dismissed]
    I --> M[Answer to Complaint]
    M --> N[Complainant's Rebuttal Not required]
    N --> O[Lack of Probable Cause / Lack of Jurisdiction]
  
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The flowchart illustrates the process of handling a complaint. It begins with 'Complaint Filed', leading to 'Review & Authorization', then 'Authorized', 'Complaint Served on Complainant', 'Complaint Served on Respondent(s)', 'Enforcement Unit Investigation Investigative Conference', and 'Cause Determination Issued'. From 'Cause Determination Issued', the process branches into 'Probable Cause' and 'Lack of Probable Cause / Lack of Jurisdiction'. The 'Lack of Probable Cause / Lack of Jurisdiction' path further branches into 'Not Authorized (Lack of Jurisdiction)' and 'Answer to Complaint'. 'Not Authorized (Lack of Jurisdiction)' leads to 'Appeal' and then 'Dismissed'. 'Answer to Complaint' leads to 'Complainant's Rebuttal (Not required)', which then leads back to 'Lack of Probable Cause / Lack of Jurisdiction'.



ENFORCEMENT DIVISION

The MCAD Enforcement Division had a productive year investigating, processing and closing cases despite significant personnel changes. The Enforcement division saw the retirements of long time MCAD employee Victor Posada, Housing Unit Senior Supervisor, and Kimberly Boyd, an Enforcement Advisor attorney. We also said goodbye to two experienced investigators in our Boston office; Joshua Papapietro departed to pursue his legal career, and Nicole Newman, applied for and was selected as our newest Enforcement Advisor attorney in the Worcester office. We welcomed four new investigators. Ms. Janet Cha and Ms. Alexandria DeAranzeta joined the Boston office, Ms. Korey Thiffault and Ms. Sheree McClain joined the Worcester office. Mr. Eric Bove became the Housing Unit Acting Senior Supervisor. At the end of 2013 the Enforcement Division, located in four geographic offices - Boston, New Bedford, Springfield and Worcester- was comprised of the Chief of Enforcement, 18 investigators, 3 supervising unit investigators, 4 senior supervisors, 5 attorney advisors and 6 administrative assistants.

Cases Processed in 2013

In 2013, the Enforcement Division received 3,224 new complaint filings. At year's end the division had 4,959 active investigations. The division resolved, investigated, adjudicated or closed 1,732 cases, with 411 of those resulting in a Probable Cause finding.

With an average caseload of over 300 cases, the MCAD's employment investigators have one of the highest active caseloads compared to other state civil rights agencies. By comparison, the caseload of other selected state civil rights agencies (New York and Connecticut) is closer to a maximum of 75 cases per investigator. Each MCAD employment investigator is assigned approximately 180 new cases per year, or 15 per month. Notwithstanding these formidable numbers and other duties, MCAD employment investigators processed, investigated, completed, and closed an average of 9 cases each per month for a division monthly average of 144 cases.

Noteworthy Accomplishments

In 2013 the average case completion time remained consistent for the third straight year at about 18 months, down from 22 months in 2010.

The Worcester office had a significant increase in the number of individuals seeking advice and filing complaints. In addition to two full time investigators in the Worcester office, the office is now staffed with an Enforcement Advisor, an attorney who provides support to the investigators and direct outreach and training assistance to individuals, community organizations, and the legal community in central Massachusetts. The New Bedford office is staffed with two Enforcement division employees, a full time investigator and an experienced fair housing investigator one day per week. Southeastern Massachusetts residents may, on a walk-in basis, make in-person housing inquiries, receive a consultation, or file a housing discrimination complaint in the New Bedford office. All Commission offices have made significant efforts to work collaboratively with other state and federal agencies.

Enforcement division investigators, supervisors, and legal advisors, working in conjunction with the MCAD Director of Training, implemented a robust volunteer/intern program with students from undergraduate, graduate, and law schools across the Commonwealth. These students perform administrative, intake, and investigative duties. This successful program resulted in the completion of 293 cases by interns and in return provided students with valuable education and experience in enforcing the Commonwealth's discrimination laws. A testament to the success of the MCAD's robust internship program is the hiring of a former Enforcement intern in 2013 as an investigator.

Enforcement Outreach and External Training

An important aspect of the MCAD mission is to eliminate and prevent discriminatory policies or practices in employment, housing and public accommodation through outreach and training. Enforcement division housing and employment investigators provided education in all areas of discrimination by participating in thirty educational outreach and training sessions to public and private organizations, colleges and universities, employers, business organizations, for law firms, and civic associations throughout the Commonwealth.

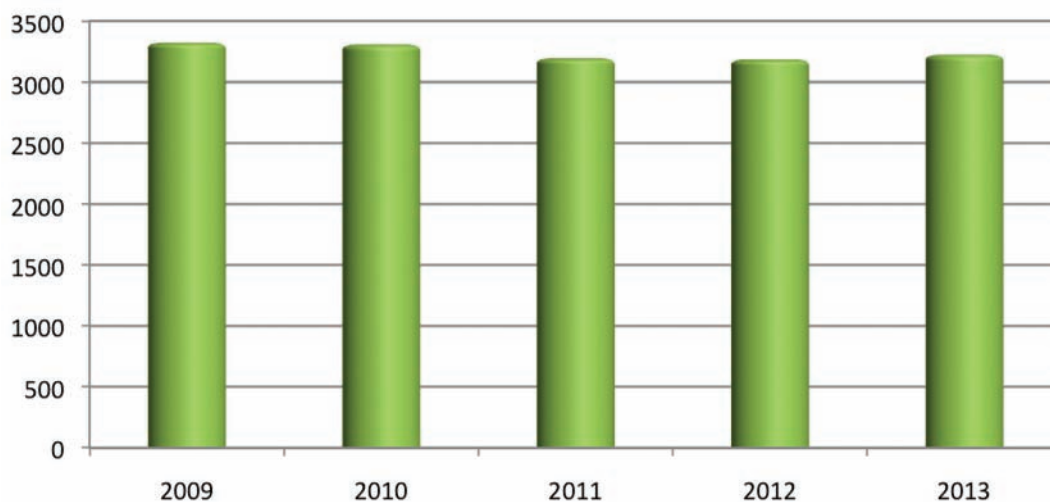
Enforcement Internal Training

Throughout the year enforcement staff received in-house and external training on topics such as new developments in Massachusetts law, emotional intelligence in the workplace, and witness interview techniques. Staff attended civil rights symposiums, continuing legal education programs, and training seminars presented by law schools, the Boston Bar Association, the U.S. Department of Labor, the U.S. Department of Justice, the U.S. Department of Housing and Urban Development, and the U.S. Equal Employment Opportunity Commission. The Springfield office senior supervisor completed training to become a certified mediator. The Boston office senior supervisor and two unit supervisors graduated from the Commonwealth's supervisory management training course. Three investigators attended investigatory training at the National Fair Housing Training Academy, Washington, D.C., sponsored by the U.S. Department of Housing and Urban Development.

Goals for 2014

For 2014 the Enforcement Division will be exploring methods to increase case resolution through more efficient processes, including early intervention mediation.

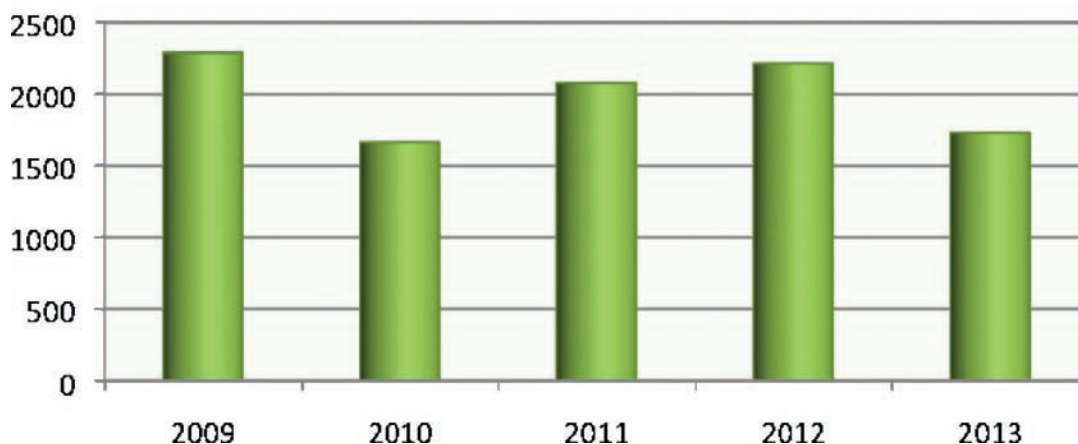
All Cases Filed



This graph represents all employment, housing, education, and public accommodation complaints filed in 2013 and the preceding four years. The MCAD received 3,224 new complaints of discrimination in 2013, consistent with the number of new complaints filed in 2012 and 2011.

| | |
|-----------------|---------------------|
| All Cases Filed | 2013 – 3,224 |
| | 2012 – 3,186 |
| | 2011 – 3,195 |
| | 2010 – 3,308 |
| | 2009 – 3,323 |

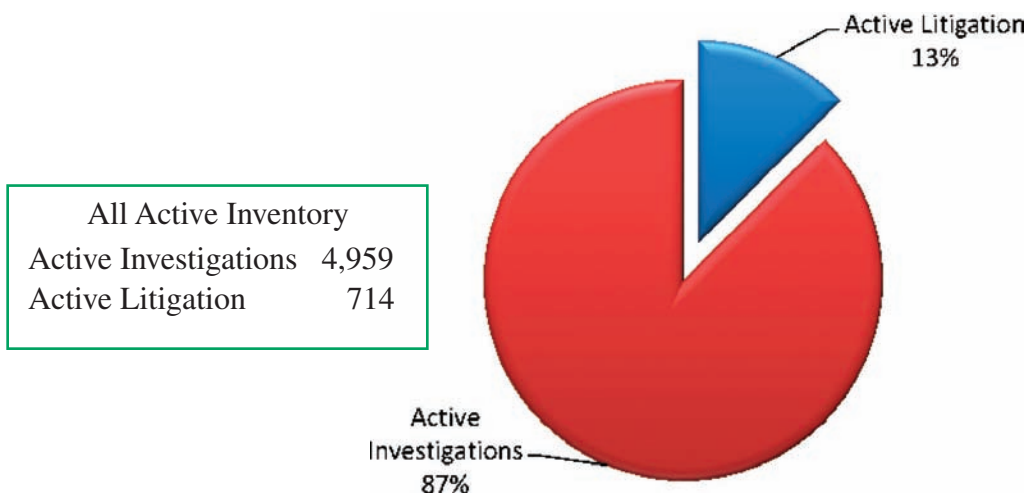
All Substantive Dispositions Completed



This graph represents the total number of completed substantive investigations in 2013 in comparison to the last four years.

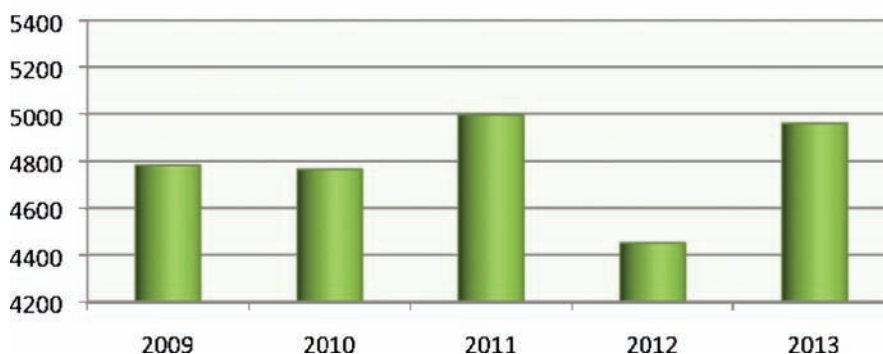
| | |
|------------------------------|---------------------|
| All Substantive Dispositions | 2013 – 1,732 |
| | 2012 – 2,215 |
| | 2011 – 2,078 |
| | 2010 – 1,664 |
| | 2009 – 2,289 |

All Active Inventory



This chart represents the total number of active cases at the Commission. Those that are being actively investigated (Active Investigations) in the Enforcement Division and those in which a probable cause finding has been issued and the case is being actively litigated. (Active Litigation at the Commission as of December 31, 2013.) Case inventory in the Enforcement division increased to 4,959 cases in 2013, an increase by 509 cases over 2012 and a slight decrease from the 2011 end of year number (4,996).

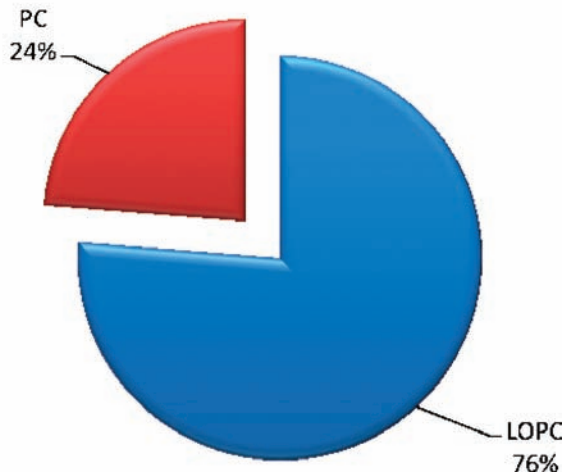
Inventory of All Enforcement Cases



This graph represents the total number of active cases being investigated in the Enforcement Division as of December 31, 2013 and compares the 2013 end of year inventory for the preceding four years. While the MCAD's commitment to timely resolution of cases remained consistent with the past two years at 18 months, the case inventory increased significantly by 509 cases.

| | | |
|------------------------------------|-------------|--------------|
| Inventory of All Enforcement Cases | 2013 | 4,959 |
| | 2012 | 4,450 |
| | 2011 | 4,996 |
| | 2010 | 4,766 |
| | 2009 | 4,783 |

All Substantive Dispositions



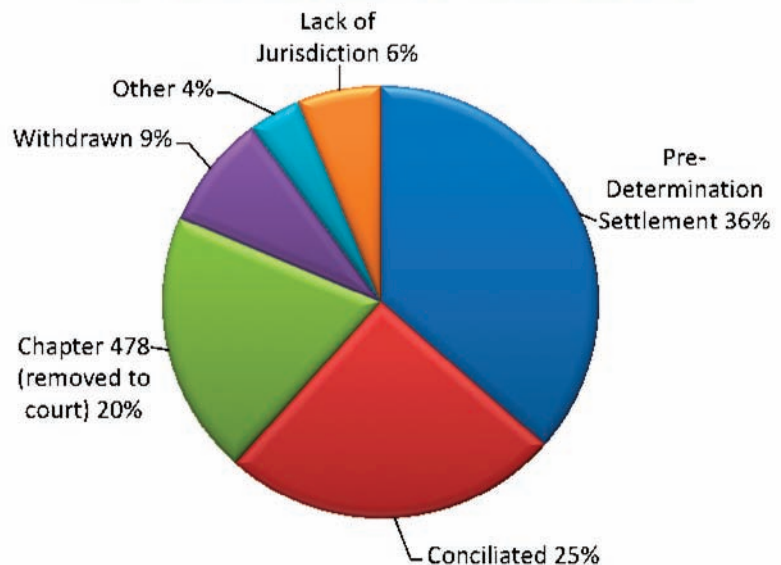
| All Substantive Dispositions | |
|------------------------------|--------------|
| Lack of Probable Cause | 1,321 |
| Probable Cause Finding | 411 |
| Total | 1,732 |

The data shows the number of cases in which substantive dispositions (Probable Cause and Lack of Probable Cause findings) were issued in 2013 by the Enforcement Division. This pie chart represents the total number of substantive dispositions and the percentage of Lack of Probable Cause findings (76% of substantive resolutions) and Probable Cause findings (24% of substantive resolutions). These percentages have remained consistent for the past three years. The percentage of Probable Cause findings in 2011 and 2012 were 25% and 26% respectively and the percentage of Lack of Probable Cause findings in 2011 and 2012 were 75% and 76% respectively.

All Administrative Resolutions

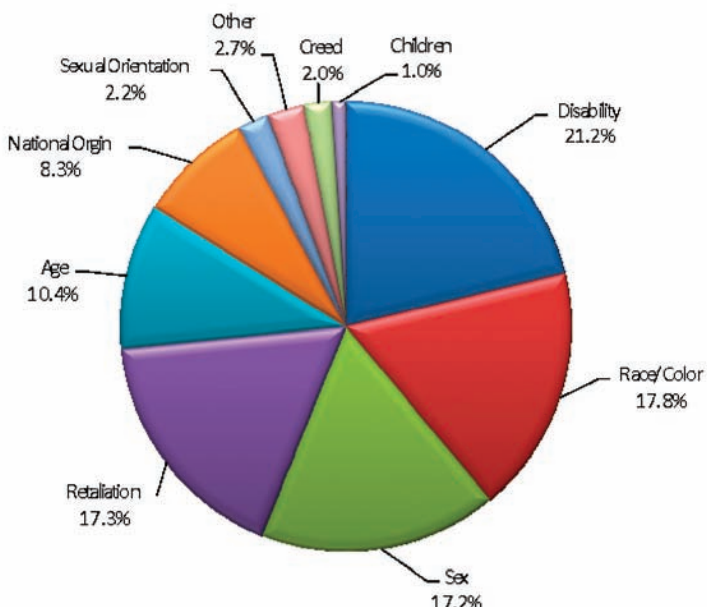
| All Administrative Resolutions | |
|--------------------------------|-------------|
| Pre-Determination Settlement | 531 |
| Conciliated | 367 |
| Chapter 478 (removed to court) | 287 |
| Withdrawn | 125 |
| Lack of Jurisdiction | 90 |
| Other* | 57 |
| Total | 1457 |

*Compliance with Order, Dismissed, Failure to Cooperate, Investigation not Authorized, Judicial Review, No Violation, Unable to Locate Complainant, Violation/Enforcement.



This data shows the total number of cases that were administratively resolved in 2013. The pie chart shows the percentage of cases closed in each category. The total number of administrative resolutions was (1,457). The majority (61%) were resolved by settlement or conciliation, a reflection of the MCAD's strong commitment to mediation efforts.

Complaints Filed by Protected Category



All Complaints Filed by Protected Category

| | |
|--------------------|-------|
| Disability | 1,218 |
| Race/Color | 1,021 |
| Retaliation | 996 |
| Sex | 986 |
| Age | 99 |
| National Origin | 475 |
| Other* | 153 |
| Sexual Orientation | 128 |
| Creed | 113 |
| Children | 59 |

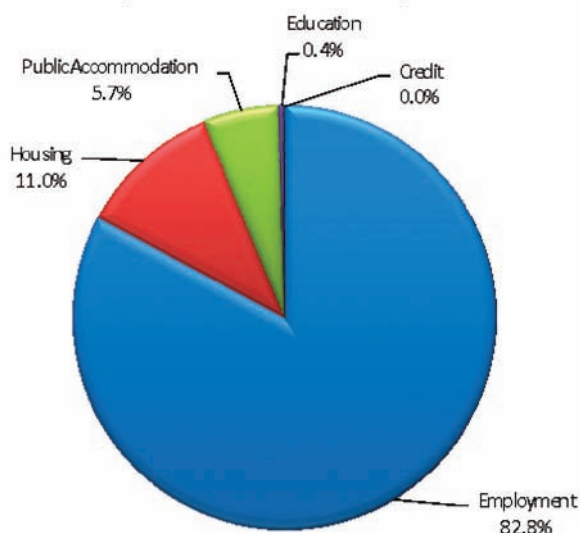
**Arrest Record, Genetic Information, Lead Paint, Marital Status, Military Status, Public Assistance*

This data shows the total number of cases filed in 2013 and the number of complaints in each major protected category. Many of the cases filed assert more than one protected category. The pie chart represents the number of complaints by protected category and demonstrates the percentage of complaints in each category as compared to the total number of new complaints filed in 2013. In 2013, Disability and Race/Color remained the most frequently cited categories of discrimination. While the protected category of Sex was the third most frequently cited discrimination in 2012 (951 cases) and had a slight uptick in 2013 (to 986), Retaliation claims saw an increase by 94 over 2012 (902 cases) and are now the third most frequently cited category of discrimination.

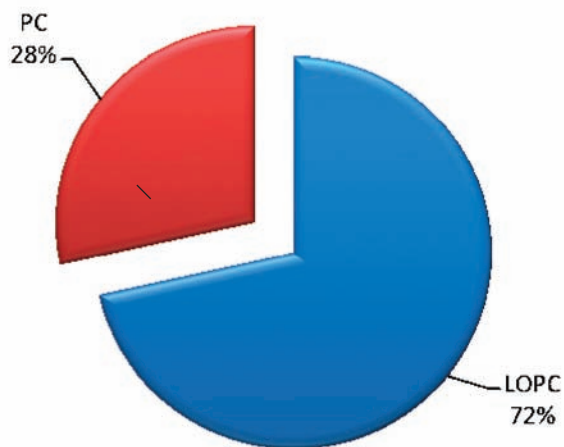
All Complaints Filed by Jurisdiction

All Complaints Filed by Jurisdiction

| | |
|----------------------|--------------|
| Employment | 2,671 |
| Housing | 354 |
| Public Accommodation | 185 |
| Education | 13 |
| Credit | 1 |
| Total | 3,224 |

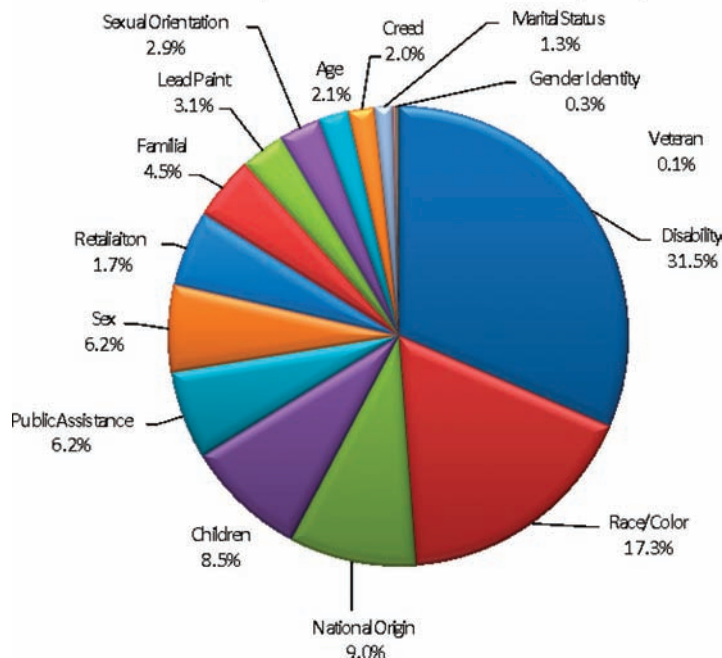


This data shows the total number of complaints filed in 2013 by category of jurisdiction. The pie chart shows the percentage of cases filed in each jurisdictional category as compared to the total number of new complaints filed in 2013. In 2013, the vast majority of complaints filed were based on employment discrimination (82.8%) which equaled 2012 numbers (83%), followed by Housing (11%) an increase of 46 cases over 2012 (10%), and Public Accommodation at 5.7%, a slight decrease from 2012 (6%).



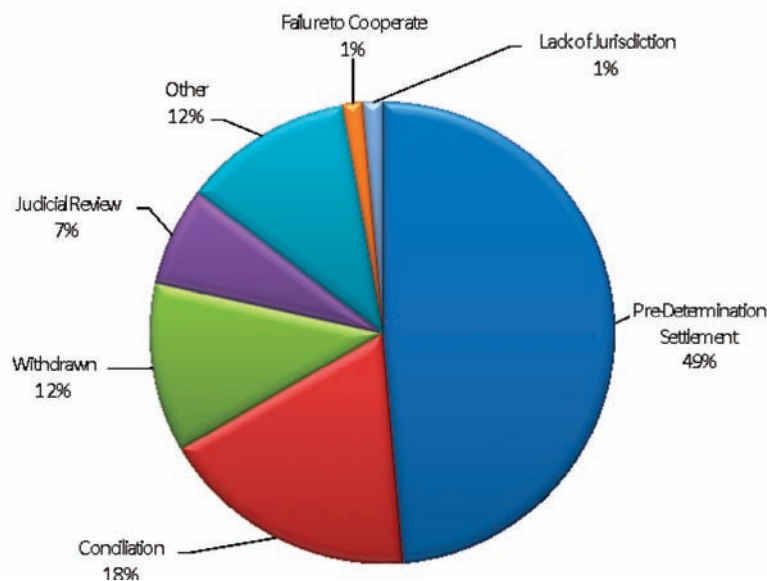
All Housing Substantive Dispositions

| | |
|------------------------|-----|
| Lack of Probable Cause | 166 |
| Probable Cause Finding | 66 |



All Housing Complaints Filed by Protected Category

| | |
|--------------------|-----|
| Disability | 225 |
| Race/Color | 124 |
| National Origin | 64 |
| Children | 61 |
| Public Assistance | 44 |
| Sex | 44 |
| Retaliation | 38 |
| Familial | 32 |
| Lead Paint | 22 |
| Sexual Orientation | 21 |
| Age | 15 |
| Creed | 13 |
| Marital Status | 9 |
| Gender Identity | 2 |
| Veteran | 1 |



All Housing Administrative Resolutions

| | |
|------------------------------|----|
| Pre-Determination Settlement | 70 |
| Conciliation | 26 |
| Withdrawn | 17 |
| Other* | 17 |
| Judicial Review | 10 |
| Failure to Cooperate | 2 |
| Lack of Jurisdiction | 2 |

*Chapter 478 (removed to court), Dismissed, Investigation not Authorized, No Violation, Violation Enforcement

2013 EEOC Substantial Weight Cases

In these cases the original charge of discrimination was filed and investigated with the EEOC. After EEOC filing, a request to dual file with MCAD may be made by the EEOC. Once the EEOC investigation is completed, the MCAD reviews the matter for compliance with state law and to determine whether to grant substantial weight to the EEOC's findings.

| | |
|-------------------------------|-----|
| EEOC Cases Filed: | 260 |
| EEOC Substantive Completions: | 99 |
| EEOC Active Inventory: | 723 |

Breakdown of EEOC Administrative Resolutions:

| | |
|--------------------------------|----|
| Dismissed | 2 |
| Withdrawn with Settlement | 19 |
| Chapter 478 (removed to Court) | 20 |
| Withdrawn | 3 |
| Other | 1 |

Breakdown of EEOC Complaints by Protected Category:

| | |
|--------------------|----|
| Sex | 93 |
| Disability | 92 |
| Retaliation | 84 |
| Race/Color | 77 |
| Age | 68 |
| National Origin | 34 |
| Creed | 7 |
| Sexual Orientation | 4 |
| Arrest Record | 1 |
| Gender Identity | 1 |

LEGAL DIVISION

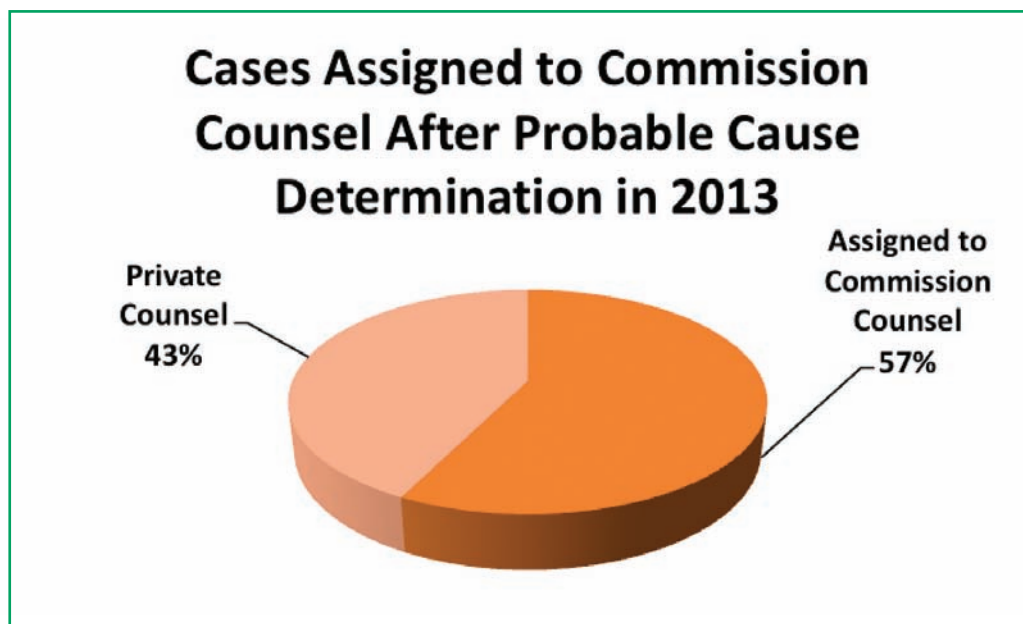
The Legal Division is responsible for enforcing the Commission's anti-discrimination laws through conciliation and litigation of complaints with a focus on ensuring implementation of the Commission's remedial mission to eradicate discrimination. The Legal Division supports the Commission's objectives through administrative proceedings and litigation conducted pursuant to § 5 of M.G.L.c. 151B, advocacy on behalf of the Commission in the superior and appellate courts of Massachusetts and the federal courts. The Division also provides legal and procedural advice to the Commission.

The Legal Division litigates individual complaints in which Probable Cause has been found, prosecutes Commission-initiated complaints, and participates in conciliation proceedings. Additionally, the Legal Division defends all final agency decisions when judicial review is sought in superior court and/or the appellate courts pursuant to G.L. c. 30A, § 14(7). The Legal Division also defends challenges to the Commission's jurisdiction and procedure and files enforcement actions to obtain compliance with the Commission's final orders. The Division works with the Commissioners on public interest Commission-initiated complaints and evaluation of proposed legislation. Members of the Legal Division also participate in outreach and training efforts to assist in the eradication of discrimination. The Division also files friend of court (amicus) briefs on important issues arising under the anti-discrimination laws in cases litigated by private parties in court under General Laws Chapter 151B, § 9. Further, the Legal Division works with the Attorney General's Office to defend the agency and its enforcement powers in administrative and litigation matters.

The Legal Division consists of the General Counsel, Deputy General Counsel, and six Commission Counsel. The Clerk's Office within the Legal Division is staffed by the Clerk of the Commission, Hearings Clerk, Appeals Clerk, Conciliation Clerk, and two Enforcement Clerks. The Springfield office is staffed by an Assistant Clerk and First Assistant Clerk. The Clerk's Office responsibilities include overseeing Commission Hearings and Full Commission appeals, assignment of motions to hearing officers, issuing Commission decisions and responding to public inquiries.

Case Assignments

After a finding of Probable Cause, the Legal Division proceeds in the public interest to eradicate discriminatory practices and obtain victim-specific relief for Complainants without private legal counsel (pro se Complainants). In 2013, the Legal Division was assigned to conciliate and prosecute 237 new cases filed by pro se Complainants. Commission Counsel participated in six Public Hearings on behalf of pro se Complainants. Hearings commenced in three additional cases but the matters were resolved prior to completion of the hearing.



Commission Counsel resolved 141 cases through conciliation and negotiation, resulting in compensation of over \$1,565,000 to Complainants for lost wages, emotional distress, or other compensable injury. Many of these settlements contained affirmative relief in addition to monetary compensation. Affirmative relief included provisions directed at preventing future violations of the anti-discrimination laws (i.e., mandatory training or policy development) and provisions intended to make the Complainant whole, such as reinstatement of Complainant to an employment position or awarding a promotion.

Noteworthy Settlements

Fair Employment Act

- In a gender/pregnancy discrimination complaint, a female employee returning from a pregnancy related medical leave was required to sign a release of claims before being permitted to work. Among other things, the mandated release required that the employee be escorted when climbing or descending stairs in the workplace; and in the event of a fall, to release the employer from any liability. The case settled for \$8,500 and anti-discrimination training for company principals and supervisors. (*Barnstable County*)
- A criminal records inquiry complaint, brought by an individual who applied to a temporary agency for placement, alleged that he was illegally asked to answer questions about criminal history on the initial employment application. As part of the settlement, the temporary agency agreed to pay the Complainant \$2,000 in back pay damages, revise its initial employment application, and provide its managers with general anti-discrimination training with an emphasis on issues relative to criminal history inquiries. (*Bristol County*)
- In a complaint of gender discrimination, a newly-hired employee of a restaurant and catering operation alleged she was subjected to derogatory comments regarding her pregnancy after she informed the owner of the restaurant of her condition and was terminated three months later when her pregnancy became physically obvious. As part of the settlement agreement, Respondent agreed to pay Complainant \$23,000, as well as to participate in MCAD-approved training on anti-discrimination in employment. (*Bristol County*)
- A race and sex discrimination complaint, brought by an African-American female, alleged that she was subjected to a sexually and racially hostile work environment. In settlement, Respondent agreed to pay Complainant \$10,000, and require the alleged perpetrator of the harassment to attend mandatory one-on-one anti-harassment training. (*Essex County*)
- A complaint of retaliation and discrimination based on a migraine related disability was brought by an employee against a publicly funded employer. The employee alleged that the employer denied her request for reasonable accommodation and subjected her to unequal terms and conditions of employment. The matter settled for \$25,000 and the employer agreed to undergo four hours of anti-discrimination training. (*Greenfield County*)
- A complaint of racial discrimination brought by an African American employee against a regional restaurant group settled for \$25,000. The employer also agreed to three years of monitoring of its Massachusetts and Connecticut locations by the Commission, to undergo anti-discrimination training, and to provide and comply with a written workforce diversity plan. (*Hampton County*)

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- A complaint of discrimination based on age and race was brought against a thrift store chain by a former employee alleging unequal enforcement of a store policy allowing employees to take home donated items that the store could not sell. The matter settled for \$32,000 and the employer agreed to attend anti-discrimination training. *(Hampton County)*
 - In a gender discrimination complaint, a female employee of a fast food restaurant alleged that she was subjected to a hostile work environment when she was singled out and strip-searched in connection with a missing property investigation. The matter settled for \$25,000 and sexual harassment training for the primary managers at each of the restaurant's Massachusetts locations. *(Middlesex County)*
 - A disability discrimination complaint, brought by an employee with a significant hearing impairment, diabetes, asthma, and chemical sensitivities, alleged that her employer, a national retailer, failed to accommodate her and unlawfully terminated her. As part of the settlement, the retailer agreed to pay Complainant \$50,000, correct its personnel documents to reflect a voluntary resignation, provide its regional human resources representatives and corporate office with reasonable accommodation and disability training, and provide Complainant with an agreed upon letter of recommendation. *(Middlesex County)*
 - Complainant, a long-term employee of an insurance company, alleged that she had been discriminated against on the basis of age. Respondent allegedly made repeated jokes about the grey-color of Complainant's hair, and repeatedly asked questions regarding the planned date of her retirement. Ultimately, Respondent terminated Complainant's employment alleging that it could no longer afford her. As part of the settlement, Respondent paid Complainant \$25,000 and required its managers and owners to participate in anti-discrimination training with an emphasis on age-based discrimination. *(Middlesex County)*
 - Complainants, female employees over the age of 40, worked as laborers for a manufacturing company and alleged age and sex discrimination. The work that Complainants performed was seasonal in nature, but each year Respondent routinely re-hired each Complainant when the busy season arrived. When the Complainants returned to commence seasonal employment, both were told that they had been replaced by noticeably younger, male, employees. In the settlement, Respondent paid Complainants \$30,000, and agreed to participate in anti-discrimination employment training and to submit an anti-discrimination policy to the Commission for review and comment. *(Middlesex County)*
 - Complainant, an employee of a national card, crafting and supply chain, alleged Respondent discriminated against her on the basis of her disability. Her cancer diagnosis necessitated that she attend multiple chemotherapy appointments. Complainant was denied requested workplace accommodations to permit her to work during the on-going chemotherapy treatment and her employment was ultimately terminated. As part of the settlement, Respondent paid Complainant \$16,000 and agreed to provide a reference for her job search efforts. Respondent also agreed to training in anti-discrimination in employment for its supervisors and store managers in Massachusetts. *(Norfolk County)*

-
- In a sexual harassment and retaliation complaint, a female golf club employee complained to her supervisor that her subordinate made her feel uncomfortable by showering her with unwelcome gifts and encroaching on her personal space. The employee also issued the employer an ultimatum requiring that the subordinate be terminated or she would quit. Later that same day, the employer terminated the complainant's employment. The matter settled for \$21,000 and anti-discrimination training for employees with supervisory responsibilities. (*Norfolk County*)
 - A case by an employee alleging gender discrimination in the form of more severe discipline and gender harassment against a water service provider settled for \$12,500. The Respondent also agreed that an employee would take MCAD's Train-the-Trainer Course and subsequently train all employees at its Brockton facility on the fair employment laws of the Commonwealth. (*Norfolk County*)
 - A disabled individual, suffering from chemical sensitivity, alleged that upon presentation of a doctor's note requiring a medical leave of absence the employer failed to engage in a dialog regarding the need for accommodation, and instead terminated her employment. The matter settled for \$35,000 and anti-discrimination training for all owners, supervisors, and employees with human resource responsibilities. (*Plymouth County*)
 - A race discrimination complaint, brought by an African American male, alleged that he was evaluated unfairly and disparately by his employer, a high tech company. A second complaint alleged that the Complainant was terminated in retaliation for complaining internally of race discrimination. The matter was settled for \$50,000 paid to the Complainant, anti-discrimination training for all Massachusetts employees, and managerial training for the alleged perpetrator of the discrimination. (*Suffolk County*)
 - A disability discrimination complaint, brought by an employee with a number of disabilities including degenerative joint disease, alleged that his employer, an international chain of hotels, failed to accommodate his disabilities and unlawfully terminated him. As part of the settlement, the chain agreed to pay Complainant \$110,000, provide its human resources director with refresher disability training, and correct personnel documents to reflect a voluntary resignation. (*Suffolk County*)
 - A complaint of discrimination alleged Respondent's inquiries about Complainant's criminal record violated the "ban the box" section of the discrimination statute. When Complainant interviewed with Respondent, a temporary placement agency, Complainant was required to check off on the employment application form whether or not he had been convicted of a felony. Complainant later learned that Respondent would not work to place him in a temporary position because of he had a criminal record. As part of the settlement agreement, Respondent ceased inquiring about criminal records on its initial application. Respondent also agreed to pay to Complainant \$6,000. (*Suffolk County*)

Fair Housing Act

- A complaint of associational race discrimination by a tenant against her landlords alleged they repeatedly failed to address her complaints of harassment by another tenant based on the race of her grandchildren. The case settled for remedies including fair housing training, that the Respondents advise the harassing tenants to cease and desist the harassment. Requirements specifically tailored to the nature of the harassment and discrimination, such as access to common utilities, and quarterly reporting to MCAD of any future harassment incidents for a period of one year. The tenant did not seek monetary compensation. (*Bristol County*)
- A housing complaint filed by a mobility impaired tenant alleged disability discrimination when the property manager did not respond to the tenant's request for the designation of additional handicapped parking spaces to accommodate the number of disabled residents in the apartment complex. The tenant also alleged that the respondent took retaliatory actions against the tenant. The matter settled for \$65,000. Additionally, the respondent withdrew its summary process motion against the tenant and the tenant agreed to vacate the apartment. (*Hampden County*)
- A complaint of race discrimination against a real estate agency, realtor and property owners alleged they failed to timely process a prospective tenant's rental application and denied the tenant the single-family house he sought to rent. The case settled for \$10,400, fair housing training, and a requirement that the Respondents use equal opportunity housing provider language in future advertisements. (*Middlesex County*)
- A complaint against an apartment complex and a management company alleged failure to provide reasonable accommodations, including a covered parking space in close proximity to the property and wheelchair-accessible entrances to the interior of the property, to a person with a disability. The case settled for \$12,000 in damages, annual training on fair housing and review of training materials, and adoption of a reasonable accommodation policy. (*Norfolk County*)

Public Accommodations Act

- A complaint of discrimination in a place of public accommodation alleged discrimination based on sex at a national restaurant chain, where the Complainant, identifying as male, but dressed in women's clothing was allegedly subjected to hostile and discriminatory comments. After Complainant was served, Respondent's store manager allegedly made comments to Complainant about his physical appearance and his sexual orientation. As part of the settlement agreement, the restaurant chain agreed to pay Complainant \$5,000. (*Norfolk County*)
- A complaint against a bank alleging discrimination in the refinancing of a mortgage loan on the basis of disability settled for \$5,500, a reset of the interest rate on the loan to a lower rate, and proof of the bank's change to its policies regarding loans to persons with disabilities in accordance with federal law and notice to its employees. (*Plymouth County*)

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- A complaint of race and national origin discrimination in a place of public accommodation, in which an individual entered a retail store in clothing identifying his national origin was allegedly treated in a hostile manner and ultimately refused service. The place of public accommodation, a national retailer, agreed to send all of its managers and supervisors assigned to that particular outlet to Commission-approved training regarding anti-discrimination in places of public accommodation. In addition to the broad training component, the settlement agreement also included payment of \$3,500 to Complainant. *(Plymouth County)*
 - A complaint of disability discrimination in a place of public accommodation was alleged by an individual who uses both a wheelchair and a service dog to aid with mobility and access. Complainant alleged that Respondent, a local grocery market, denied her equal treatment in the use of its bathroom facilities. As part of the settlement agreement, Respondent paid to Complainant \$4,000, agreed to participate in training on discrimination in places of public accommodation, post a Commission-drafted Notice to Customers concerning anti-discrimination in places of public accommodation and to maintain a restroom maintenance log. *(Suffolk County)*
 - A complaint of race discrimination in a place of public accommodation was alleged by an African-American male who attempted to receive service at a local bar. The sole bartender allegedly refused to serve Complainant or significantly delayed delivery of service and used derogatory race-based phrases and terms. As part of the settlement agreement, Respondent agreed to make a \$1,000 donation to a mutually agreed upon charity, and to send a representative to training on anti-discrimination in places of public accommodation. Respondent also agreed to institute a Commission-drafted anti-discrimination policy and to post a Commission drafted Notice to Customers concerning prohibited discrimination in places of public accommodation. *(Suffolk County)*
 - A complaint of racial discrimination was brought by a convenience store patron alleging that the cashier made racially derogatory comments and gestures and that management was unresponsive to the concerns of the patron. The matter settled for \$10,000. *(Worcester County)*
 - A complaint of racial discrimination against a bank and others settled for \$120,000, where the Complainant, a regular customer, was allegedly detained and arrested following the deposit of a valid check. He alleged that after it was determined that the check was valid, he was released. *(Worcester County)*

Significant Massachusetts Court Decisions

Flagg v. AliMed, Inc., 466 Mass. 23 (2013)

The Commission filed a “friend of the court” (*amicus*) brief in the Supreme Judicial Court in December of 2012 in this case where the plaintiff alleged he was fired from his job because his wife was handicapped. The Supreme Judicial Court issued its decision on July 19, 2013, adopting many of the Commission’s arguments.

A Superior Court judge had dismissed plaintiff’s claim of employment discrimination, accepting the employer’s argument that M.G.L.c 151B does not prohibit associational disability discrimination and the plaintiff appealed. In its *amicus* brief, the MCAD highlighted its legislative charge of eliminating and preventing discrimination within the Commonwealth and its role as the primary authority in the interpretation of the scope of Chapter 151B. The MCAD explained that failure to recognize the claim would eviscerate years of MCAD jurisprudence which recognized the claim of associational disability discrimination. Calling attention to the statutory requirement that Chapter 151B be interpreted liberally in order to fulfill the purpose of the statute, the Commission pointed out that a reading of the statute that limits the right to associational disability protection is contrary to legislative intent.

The Supreme Judicial Court reversed the Superior Court’s dismissal of the claim of employment discrimination holding that plaintiff’s claim of associational discrimination stated a claim under Chapter 151B. In the majority opinion, the Supreme Judicial Court reinforced the MCAD’s comprehensive agency powers to effectuate the aims of Chapter 151B to eradicate discrimination. The majority also recognized the Commission’s argument that the legislature expressly directed that Chapter 151B be construed liberally to accomplish its purposes. Further, it held that the Commission’s interpretation of Chapter 151B is generally afforded substantial deference.

MCAD, et al. v. Fung Wah Bus Transportation, Inc. and Pei Lin Liang, 84 Mass. App. Ct. 1106 (2013) (Rule 1:28 disposition)

The Massachusetts Appeals Court upheld the authority of the MCAD to institute an enforcement action in Superior Court against a non-compliant responding party who was found liable by the MCAD for disability discrimination. In October 2008, the Full Commission affirmed the Hearing Officer’s decision holding Fung Wah Bus Transportation, Inc. (“Fung Wah”) and its president, liable for disability discrimination under the Massachusetts public accommodation law, M.G.L. c. 272, §§ 98 and 98A, and awarded damages and a civil penalty. Fung Wah did not file a timely appeal of the Full Commission decision to the Superior Court, nor did it pay the damages and penalty assessed and awarded by the Commission.

Pursuant to M.G.L. c. 151B, § 6, the MCAD and the Commonwealth instituted a Superior Court enforcement action to enforce the MCAD’s final decision. In response, Fung Wah sought judicial review of the damages awarded by the MCAD. The MCAD moved to strike, arguing that because Fung Wah had not filed a timely administrative appeal in Superior Court, it no longer had the right to seek judicial review of the MCAD damage award. The Superior Court granted both the motion to enforce the MCAD final decision and the motion to strike Fung Wah’s untimely attempt for review. On appeal, the Appeals Court affirmed the lower court’s judgment, holding that in an enforcement proceeding, the court will not consider those matters which the responding party failed to raise through timely appeal of the MCAD administrative ruling.

M.G.L. Chapter 30A Litigation

Commission Counsel were assigned to brief and argue the Commission's position in five Chapter 30A petitions for judicial review of final decisions of the MCAD's Full Commission. The role of Commission Counsel in such appeals is to defend and uphold the decisions of the Full Commission.

Bellanti v. MCAD and Brook Anido, Essex County Civil Action No. 13-1067. The Commission filed a preliminary answer and counterclaim for enforcement of the Commission's Order on December 5, 2013.

Engineered Materials Solutions, Inc. v. MCAD and Guy Doble, Suffolk Superior Court Civil Action No. 13-1386-D. The parties reported the case settled after filing of the administrative record by MCAD on June 22, 2013. The case was closed by Stipulation of Dismissal on July 3, 2013.

Nubar Hagopian and Newbury Guesthouse v. MCAD, Suffolk County Civil Action No. SUCV 13-3897. The Commission was served with a Chapter 30A petition for judicial review of the Full Commission decision in mid-December 2013.

MCAD v. Defazio, Suffolk County Civil Action No. 13-03005-F, Middlesex County Civil Action No. 13-03344. The Commission filed an enforcement action against Respondent in Suffolk Superior Court, while Respondent filed a Chapter 30A petition in Middlesex Superior Court. The Commission responded to the Middlesex petition, and the cases have been consolidated in Middlesex County. The administrative record was filed December 11, 2013.

SSP America f/k/a Compass Group, North America v. Chairman Tynes, Suffolk County Civil Action No. 13-3144. SSP America sought judicial review of an interlocutory ruling by the Full Commission, styling it as a Chapter 30A review. After a hearing on the MCAD's motion to dismiss, the Superior Court dismissed the action on the grounds that Chapter 30A and G.L. c. 151B, § 6 do not permit for judicial review of an agency's interlocutory ruling.

In addition to the five Chapter 30A court cases assigned in 2013, Commission Counsel were responsible for the defense of four additional Chapter 30A petitions pending in the Massachusetts Superior Courts in 2013. The MCAD prevailed in two of the cases, which have now been appealed to the Massachusetts Appeals Court.

Costco Wholesale Corporation v. MCAD, Suffolk County Civil Action No. 11-03170. The MCAD prevailed in a Chapter 30A challenge brought by the Respondent on March 5, 2013. The intervener, Mytchell Low, sought attorneys' fees which were denied by the Superior Court. Respondent, Costco, and Mytchell Low filed Notices of Appeal.

ISO New England v. MCAD, Suffolk County Civil Action 2011-04272. On April 16, 2013, the Superior Court denied in part and allowed in part plaintiff's motion for judgment on the pleadings. The MCAD decision was affirmed on all issues with the exception of front pay, which was modified and reduced based on the Superior Court's conclusion that the complainant failed to fulfill his duty to mitigate. Thereafter, the intervener, Stephen St. Marie, sought attorney's fees which were denied. The Court has not issued final judgment.

Anthony Luster v. MCAD, Worcester County Civil Action No. 12-0861D. Plaintiff's Motion for Judgment on the Pleadings was denied on August 22, 2013, affirming the MCAD decision. Plaintiff filed a Notice of Appeal.

YRC Inc. v. MCAD, Suffolk County Civil Action No. 12-1699. The parties filed cross Motions for Judgment on the Pleadings, and argument is scheduled for February 5, 2014.

Other Litigation and Appeals Handled by Commission Counsel

Commission Counsel defend the agency in all other lawsuits which do not originate as Chapter 30A administrative appeals, and pursue enforcement matters for the agency. In 2013, Commission Counsel handled eight new litigation matters.

Araujo v. MCAD, Suffolk County Civil Action No. SUCV2013-02843E. A complaint against the MCAD seeking reversal of the Commission's lack of probable cause finding. On September 20, 2013 the Superior Court granted the Commission's Motion to Dismiss. On October 17, 2013, the Superior Court denied plaintiff's Motion to Vacate the Dismissal and affirmed its judgment of dismissal.

Harold Bertino v. MCAD, et al., Plymouth County Civil Action No. 2013-10793. The complaint challenges the Commission's lack of probable cause finding. The Commission's motion to dismiss was served on plaintiff on December 31, 2013.

Richard M. Davis v. MCAD, Middlesex County Civil Action No. MICV2013-03782. A complaint seeking declaratory judgment and reversal of the Commission's probable cause finding in a housing discrimination case was dismissed by the Superior Court upon the Commission's motion to dismiss on November 12, 2013.

Brett Deveau v. MCAD, Suffolk County Civil Action No. SUCV2013-02876. A complaint challenging the MCAD's lack of probable cause finding was dismissed by the Superior Court upon the Commission's motion on October 9, 2013.

De Almeida v. MCAD, et al., Suffolk County Civil Action No. SUCV2013-03756. The complaint challenges the MCAD's lack of probable cause finding. The Commission filed a motion to dismiss on December 3, 2013.

Richard Fleming v. MCAD, et al., Suffolk County Civil Action No. SUCV2013-03480. The complaint challenges the MCAD's lack of probable cause finding. The Commission served its motion to dismiss on December 31, 2013.

Kyl Myrick v. MCAD, Suffolk County Civil Action No. SUCV2013-03227. The pro se complaint challenges the MCAD's lack of probable cause finding. The Commission filed its motion to dismiss on October 3, 2013. During 2013, the Commission also defended two motions for sanctions and plaintiff's motion for judgment on the pleadings.

Terrance Rothman v. MCAD, Suffolk County Civil Action No. SUCV2013-02345E. The pro se complaint concerns transcription of a lack of probable cause appeal hearing. The Superior Court dismissed the case and denied plaintiff's motion for reconsideration. The plaintiff has filed a Notice of Appeal.

Additional Closed Cases

Commission Counsel also closed six additional cases, including both Chapter 30A and non-Chapter 30A cases, in 2013.

Ciccone v. MCAD and MA Dep't of Conservation and Recreation, Suffolk County Civil Action No. SUCV2012-02794. A complaint against the MCAD sought reversal of the Commission's finding of Lack of Probable Cause. On December 17, 2012, the Superior Court granted the Commission's Motion to Dismiss. Plaintiff did not appeal the ruling, and the case was closed in 2013.

City of Worcester v. MCAD, Worcester County Civil Action No. 11-02500/11-02497. Following truncated review of the parties' motions for judgment on the pleadings, the Superior Court stayed the issue of disparate treatment, remanding the case back to the Full Commission on the limited issue of disparate impact. The City of Worcester filed a Petition for Interlocutory Appeal, which was denied by a Single Justice of the Massachusetts Appeals Court on September 27, 2013.

Gammon v. City of Revere, et al., Suffolk County Civil Action No. SUCV 2011-0642. Complaint sought to enjoin MCAD proceedings, challenging jurisdiction under G.L. c. 151C. Superior Court dismissed the complaint without prejudice on August 22, 2013.

Gilberto DaSilva d/b/a Samba Cleaning Service v. MCAD, Suffolk County Civil Action No. 12-1750G. After the administrative record was filed, plaintiff took no further action in this Chapter 30A proceeding. Commission Counsel's motion to dismiss for failure to prosecute was granted by the Superior Court of August 2, 2013.

New England Clambake, Inc. d/b/a Wimpy's Restaurant v. MCAD, Suffolk County Civil Action No. 11-4167-F: The MCAD prevailed in a Chapter 30A challenge brought by New England Clambake, and a judgment in MCAD's favor was issued in July of 2013.

Sylvania Lighting Services v. MCAD, Essex County Civil Action No. 12-796. The Commission filed an answer and counterclaim for enforcement in this Chapter 30A action in 2012. The case was dismissed following settlement by the complainant and respondent in the underlying MCAD case on January 2, 2013.

Massachusetts Appeals Court

Commission Counsel is also defending the agency in a matter pending at the Massachusetts Appeals Court.

Matthew Connor v. MCAD, Massachusetts Appeals Court 2013-P-0788. Pro se plaintiff challenged the Commission's lack of probable cause finding and raised many other substantive and procedural challenges. The plaintiff appellant is challenging the Suffolk Superior Court's dismissal of the case. The matter is fully briefed.

HEARINGS DIVISION

The Hearings Unit includes two full-time hearing officers and one part-time hearing officer and the three Commissioners. In 2013, Chairman Tynes, Commissioner Thomas-George, and the three hearing officers held hearings. The Hearings Unit also conducts certification conferences on behalf of the Investigating Commissioner, rules on pre and post-certification discovery matters and Motions to Dismiss, issues Certification and Hearing orders, and conducts conciliations and mediations.

In 2013 the Hearings Unit scheduled 78 public hearings. Of that number, 65 cases had hearings held or were settled prior to the hearing (32 hearings held/ 33 settled). The remainder of the matters were continued.

The Hearings Unit scheduled 212 pre-hearing conferences. Of that number, 152 cases had pre-hearing conferences or settled prior to the conference (120 held/ 32 settled). The remainder of the matters were continued.

In 2013 the Hearings Unit issued 28 hearing decisions. One decision each was issued by Commissioner Sunila Thomas-George and former Commissioner Martin Ebel, writing as a specially-designated hearing officer. Eight decisions were issued by Hearing Officers Eugenia Guastaferrri and Betty Waxman and ten decisions were issued by Hearing Officer Judith Kaplan.

The vast majority of the decisions were in employment cases, with gender/ sexual harassment/ pregnancy cases leading the count and disability following a close second. Four decisions involved claims of housing discrimination, two based on denial of housing because of the Complainants' status as Section 8 housing subsidy recipients. There were two cases involving public accommodation discrimination, both resulting in decisions in favor of Complainants.

Twelve employment cases resulted in decisions in favor of Complainants. Ten employment decisions were in favor of Respondents and the complaints were dismissed.

The following is a summary of some of the significant decisions issued. All of the decisions and awards are published in the Massachusetts Discrimination Law Reporter and on MCAD's website.

Significant Hearing Officer Decisions

Employment Decisions

MCAD & Karen Dionne v. Cutter Northern Refractories, Inc. & Thomas Cutter, 35 MDLR 15 (2013) (Sexual Harassment, Constructive Discharge)

The Hearing Officer found that a Respondent company owner's offer of a promotion to Complainant and the offer of \$1000 in cash while simultaneously making sexual advances to her constituted quid pro and hostile work environment sexual harassment. She also found that Complainant's resignation once she became aware of Respondent's extreme obsession with her was a constructive discharge. Complainant worked for Respondents as an assistant to the customer services manager. Approximately one year into her employment, the company owner asked Complainant out to dinner to discuss a possible promotion for her. He made sexual advances after the dinner which

Complainant rejected. Days later, the company owner directed Complainant to meet him for lunch during work hours. He then proceeded to his personal residence where he and Complainant ate lunch and he gave Complainant \$1,000 in cash with the promise of more related to her promotion. He again made sexual advances to Complainant which she rebuffed. The next day the owner wrote Complainant a crude and offensive letter containing a request for sexual favors and proposing an illicit sexual affair. The Hearing Officer found that the letter caused Complainant to feel extreme discomfort, disgust and revulsion and that she felt compelled to resign her position. The Hearing Officer concluded that Complainant initially believed that she could take advantage of the company owner's attraction to her by accepting and spending the money he offered while avoiding having to accede to his requests for sexual favors. However, when Complainant discovered the extent of the owner's infatuation with her she became frightened and reasonably believed she had no other option but to resign. The Hearing Officer found that while Complainant was not wholly innocent in her dealings with the owner, she nonetheless did not welcome his sexual advances and propositions and found that his conduct constituted unlawful quid pro quo and hostile work environment sexual harassment. The Hearing Officer also concluded that Complainant was constructively discharged once she became aware of the owner's extreme and crude sexual obsession with her. She awarded lost wages in the amount of \$72,000, finding that Complainant had mitigated her damages by seeking other employment and working a number of jobs at which she earned less than at Respondent until she finally changed careers. The Hearing Officer also awarded \$900 in compensatory damages for increased costs of daycare and \$25,000 in damages for emotional distress. The Hearing Officer found Complainant's acute distress was of short duration and that other factors contributing to her distress were her own guilt and embarrassment at having accepted money from Respondent believing she could do so without repercussions and having to reveal her participation in the matter to her husband.

MCAD & Rebecca Hammond v. Carol O'Leary Residential Cleaning Specialists & Carol O'Leary, 35 MDLR 25 (2013) (Sex discrimination/pregnancy, unlawful termination)

The Hearing Officer found for Complainant on her claim that she was terminated from her employment because she was pregnant. Complainant worked for Respondents as a house cleaner. Three months into her employment, Complainant missed some work due to illness, and learned that she was pregnant. When Complainant informed the owner of the company of her pregnancy, the owner stated that she had concerns about Complainant's attendance and also about Complainant's working with chemicals and lifting while pregnant. Several days later the owner terminated Complainant's employment. The Hearing Officer found that while the decision to terminate Complainant's employment may have been motivated, in part, by legitimate concerns relating to Complainant's attendance, her concern about Complainant's working with chemicals and performing lifting while pregnant was the primary reasons for her termination. The Hearing Officer concluded that Respondents had "mixed-motives" for terminating Complainant's employment. She found that while Complainant had some attendance problems, there was evidence that co-workers who had been absent and tardy were not disciplined, and that Respondents' harsher treatment of Complainant was motivated primarily by unlawful discriminatory animus relating to concerns about her pregnancy. Despite Complainant's stated willingness to remain working while pregnant the owner chose to terminate her employment out of concern that her pregnancy would be endangered, a belief that her ability to perform certain functions of her job would be diminished because of her pregnancy, and belief that Complainant's pregnancy would result in further absences and potential liability to Respondents. The Hearing Officer concluded that these were impermissible reasons for requiring

a pregnant employee to stop working. Since Complainant essentially stopped seeking employment after the birth of her baby because of the high cost of child care and some unrelated medical issues, the Hearing Officer awarded her back pay only for wages that she would have earned through the eighth month of her pregnancy totaling \$6,500. She also found that Complainant's emotional distress was not severe or long-lasting and awarded her the nominal sum of \$10,000 for the distress she suffered as a result of the unlawful termination.

MCAD & Barbara Avila v. J & S Enterprises, Inc., 35 MDLR 19 (2013)
(Sexual harassment, constructive discharge)

The Hearing Officer found for Complainant on a claim of quid pro quo and hostile work environment sexual harassment and found Complainant was constructively discharged. Complainant worked as a waitress in Respondent's restaurant. During the course of her employment, the restaurant's owner and manager engaged in numerous acts of inappropriate physical touching of young female staff, including smacking their behinds, locked Complainant and a young female employee in a closet, made offensive sexual comments to Complainant, followed her out to her car on several occasions and asked her to go out for drinks with him stating she would have "job security." Complainant rejected his advances and unwelcome remarks. Some two years into her employment, when Complainant questioned the work schedule, she was assaulted by the owner, who touched her breast, grabbed her arm and pushed her to the floor. Other co-workers were present in the restaurant after hours when this incident occurred, and heard Complainant yell for help. One co-worker confirmed that when she confronted the owner and told him to stop harassing Complainant, they argued over the incident and he pushed her into one of the booths. Thereafter, Complainant worked only two more shifts at the restaurant and began drinking again after a long period of sobriety. She filed a criminal complaint against the restaurant owner because of her concern for younger female employees. The Hearing Officer rejected Respondent's attempts to attack Complainant's credibility and besmirch her character because she was an alcoholic. The Hearing Officer also found that a dismissal of the criminal charges of assault and battery against the owner was not dispositive of the civil claims of sexual harassment and constructive discharge. She found that Complainant was the victim of sexual harassment and was constructively discharged. Respondent was ordered to pay Complainant lost wages in the amount of \$6,102.40, damages for emotional distress in the amount of \$50,000, and was ordered to implement a sexual harassment policy, to be posted conspicuously in the workplace and to designate a sexual harassment officer for the reporting of complaints.

MCAD & Russ Baker v. 3Js, d/b/a White Hen Pantry, 35 MDLR 42 (2013)
(disability discrimination)

The Hearing Officer found for Complainant, a store clerk/cashier at Respondent's convenience store, on his claim of disability discrimination. Complainant worked at the store 20 hours a week and his duties included opening the store at 5:30 a.m. each day. After Complainant injured his knee, his doctor recommended that he use a cane, but he had no work restrictions and the Hearing Officer found that the use of a cane did not interfere with his duties in any way. Complainant was terminated from his job at Respondent when the store owner and manager returned from a trip and found Complainant using a cane on the job. After Complainant advised Respondent that he was going to sue for disability discrimination, Respondent threatened to and did file a criminal complaint against Complainant for stealing from the store. This complaint was dismissed for insufficient evidence by the judge who declined to submit the case to the jury. There was evidence

that Respondent engaged in other retaliatory actions against Complainant, which were perceived as threats and intimidation to Complainant and his family and contributed to his distress. The Hearing Officer found that Complainant was terminated because of a perception that he was disabled because of his need to use a cane and that his termination violated G. L. c. 151B, s.4 (16). Complainant was awarded back pay in the amount of \$7,020 and damages for emotional distress in the amount of \$35,000.

MCAD and Gladmyra Recupero v. Terri's Little Pumpkins and Terrill Battano, 35 MDLR 46 (2013) (Sex discrimination/pregnancy)

The Hearing Officer found for Complainant on her claim of sex/pregnancy discrimination. Complainant, an employee of a day care center, was terminated during her maternity leave, ostensibly for failing to submit a timely doctor's note stating that she was fit to return to work and could lift forty pounds throughout the day. The Hearing Officer determined that Complainant did not fall under the protections of the Massachusetts Maternity Leave Act because she was a part-time employee who was granted three months of leave whereas the statute only provides for eight weeks of unpaid maternity leave to full-time employees. However, the Hearing Officer determined that Complainant had an alternative cause of action for gender discrimination where the employer voluntarily approved a maternity leave in excess of eight weeks but then fired Complainant during her leave. She found that the decision to terminate Complainant was inextricably tied to her maternity leave. The Hearing Officer did not believe Respondent's witnesses who testified that they thought Complainant had abandoned her position. The evidence shows that Complainant made clear her desire to return to work even though it took her three weeks to schedule a medical exam and procure a written note from her primary care physician. Complainant was awarded back pay damages consisting of the difference between her unemployment compensation and her 34 hour per week wages at Respondent and \$15,000 in emotional distress damages.

MCAD and Pamela Scanlan v. Department of Correction, 35 MDLR 52 (2013) (Sex Discrimination, Retaliation)

The Hearing Officer found for Complainant, a Correction Officer on a claim of gender discrimination and retaliation. She found that Complainant was retaliated against not only for filing her own complaint of gender harassment but because her husband who had worked at the same facility had also filed a claim of discrimination against the DOC with the MCAD. Complainant worked as a Correction Officer at the Northeast Correctional Center (Concord Farm) for fifteen years prior to filing her complaint and during this time was assigned primarily to the post of "control room officer" working within the institution, a job for which she was well suited and performed capably. She was one of a very small number of female Correction Officers who worked at the facility, who were generally not assigned to supervise outside work crews. Despite a policy that all Officers be rotated every six months, this was not the general practice at the facility. Not long after some activity in a DOC disciplinary matter against her husband, Complainant was assigned to take a work crew to Boston, an assignment she felt particularly unsuited to do. She complained about the assignment, and filed a formal complaint against the Lieutenant who made the assignment, stating that she believed it was harassment and against the established practice that female officers not be assigned to work crews, absent any other options. Thereafter, she was routinely assigned to outside work crews in generally undesirable locations with inadequate bathroom facilities for a female officer. Other superior officers confirmed that the Lieutenant she complained about made it clear that Complaint was to be assigned outside the facility and other officers were not to swap

assignments with her. After Complainant's husband filed a discrimination complaint at MCAD, she was ordered to pat-frisk inmates in her work crew inside the facility in the presence of male officers and other inmates, an order she found particularly demeaning and inappropriate, and not in conformance with past practice. The Hearing Officer concluded that the adverse actions against Complainant were both gender discrimination and retaliation for her having complained internally and her husband's filing of an MCAD complaint. Complainant was awarded \$50,000 in damages for emotional distress and Respondent was assessed a Civil Penalty in the amount of \$10,000. Respondent was also ordered to conduct training of its senior officers and to conduct its internal investigations in compliance with departmental policy.

MCAD and Shawn Haywood v. Office of the Commissioner of Probation, 35 MDLR 66 (2013)
(Race discrimination)

The Hearing Officer found for Complainant on his claim of failure to promote on account of his race. Complainant charged that for over a decade he was discriminatorily denied promotion to the position of Probation Officer in various courts because of race. From 1998, when Complainant was hired as an Associate Probation Officer, through 2008, he had a blemish-free record of employment. He met the qualifications for the position of Probation Officer, with a college degree in criminal justice and sociology and several years working as an Associate Probation officer. Notwithstanding, he was unsuccessful in obtaining a promotion despite submitting numerous applications to different courts over many years, and the evidence showed that his applications were treated differently from those of politically-connected individuals. Although Complainant's unsuccessful applications for promotion between 2001 and 2008 were outside the 300-day limitations period for purposes of relief, his application for promotion to Probation Officer at the East Boston District Court in April of 2008 was timely, he had seniority over other candidates for promotion, and his race (black) was under-represented in the Probation Officer position at that court. Thus, in accordance with Respondent's affirmative action plan, he should have been appointed. When Complainant learned that a white female Associate Probation Officer with only two year's seniority who he had helped train was appointed to a Temporary Probation Officer, he filed his latest complaint. Respondent had a practice of making temporary probation officer assignments without interviews or job postings, which resulted in the rescission of 15 temporary appointments made in 2008, for violation of the Seniority Provisions of the Collective Bargaining agreement. The Hearing Officer determined that Complainant was entitled to the next Suffolk County Probation Officer vacancy in a court where there was an under-representation of black Probation Officers. The Hearing Officer also awarded back pay between April of 2008 and the commencement of public hearing, in the amount of \$28,282 and front pay between the commencement of public hearing and the date of his appointment to a Probation Officer position, as Ordered, and emotional distress damages in the amount of \$75,000.

MCAD and William Stone v. Plymouth County Sheriff's Dept., 35 MDLR 121 (2013)
(Retaliation)

The Hearing Officer found for Complainant, a correction officer, on his claim of retaliation against the Plymouth County Sheriff's Department. Complainant charged that he was transferred to a night-shift position in retaliation for testifying at an MCAD public hearing on behalf of a fellow correction officer. The Hearing Officer determined that Complainant had engaged in protected activity and thereafter suffered an adverse employment action. Although Respondent disputed that there was a causal link between Complainant's testimony and his subsequent transfer, the

evidence indicates that the two actions were related. Supporting evidence included the fact that Complainant's transfer followed his MCAD testimony by less than two months, and Complainant had received a favorable job evaluation for the year prior to his transfer. The Complainant credibly denied overhearing a derogatory remark about the Sheriff made by a fellow correction officer, which he was criticized for not reporting, and he credibly denied responsibility for a bathroom issue that Respondent asserted was another reason for transfer. Complainant never sought a night-shift assignment as suggested by Respondent. As relief, the Hearing Officer ordered Complainant to be reinstated to his former assignment as Day Shift Commander and he was awarded damages for emotional distress in the amount of \$75,000.

MCAD and Mills and Ronan v. A.E. Sales, Inc. & Ernest Prete, 35 MDLR (2013) (Sexual harassment, constructive discharge)

The Hearing Officer found for two Complainants in their claims of sexual harassment and constructive discharge filed against their former employer, a high end foreign auto repair shop, and the owner of the shop. Complainants charged that the owner created a sexually hostile and gender hostile work environment by repeatedly telling sexual jokes, making sexual references, leering at their breasts, encouraging them to wear skimpier clothing to work, posting sexual references in the workplace, discussing his sexual dysfunction, engaging prostitutes and masseuses in the workplace, and displaying other behavior of a sexual or bullying nature that they found demeaning and offensive and that interfered with their ability to perform their jobs. The Hearing Officer found that such behavior occurred and was severe and pervasive. She did not credit the Respondent's reasons for the behavior as legitimate. She found that the behavior was unwelcome, uninvited and offended the Complainants. Complainant Mills had routinely participated in the sending of offensive and off-color emails to the owner and other male co-workers and the Hearing Officer found she was not offended by off-color humor. However, the Hearing Officer found that the owner's conduct, particularly his touching of Mills was uninvited and unwelcome, but that Mills was not intimidated or fearful of him, but more angry and annoyed. She found that Mills was terminated when the owner told her to "get the f—k out," after a brief disagreement just subsequent to her complaining about his offensive behavior and yelling at him to stop. She was awarded \$25,000 in damages for emotional distress, and back pay in the amount of \$5,307, since she went to a new job at a competitor within a month of her termination. The Hearing Officer found that Complainant Ronan was also constructively discharged when the owner told her to "shut the f—up" when she attempted to complain to him about his harassment. The Hearing Officer concluded that Ronan was so offended and demeaned by the work environment and the owner's conduct that she felt compelled to resign her employment. Ronan was awarded back pay in the amount of \$29,962 and damages for emotional distress in the amount of \$40,000. While Ronan's employment at Respondent was of much shorter duration, the Hearing Officer found that she was subjectively fearful of and intimidated by the owner's behavior and suffered greater distress as a result of the harassment. A civil penalty was assessed against Respondents in the amount of \$10,000.

Housing Decisions

MCAD and Naysi Ortega v. Charles Papalia, 35 MDLR 110 (2013) (government subsidy discrimination)

The Hearing officer found for Complainant, who was the holder of Section 8 rental subsidy, and seeking to rent another apartment because she was facing eviction from her apartment building in Andover due to a change in rental rates. Complainant sought a two bed-room apartment with storage and wished to remain living in Andover because she did not want to uproot her daughter, who had always attended Andover schools. Complainant learned of an apartment owned by Respondent in Andover, which she and her daughter viewed. Complainant liked the apartment because it was spacious, had storage and was in a good location. She could afford the apartment with her Section 8 voucher. She completed all of the forms required by the Section 8 program in order to rent the unit and submitted her application to Respondent on or about April 4, 2011. Respondent testified that he liked Complainant and thought she would be a great fit for the unit. He told Complainant that, pending a Section 8 inspection of the property, he would rent her the unit. On April 27, 2011 an inspector from the agency that administered Complainant's Sec. 8 certificate inspected the property with Respondent, pointing out what Respondent considered insignificant code violations. The inspector informed Respondent that the property failed inspection and that Section 8 funds would not be allocated to Complainant for rental of the unit. Respondent stopped the inspection. Respondent refused to make the necessary repairs and refused to rent to Complainant. As a result Complainant was very distressed. At Hearing Respondent acknowledged that he did not rent the apartment to Complainant because he did not want to make repairs to the property as required by the Section 8 program. The Supreme Judicial Court and the Commission have ruled that a landlord's refusal to accept tenants with Section 8 subsidies because of concerns about the requirements of the program is not a valid defense to a discrimination claim. Therefore, the hearing officer found the landlord liable for discrimination on account of the Complainant's receipt of a Section 8 rental subsidy. She found that Complainant was distressed emotionally because having been unlawfully denied an apartment and awarded her \$5,000 in damages. She also ordered Respondent to cease and desist from discriminating on the basis of rental subsidy and ordered him to undergo training to learn about the requirements of the Section 8 program and how they relate to the anti-discrimination laws.

MCAD and Yolanda & Charles Hampton v. Ann Watson, 35 MDLR 91 (2013) (national origin /race discrimination)

The Hearing Officer found that Complainants, an African American/Puerto Rican couple were discriminated against by their landlord on the basis of national origin and race/color. Complainants rented the top floor of Respondent's two family house in 2004. After performing many of their own home repairs for years, they began to complain in 2010 about windows that wouldn't open, a stove that didn't work, a leaking roof, rotting stairs, a rotting deck, and a moldy garage. Caucasian renters of a downstairs unit in the same house were given a new stove within months of moving in and garage space whereas Complainants were prohibited from parking inside. When the requested repairs were not made Complainants withheld rent and began to place their rent into an escrow account. Thereafter, they were subjected to racial harassment and disparate treatment in relation to other tenants. Respondent used racially-offensive language in addressing Complainants and circulated a false rumor that Complainant's husband had stolen a car. In addition to subjecting Complainants to racial harassment through the use of racial epithets, Respondent imposed

different terms and conditions on Complainants and the downstairs neighbors which constituted disparate treatment. Complainants were forced to move as a result of the untenable conditions in their apartment and the abuse they were subjected to by Respondent. The Hearing Officer held that Respondent violated M.G.L. c. 151B, § 4(7) by discriminating against Complainants in the terms and conditions of housing because of race or color. She found Complainant and her husband to be extremely credible witnesses. Respondent did not appear at the public hearing and was defaulted and, thus, failed to present any defense. Complainants were awarded \$75,000.00 in damages for emotional distress based on medical evidence and their compelling testimony.

Relief Awarded

Awards for Emotional Distress were made in cases as follows:

| | |
|----------------------------------------------|--------------------|
| Dionne (employment/sexual harassment) | \$25,000 |
| Avila (employment/sexual harassment) | \$50,000 |
| Hammond (gender/pregnancy) | \$10,000 |
| Baker (disability) | \$35,000 |
| Recupero (gender/pregnancy) | \$15,000 |
| Scanlan (employment/gender/retaliation) | \$50,000 |
| Eddings (public accommodation/race) | \$5,000 |
| Haywood (employment/race and color) | \$75,000 |
| Hampton (housing/race/color/nat'l origin) | \$75,000 |
| Ortega (housing/sec. 8 subsidy) | \$5,000 |
| Stone (employment/retaliation) | \$75,000 |
| Fiasconaro (public accommodation/disability) | \$1,500 |
| Vargas (employment/retaliation) | \$10,000 |
| Davis (complaint against Union/race) | \$20,000 |
| Mills/Ronan (sexual harassment/retaliation) | \$25,000/ \$40,000 |
| Alzain (employment/ disability) | \$15,000 |

Back pay awards:

| | |
|-------------|--------------------------------------------------|
| Dionne | \$72,000 |
| Avila | \$6,100 |
| Hammond | \$6,500 |
| Baker | \$7,000 |
| Recupero | (to be determined per Hearing Officer's formula) |
| Haywood | \$ 30,000 |
| Vargas | \$ 6,975 |
| Mills/Ronan | \$5,300/ \$29,960 |
| Alzain | \$31,900 |

Civil penalties :

| | |
|-------------|----------|
| Scanlan | \$10,000 |
| Mills/Ronan | \$10,000 |

Alternative Relief:

Avila - Development of Sexual Harassment Policy,
Designation of Sexual Harassment Officer

Scanlan - Training, Order to conduct internal investigations
in compliance with DOC policy

Haywood - Training, Appoint Complainant to next vacancy where blacks are
under-represented with front pay from date of hearing to time of appointment

Ortega - Housing Training

Stone - Training, Reinstatement to former assignment

Fiasconaro - Training

Davis - Establish written policy for granting loans

Full Commission Decisions

The Full Commission decides appeals of the decisions of a Single Commissioner or Hearing Officer. In 2013 the Full Commission issued decisions in ten cases. In all ten cases, the Full Commission upheld the findings of the decision below with respect to liability. In two of the cases cited, Daly and Croken/Tamayo, the Full Commission amended the awards of back pay to the Complainant. (see case summaries below) The Full Commission also awarded attorney's fees in those cases in which the Complainant prevailed.

Significant Full Commission Decisions

Daly v. Codman & Shurtleff, Inc., 35 MDLR 85 (2013) (disability discrimination)

The Full Commission upheld the Hearing Officer's decision that Respondent was liable for disability discrimination because of its failure to grant reasonable accommodations to Complainant who suffered from severe coronary artery disease, and affirmed the Hearing Officer's finding of constructive discharge. The Full Commission affirmed the award of \$100,000 in damages for emotional distress, and awarded \$77,355 for attorney's fees, but overturned an award of \$29,900 for back pay because Complainant received full disability pay during that period.

The Full Commission affirmed the finding that Complainant was disabled, noting that Complainant had a significant medical history of heart disease and had taken several medical leaves of absence during her 32 years of employment with Respondent and its affiliates or subsidiaries. The Full Commission also affirmed the finding that Respondent was on notice of Complainant's chronic heart problems and that a condition that manifests only episodically qualifies as a disability.

Complainant had a number of duties related to purchasing of supplies for Respondent which manufactures and distributes medical devices and diagnostic equipment, issuing sales planning and forecasting reports, and maintaining and administering a hardware and software database that encompassed the entire transactional history for purchasing and accounts payable throughout the parent company, worldwide. She was also assigned to be the project leader for a new purchasing and accounts payable software system.

The Hearing Officer found that Complainant repeatedly sought a reduced workload and made her supervisor and the HR director aware that she could no longer tolerate the stress of her ever expanding duties and feared she would have a heart attack. She notified HR that her supervisor had a poor understanding of her workload, lacked computer skills, and was not supportive. The Hearing Officer concluded that both Complainant's immediate supervisor and the HR director did not take meaningful steps to modify or reduce Complainant's workload, which would have been a reasonable accommodation, but continued to assign her responsibility for additional projects and that as a result her health continued to deteriorate. After being hospitalized for chest pain and cardiac catheterization, Complainant went on short term disability and did not return to work. While she never formally resigned her employment the Hearing Officer found that she was constructively discharged.

Guy Doble v. Engineered Materials Solutions, 35 MDLR 36 (2013) (disability discrimination)

The Full Commission affirmed the Hearing Officer's decision that Respondent was liable for disability discrimination when it failed to discuss reasonable accommodations with Complainant,

a machine operator who suffered from debilitating osteoarthritis in his knees. Upon elimination of his 8 hour machine operator position, Respondent re-assigned him to a 12 hour job it knew he could not do, thereby compelling him to resign. The Hearing Officer's finding of constructive discharge was also affirmed. The Full Commission found support for the conclusion that Respondent was on notice of Complainant's disability prior to its reorganization and elimination of his position, and that it had an obligation to endeavor to assign him to a job that he was capable of doing with or without a reasonable accommodation, to thoroughly investigate his physical limitations. Respondent was also obliged to re-consider Complainant's hasty resignation knowing that he did so because of medical limitation, particularly in light of testimony of the company nurse that Respondent would have worked with Complainant to explore accommodations had he not resigned so hastily and provided further medical information. The Full Commission upheld the Hearing Officer's award of \$50,000 in damages for emotional distress and back pay and awarded attorney's fees in the amount of \$31,880.

Complainant had worked for the Respondent and its predecessors for 35 years. He had previously sought an accommodation because of severe arthritis in his knees and after undergoing surgery in both knees was assigned to a less strenuous position. Later his shift was reduced to 8 hours when he could not tolerate a 12 hour shift. When the company reorganized and eliminated his position, Complainant was unilaterally assigned to a 12 hour shift doing a job he could not physically tolerate. Complainant attempted to perform the newly assigned job for one day but could not tolerate the physical requirements, and he was told there were no other jobs for him. He tendered his resignation in frustration and did not receive severance benefits, although other laid off employees received such benefits.

Timothy Baker v. Plymouth County Sheriff's Department, 35 MDLR – (2013) (retaliation)

The Full Commission affirmed the Hearing Officer's decision that the employer engaged in retaliatory conduct in violation of G.L. c. 151B, §4 (4) and the award of \$75,000 in emotional distress damages. The Full Commission also awarded attorneys' fees. The Hearing Officer concluded that Respondent was not liable for gender discrimination for the manner in which it investigated Complainant's sexual harassment complaint and she dismissed Complainant's claims of gender discrimination and constructive discharge for lack of evidence. However, the Hearing Officer concluded that Respondent was liable for unlawful retaliation when it failed to reappoint Complainant to the position of lieutenant and placed him on unauthorized leave after he engaged in protected activity. The Respondent appealed.

Timothy Baker was a lieutenant with the Plymouth County Sheriff's Department who reluctantly complained about a female co-worker's conduct which allegedly constituted sexual harassment. After he was required to write a report about his co-worker's conduct he was demoted from his position as lieutenant. The Hearing Officer specifically found that the evidence offered by the Respondent that poor performance was the cause of the demotion was not credible. The Full Commission held that there was sufficient evidence to support the Hearing Officer's conclusion that Baker's protected activity led to the demotion, and recognized that it should defer to the Hearing Officer's determinations as to credibility.

Francis Croken & John Tamayo v. Hagopian Hotels, et al., -- MDLR – (2013)
(race discrimination and retaliation)

The Full Commission affirmed the Hearing Officer's decisions that Respondents Nubar Hagopian and Hagopian Hotels were liable for unlawful discrimination against Tamayo on the basis of race and color, in violation of M.G.L. c. 151B, §4(1) and for unlawful retaliation against Croken and Tamayo in violation of M.G.L. c. 151B, §4(4). The Full Commission reversed the Hearing Officer's award to Tamayo of \$112,127 in damages for back pay because the Hearing Officer's award of back pay was inconsistent with her dismissal of Tamayo's constructive discharge claim. The awards of \$50,000 for emotional distress to Tamayo, and the awards to Croken \$195,489 for back pay and \$80,000 for emotional distress were affirmed. The Full Commission also awarded attorneys' fees to the Complainants.

The Hearing Officer's findings which follow were found to be supported by substantial evidence and her credibility determinations. Francis Croken and John Tamayo were employees of Respondents, including Hagopian Hotels. The owner of Hagopian Hotels, Nubar Hagopian, took action and made comments against John Tamayo which created a hostile work environment and constituted unlawful discrimination, including falsely accusing Tamayo of stealing food and breaking into an apartment. When Nubar Hagopian told Tamayo's manager, Francis Croken, about the problems, Croken offered to investigate. Hagopian made it clear he did not welcome an investigation telling Croken, "Why would I want you to investigate? He's a wetback." When Croken insisted on investigating the matter rather than simply firing Tamayo and subsequently informed Hagopian that the accusations against Tamayo were false, Hagopian demanded Croken's resignation. When Croken refused, Hagopian terminated his employment, calling Croken rude, unprofessional and insubordinate. The Full Commission agreed with the Hearing Officer's determination that these activities constituted unlawful discrimination and retaliation.

William Anderson Jr. and Massachusetts Commission Against Discrimination v. United Parcel Service, 35 MDLR 187 (2013) (disability discrimination and constructive discharge)

The Full Commission affirmed the Hearing Officer's conclusion that Respondent violated G.L. c. 151B, § 4(16), by failing to engage in an interactive process with its long-time employee and provide him with a reasonable accommodation for his bipolar disorder. On appeal, UPS argued that the Hearing Officer erred when she concluded that the Complainant was disabled. The Full Commission affirmed the Hearing Officer's conclusion that the Complainant's condition affected his ability to work as well as his interpersonal relationships and cognitive functions, such as thinking and concentrating. The Full Commission also concluded that the Hearing Officer's findings were supported by substantial evidence that UPS had sufficient information to determine that Complainant was disabled, finding that that UPS knew of Complainant's condition, knew that he received electroconvulsive therapy, and knew that his condition affected him at work and at home. The Full Commission noted there was evidence that Complainant's psychiatrist notified UPS of the treatment for bipolar illness and provided UPS with details of his symptoms. The Full Commission affirmed the Hearing Officer's conclusion that UPS should have transferred Anderson to a less stressful managerial position he had previously performed and requested, based on UPS' size, the many available positions Complainant could have and had in fact performed in the past, and UPS' longstanding practice of transferring employees. In addition, the Full Commission affirmed the Hearing Officer's conclusion that Complainant was constructively discharged based on findings that his working conditions became so intolerable that Complainant had no choice but to resign due to UPS' consistent refusal to provide an accommodation.

Following the Hearing Officer's Decision, the Complainant filed a case in federal court under the federal Americans with Disabilities Act. The MCAD was not a party to this action, and the testimony observed by the Hearing Officer at the MCAD's public hearing was not heard by the federal court. On a motion for summary judgment filed by UPS, the United States District Court dismissed the matter. On appeal to the Full Commission, UPS argued that the federal court decision collaterally estopped the Commission from concluding the Complainant was qualified to be transferred. The Full Commission concluded that it was not estopped by an intermediate federal court decision based on affidavits rather than testimony and that its role was not to accept the federal court's summary judgment decision, but instead to review the Hearing Officer's Decision based on the record that was before the Hearing Officer at the time she made the Decision.

With respect to damages, the Full Commission affirmed the Hearing Officer's emotional distress award of \$125,000, the award of sixteen (16) years of front pay damages, and the 12% interest awarded on the back pay and emotional distress damages awards. UPS also argued on appeal that the Hearing Officer's failure to attach a discount rate to the front pay damage award was in error. The Hearing Officer held that because the parties presented no expert testimony on the issue of present value, no discount rate would be applied to the front pay award. The Full Commission reversed this portion of the Decision, and instead, applied a 5.7% discount rate to reflect the present value of the front pay damage award. The Full Commission also awarded attorney's fees in the amount of \$90,690 and costs.

ADMINISTRATION AND FINANCE DIVISION

The Administration and Finance Department is comprised of three units overseen by the Chief of Administration & Finance.

The Business Office/MIS Unit is staffed by the Personnel Specialist III, and two part-time MIS contractors. This office handles all personnel and budget issues, as well as all computer and communication issues for the MCAD.

The Training Unit is comprised of the Director of Training, one half – time trainer, and a full-time Northeastern University cooperative education student. Other MCAD staff members who have completed the Commission’s Train-The-Trainer program sometimes deliver internal and external training sessions; Commissioners, Counsel, and other staff members often conduct internal and external presentations.

The Alternative Dispute Resolution Unit consists of two programs:

Conciliation:

The Conciliation Program in the Boston office is managed by one full-time conciliator who is an attorney, and one half – time attorney conciliator. On occasion, Commissioners, Hearing Officers, Enforcement Advisors and Investigators also conduct conciliations. In the Springfield office the majority of conciliations are conducted by the Commissioner, and on occasion, Enforcement Advisors and Investigators also conduct conciliations.

Mediation:

The Early Mediation Program in Boston is coordinated by MCAD’s contract mediator, who is an attorney with an intern’s assistance. The mediator reaches out to interested parties, schedules and mediates pre-determination cases with pro se Complainants. On an as needed basis, a part-time conciliator also mediates cases for the agency, as well as other MCAD staff members. The pre-determination attorney-represented cases are scheduled and mediated by the full time conciliator. In the Springfield office the program is run by a Senior Investigator with the assistance of an Administrative Assistant. The Investigator conducts the majority of the mediation sessions, however, on occasion the Commissioner will also conduct mediation sessions. In the other two field offices, Worcester and New Bedford, all alternative dispute resolution is conducted by the staff of the Springfield office, with occasional assistance from the Boston staff.

Training Unit

During 2013, the MCAD training unit and other staff conducted 99 external employment and housing discrimination prevention training sessions and presentations attended by 2,619 participants. Our audiences included human resources professionals, supervisors and managers, line staff, landlords, and realtors, and the sessions ranged from two hours to four days in length.

The MCAD outreach program, “Spreading Education to End Discrimination” or “S.E.E.D.” completed 127 presentations in 2013, reaching 2,127 individuals in a variety of settings. Spring, summer, and fall interns established statewide contacts at organizations that serve populations likely to experience discrimination, and scheduled and conducted free presentations on discrimination in employment, housing and public accommodations in English, Spanish, and Haitian Creole.

The Commission held its fourteenth annual employment Discrimination Prevention course this year, including five half-day prerequisite sessions, 2 two to three day Train-The-Trainer modules,

and 3 two to three day EEO practitioner modules. This year's courses were full to capacity and, for the first time, we offered the internal investigations course twice.

The training unit designed, facilitated and/or administered numerous internal training sessions for the Commission's staff this year, including three three-day initial training sessions for new interns and employees held in January, June, and September, supplemented with half-days sessions on fair housing, and on outreach and presentation skills training for S.E.E.D. interns. Other internal training programs included a housing discrimination train-the-trainer program aimed to increase the number of MCAD staff able to conduct fair housing training; a series of nine summer brown bag lunch discussions on various topics; and a presentation on emotional intelligence with Salem State University professor Gavriel Meirovich hosted by the MCAD, and attended by over seventy state employees.

The training unit oversees the Commission's internship program at all four offices, working closely with the Enforcement Advisor Supervisor in the Boston office, Enforcement Advisor in the Springfield office, and a team of intern supervisors across the agency. Through this interoffice collaboration, the internship program continues to flourish, with over 80 undergraduate, law student, and attorney volunteers working at the Commission during 2013. These interns play a key role at the Commission by completing hundreds of dispositions, intake meetings with complainants, and conducting outreach presentations across the Commonwealth.

As of the close of 2013, the training unit has monitored compliance in a total of 501 cases where the hearing decision or settlement included a training requirement. Of those, 382 cases are no longer active, generally because the training was completed and occasionally because the respondent or organization no longer exists.

The training unit continues to support program development for the National Center on Race Amity, strategic planning and program development for the Union of Minority Neighborhoods' Boston Busing and Desegregation Project, and program development for the YWCA Boston's Community Dialogues on race.

CONCILIATION/MEDIATION

Agency wide, the Conciliation Division scheduled 468 cases in 2013. Conciliations are conducted after probable cause is found. Of the 468 cases scheduled, 273 sessions were held with 177 settlements reached. This results in a 65% settlement rate. The total amount of conciliation settlements agency wide was approximately \$5,420,248.00.

The mediation program continues to be a robustly utilized resource for parties and attorneys alike. Agency wide participants are provided administrative and mediation services from experienced mediators. The program also provides college and law student interns valuable exposure to the mediation process. They are assigned cases to administrate, liaise with parties and their representatives, and attend mediations as observers (party acceptance permitting). Agency wide, the early mediation program was offered to over 426 parties and scheduled 324 mediations. Of the 324 mediations scheduled, 283 mediation sessions were conducted, which is an increase over last year of 55 cases, and 219 of the sessions held resulted in settlement. This results in a 77% settlement rate. The total amount of mediation settlements agency wide was approximately \$2,175,137.00.

SUMMARY OF ADR SETTLEMENT RATES BY MONTH

| | EARLY MEDIATION PROGRAM | | | | | | | | | | | | |
|----------------------|-------------------------|------|------|------|-----|------|------|------|-------|------|------|-----|---------------|
| | Jan. | Feb. | Mar. | Apr. | May | June | July | Aug. | Sept. | Oct. | Nov. | Dec | Annual Totals |
| Parties Contacted | 26 | 26 | 20 | 32 | 32 | 46 | 42 | 26 | 46 | 64 | 40 | 26 | 426 |
| Mediations Scheduled | 35 | 22 | 27 | 30 | 31 | 22 | 27 | 26 | 24 | 37 | 20 | 23 | 324 |
| Mediations Held | 32 | 19 | 23 | 28 | 31 | 20 | 25 | 23 | 21 | 32 | 13 | 16 | 283 |
| Mediations Settled | 29 | 15 | 19 | 22 | 16 | 17 | 17 | 19 | 17 | 23 | 12 | 13 | 219 |
| Settlement Rate | 91% | 79% | 83% | 79% | 52% | 85% | 68% | 83% | 81% | 72% | 92% | 81% | 77% |

| | POST PROBABLE CAUSE CONCILIATION PROGRAM | | | | | | | | | | | | |
|-------------------------|------------------------------------------|------|------|------|-----|------|------|------|-------|------|------|-----|---------------|
| | Jan. | Feb. | Mar. | Apr. | May | June | July | Aug. | Sept. | Oct. | Nov. | Dec | Annual Totals |
| Conciliations Scheduled | 55 | 52 | 58 | 54 | 34 | 41 | 35 | 38 | 33 | 29 | 18 | 21 | 468 |
| Conciliations Held | 29 | 25 | 35 | 28 | 26 | 23 | 22 | 22 | 19 | 16 | 12 | 16 | 273 |
| Conciliations Settled | 22 | 14 | 19 | 17 | 16 | 9 | 11 | 18 | 17 | 11 | 10 | 13 | 177 |
| Settlement Rate | 76% | 56% | 54% | 61% | 62% | 39% | 50% | 82% | 89% | 69% | 83% | 81% | 65% |

MCAD BUDGET FOR FISCAL YEAR 2013 OVERVIEW

July 1, 2012 - June 30, 2013

Budgetary Direct Appropriation

Line Item 0940-0100

State Appropriation **2,543,312**

Retained Revenues Collected

Line Item 0940-0101

HUD 617,806

EEOC 1,343,000

Trainings 145,930

Testing 2,789

Fees 5,203

Total 2,114,728

Train-The-Trainer

Line Item 0940-0102 *

Train the Trainer Program **87,565**

FY13 Budget Sub-Total 4,745,605

9C Cuts 47,322

TOTAL FY13 BUDGET 4,698,283

Total FY13 Expenses

Payroll 4,019,540

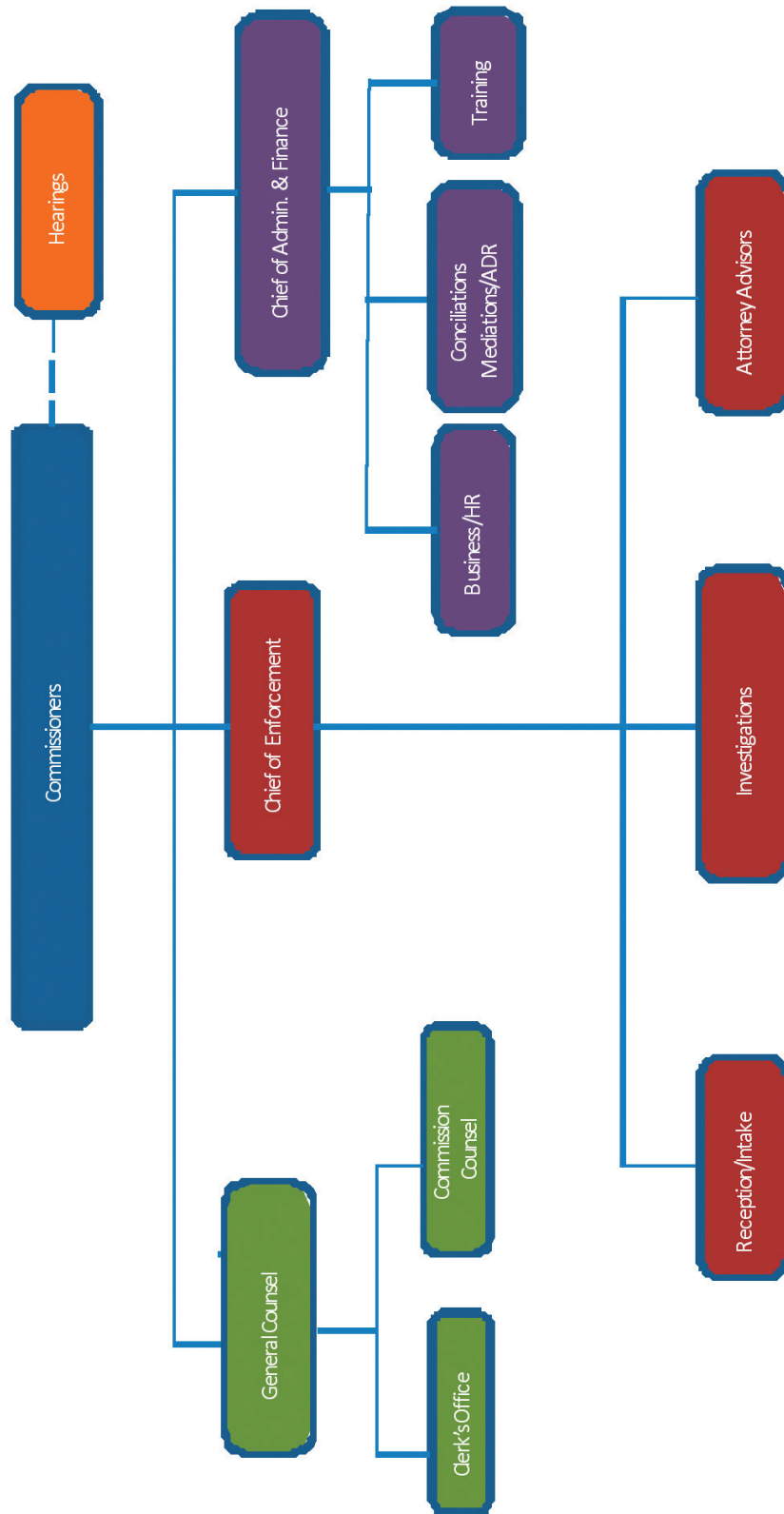
Rent 88,562

Administrative Costs 537,580

Total 4,645,682

** This retained revenue account allows the MCAD to retain and spend revenue from the MCAD Train the Trainer Program. However, the account is capped at \$70,000. Any revenue received in excess of that amount is deposited into the general fund. In FY13, revenues collected in that account exceeded the cap of \$70,000 and \$17,565.00 was deposited into the general fund.*

MCAD ORGANIZATIONAL STRUCTURE 2013



2013 MCAD Staff

| | | |
|------------------------|------------------------|-----------------------|
| Lisa Adams | Elizabeth Hickey | Michelle Phillips |
| Melvin Arocho* | Marzella Hightower* | Victor Posada* |
| Deborah A'Vant* | June Hinds-Zabala* | Jeannine Rice* |
| Joel Berner | Clare Horan | Amaad Rivera |
| Sarah Biglow | Vivian Hsu | Lila Roberts |
| Eric Bove | Maria Joseph* | Caitlin Sheehan |
| Kimberly Boyd* | Judith Kaplan* | Rebecca Shuster* |
| James Brislin | Theresa Kelly | Andre Silva |
| MaryAnn Brunton* | Nomxolisi Khumalo | Alexander Smith |
| Marlania Bugg* | Johny Lainé | Myrna Solod* |
| Emily Caplan | Jennifer Laverty | Kristen Sopet |
| Wendy Cassidy* | Shirley Lee* | Abigail Soto-Colon* |
| Janet Cha | Audrey Lee | Ethel Stoute* |
| Amy Chow | Simone Liebman* | Tania Taveras |
| Kathleen Chung | Melanie Louie* | Beth Tedeschi |
| Ellen Cobb | Sheila Mathieu | Korey Thiffault |
| Vanessa Davila* | Gilbert May* | Sunila Thomas-George* |
| Alexandria De Aranzeta | Sheree McClaine | Nancy To* |
| Karen Erickson | Constance McGrane | Jeffery Turner* |
| Geraldine Fasnacht* | Lynn Milinazzo-Gaudet* | Julian Tynes |
| Lynn Goldsmith* | Ying Mo* | Betty Waxman* |
| Barbara Green | Carol Mosca* | Jamie Williamson |
| William Green | Carol Murchison* | Paul Witham* |
| Eugenia Guastaferrri* | Pamela Myers | Patty Woods |
| Yaw Gyebi, Jr. | Nicole Newman | Jacklyn Zawada |
| SuJin Han | Joshua Papapietro | Carmen Zayas |
| Keith Healey | Yudelka Peña* | Catherine Ziehl |

* identifies employees who have ten or more years of service with the Commission

Bold identifies employees who retired in 2013

2013 MCAD Interns

| | | |
|----------------------|---------------------|--------------------|
| Bader Abu-Eid | Kate Huleatt | Alyssa Richardson |
| Lena Bae | Sharon HunJan | Lisa Rodriguez |
| Anila Bako | Tsyeba Johnson | Maritza Rodriguez |
| Joshua Balk | Benjamin Kehr | Nicholas Rowe |
| Alejandra Barcenaz | Sumitra P. Krishnan | Kate Sapirstein |
| Aileen Bartlett | Alexandra Laham | Alyssa Sheets |
| Brittany Bell | Joseph Landergan | Tenzing Sherpa |
| Mairead Blue | Tien Le | Anneta Shovgan |
| Sela Brown | Alexandra B. Lowe | Anique Singer |
| Gloria Cadder | Kuong C. Ly | Rosalind Smith |
| Nick Carriero | Assad Lyn | Yegi Son |
| Debra Ann Cebulski | Tuan Mai | Caroline Standke |
| Kelley Cohen | Benjamin Martin | Adam Swinderman |
| Jamie Cosme | Nicole Masri | Shu Wei |
| Rosanna Cruz-Sola | Nicole May | Sarah Wiles |
| Emerson Davis | Rachel | Helena Williams |
| Gabrielle DeStefano | Mayo | Roshima Williams |
| Prativa Dhakal | Sokhna Mbacke | Meisha N. Williams |
| Restilda Dhroso | Chad McDaniel | Adam Yoast |
| Nicholas Dorf | Jackie Meyers | |
| Natalie Festor | Moriah Miller | |
| Jamie Lynn Flaherty | Alexa Morris | |
| Addie Forster | Victoria Morte | |
| Kelly Friend | Samuel Mortimer | |
| Jeremy Gardner | Melina Munoz | |
| Tanya Gassenheimer | Brianna Newman | |
| Alyssa Gillespie | Renee Omolade | |
| Melanie N. Gomes | Shannon Palmer | |
| Krissy Greco | Angela Paternostro | |
| Evariste Hatungimaur | Letitia Z. Pierre | |
| Isabel Highland | Giovanna Randazzo | |

2013 MCAD Advisory Board Members

Thomas Gallitano (Chair)

Tani Sapirstein (Vice-Chair)

Margarita E. Alago

Barbara Chandler

Nadine Cohen

Remona L. Davis

Joseph L. Edwards

Jacqueline P. Fields

Karla Fitch-Mitchell

Gail Goolkasian

Jeffrey L. Hirsch

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