

# 2014 ANNUAL REPORT



Chairwoman  
Jamie R. Williamson

Commissioners  
Sunila Thomas George  
Charlotte Golar Richie



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# LETTER FROM THE COMMISSIONERS

**Dear Governor Baker, Lieutenant Governor Polito, President Rosenberg, Speaker DeLeo, Members of the State Legislature and People of the Commonwealth:**

In accordance with state law, we hereby issue the Annual Report for the Massachusetts Commission Against Discrimination (MCAD), which provides data and highlights the Commission's work during calendar year 2014.

The year 2014 was a significant anniversary in the history of civil rights. Across the country and at the MCAD, we recognized and celebrated the 50th anniversary of the 1964 US Civil Rights Act in conjunction with our state, federal and community civil rights partners. In collaboration with student volunteers from Winthrop High School, the MCAD recalled the 150th anniversary of the Gettysburg Address, by reciting and recording the address as a group in the great hall of the John Adams Court House and participating in the nation-wide Gettysburg address project. This event celebrated the mission of the MCAD which promotes equal opportunity for all through the eradication of discrimination.

Along with the marking of milestones, there was also renewed activism and reflection surrounding the continuing struggle for civil rights in all realms of society. As a country, we debated a national sports league's response to domestic violence and a nation-wide delivery company's treatment of pregnant employees; we witnessed throngs of demonstrators protesting the fatal shootings of unarmed black men in our cities, seeking justice through a renewed commitment to fair treatment regardless of race, recalling a movement of 50 years ago.

## **History & Mission**

The MCAD was established in 1946 as the state's chief civil rights agency charged with the authority to investigate, prosecute, adjudicate and resolve cases of discrimination. Led by three Commissioners, one who serves as chair, the MCAD enforces the state's anti-discrimination laws in employment, housing, credit, public accommodations and access to education, on behalf of individuals in numerous protected categories (including race, color, creed, national origin, age, disability, gender and sexual orientation). As an independent agency in the Executive branch of state government, the MCAD is partially funded by the U.S. Department of Housing and Urban Development (HUD), the U.S. Equal Employment Opportunity Commission (EEOC), the Commonwealth of Massachusetts, and revenues generated by its well-regarded training program.

## **Progress Report**

In addition to being an historic year for the MCAD, 2014 was also a productive year. The MCAD convened the 8th annual Fair Housing and Civil Rights Conference in Springfield with support from our federal, state, and local partners, which was attended by hundreds of civil rights leaders, supporters, and workers in the field, many whom are experts in fair housing and employment. The conference was an exciting opportunity to educate, share best practices, discuss trends, and deepen collaboration.

Throughout the year, the Commission issued decisions and orders on a variety of issues, including housing discrimination and the use of service animals, the Commission's jurisdiction in education and retaliation. Most notably, the Full Commission upheld decisions guaranteeing health insurance coverage for same-sex spouses, and liability against an employer that failed to address a hostile work environment based upon one's association with members of protected classes. At the request of the Supreme Judicial Court, the MCAD also filed an amicus brief on the topic of gender-based selection criteria by a police department.

The Commission assisted in efforts to advance legislation to expand its jurisdiction, most notably, the Domestic Workers' Bill of Rights enacted in June to protect workers in private homes from discrimination. We also joined the business and legal communities, and organized labor, to secure passage of an Act Relative

to Parental Leave, amending the Massachusetts Maternity Leave Act to create a gender-neutral right to unpaid leave for all new and expectant parents.

The primary focus of the MCAD continues to be the fair and swift investigation of all cases of discrimination. In 2014, over 3,100 individual complaints of discrimination were filed at our offices in Boston, New Bedford, Springfield and Worcester increasing the existing high volume of cases from previous years. We are proud that, through the development of targeted and improved case tracking, there was a decrease in the case backlog in 2014.

With a primary goal of reducing the case inventory, the Commission worked to increase its budget, streamline its operations, and preserve the operation of its four offices. Faced with an expiring lease and possible closure of our Worcester office, the Commission successfully secured a new location in downtown Worcester, ensuring continued service to the state's second largest city and the central part of the state.

Recognizing that a number of MCAD complainants have limited English proficiency, the Commission took decisive steps this year to establish a comprehensive Language Access Plan through data collection, document translation, and expanded access to interpretive services.

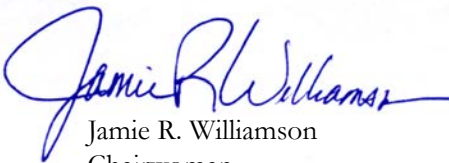
## Leadership

While 2014 was a historic anniversary year for civil rights in the United States, it was an important year of accomplishments and change at the MCAD. Jamie R. Williamson, a former city councilor and fair housing champion, was appointed MCAD Chair, and former legislator and city housing chief Charlotte Golar Richie was appointed as Commissioner. They joined Commissioner Sunila Thomas-George, whose background as an attorney and former Manager at MCAD helps to establish a well-rounded leadership team.

Discrimination is often described as “an epidemic,” as it is widespread, pernicious, degrading and erodes the fabric of communities. In the 68 years after the establishment of the MCAD, and 50 years after the passage of the nation's landmark civil rights law, discrimination continues to be an issue of critical concern in Massachusetts. However, we commit that, with the support of the Baker administration and the Massachusetts Legislature, and in partnership with HUD, EEOC, and the civil rights community, we will continue to make great strides in our efforts to prevent, reduce and ultimately eradicate discrimination in the Commonwealth of Massachusetts.

Respectfully submitted,

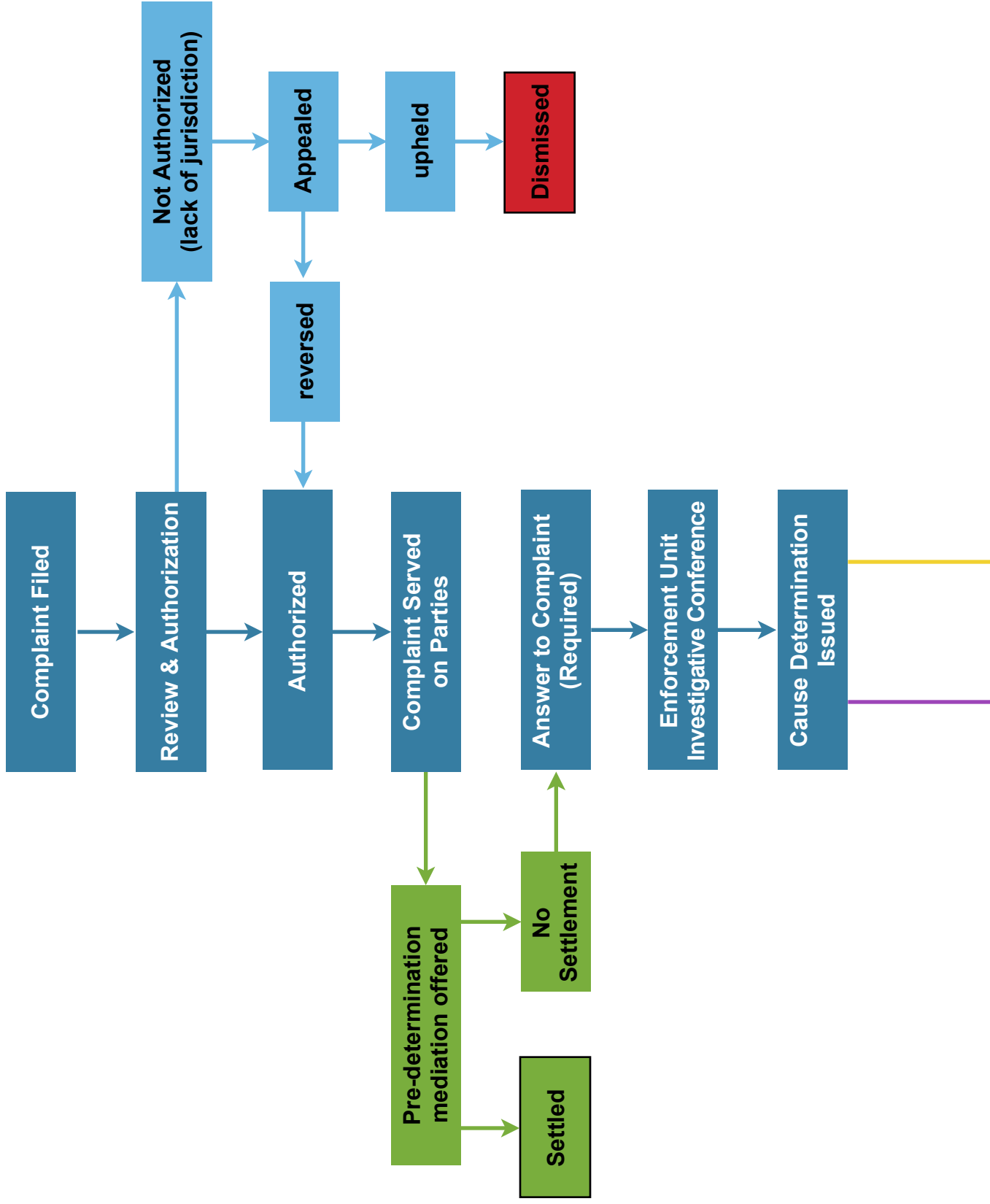


  
Jamie R. Williamson  
Chairwoman

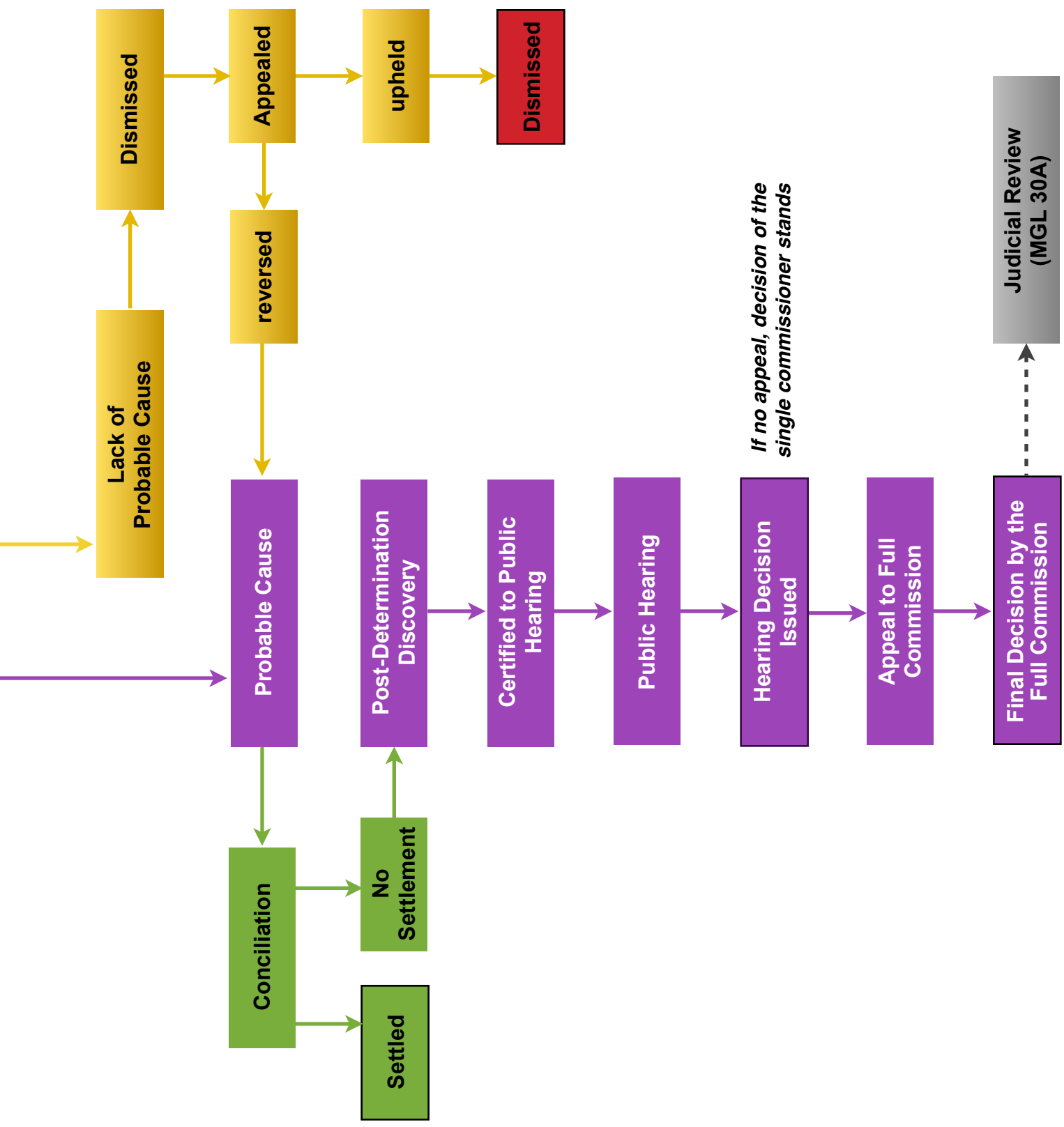
  
Sunila Thomas George  
Commissioner

  
Charlotte Golar Richie  
Commissioner

# Flow Chart of MCAD Cases

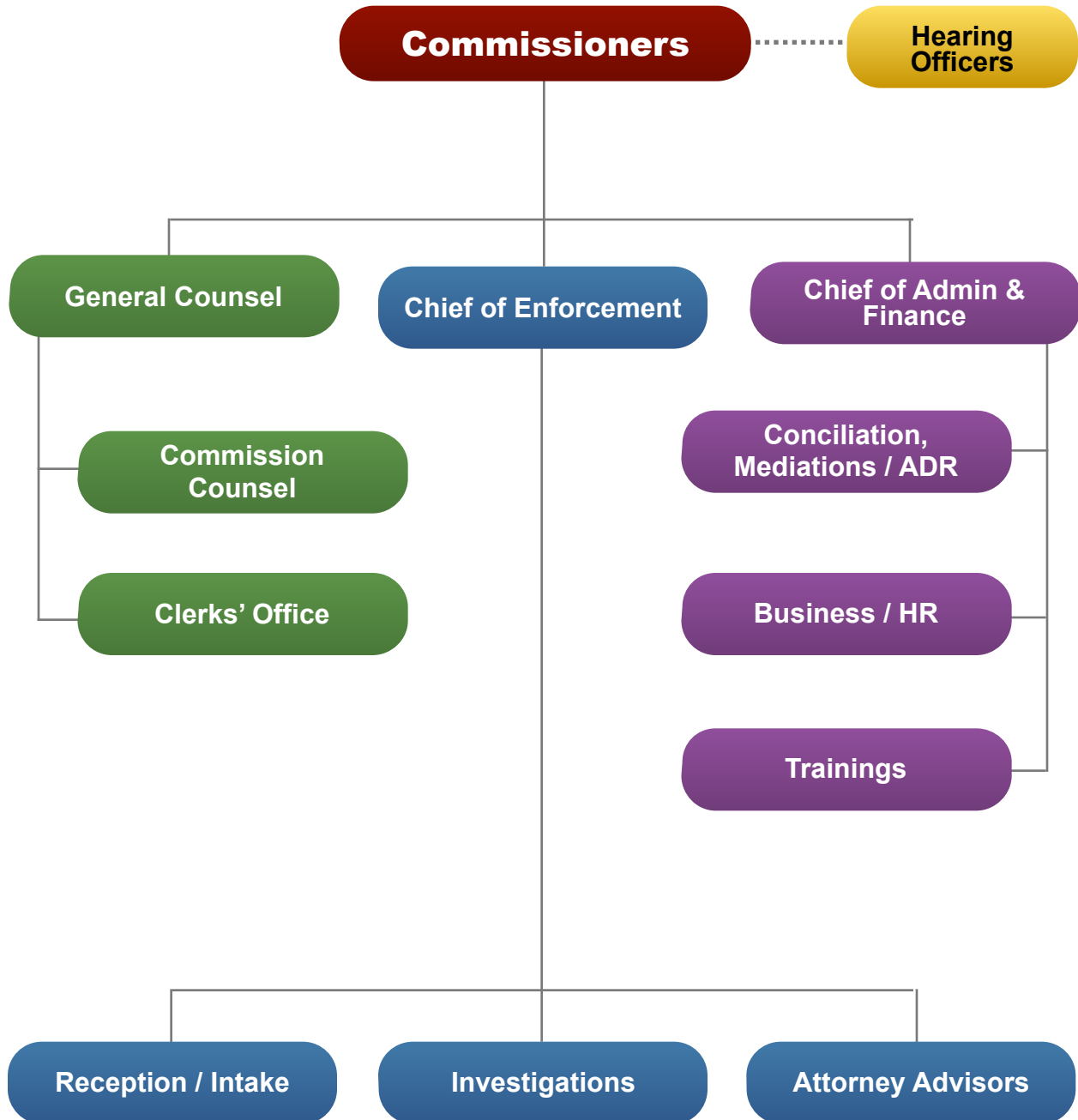






*If no appeal, decision of the single commissioner stands*

# MCAD ORGANIZATIONAL STRUCTURE



# MCAD BUDGET FOR FISCAL YEAR 2014

## OVERVIEW

July 1, 2013 - June 30, 2014

### Budgetary Direct Appropriation

Line Item 0940-0100	
State Appropriation	<b>\$2,568,237</b>

### Retained Revenues Collected

Line Item 0940-0101	
HUD	\$569,523
EEOC	\$1,436,305
Trainings	\$74,295
Testing	\$5,035
Fees*	\$6,396
Attorney's Fees	<u>30,000</u>
<b>Total</b>	<b>\$2,121,554</b>

### Train-The-Trainer

Line Item 0940-0102	
Train the Trainer Program	<b>\$95,050</b>

<b>Total FY14 Budget</b>	<b>\$4,784,841</b>
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### Total FY13 Expenses

Payroll	4,072,131
Rent	88,562
Administrative Costs	620,922
<b>Total</b>	<b>\$4,781,615</b>

\* Fees are collected for copies of documents responding to Public Records requests.

# ENFORCEMENT DIVISION

The MCAD Enforcement Division is primarily responsible for receiving and investigating complaints of discrimination and making recommendations of Probable Cause or Lack of Probable Cause to the Investigating Commissioners. The Enforcement Division also reviews complaints for lack of Jurisdiction, recommending dismissals where appropriate, and facilitates settlement discussions on housing complaints for early resolution under the state and federal Fair Housing Acts.

The Enforcement Division continued to produce strong results, despite major personnel changes. At the conclusion of 2014, the Enforcement Division, operating out of offices in four locations statewide – Boston, New Bedford, Worcester and Springfield – was comprised of the Acting Chief of Enforcement, six supervisors, 20 investigators, five attorney advisors, and six administrative assistants.

## Cases Processed

In 2014, the Enforcement Division received 3,127 new complaint filings. At year end, the Division had 4,843 complaints under investigation. The Division completed 1919 investigations, 187 more than in 2013. There were 327 Probable Cause findings issued, down from the 411 in 2013.

Compared to other state civil rights commissions across the country, the MCAD has one of the largest caseloads per investigator, with the average caseload of employment investigators surpassing 250, while neighboring states have an average of 50-75. Yet, the MCAD enforcement division still is able to complete more investigations and resolve more cases than nearly all other state civil rights commissions across the country.

## Enforcement Outreach And Training

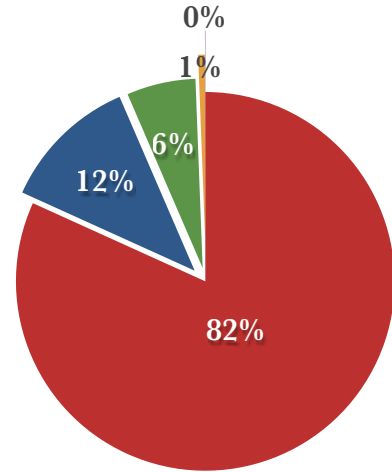
An important aspect of the MCAD mission is to eliminate and prevent discriminatory policies or practices in employment, housing and public accommodation through outreach and training. In 2014, the Enforcement Division staff participated in numerous educational outreach and training sessions for public and private organizations, colleges and universities, business organizations, law firms, and civic associations throughout the Commonwealth.

The Enforcement Unit also provided training opportunities for its staff, facilitating staff attendance at civil right symposiums, continuing legal education programs, and training seminars presented by law schools, the Boston Bar Association, Massachusetts Bar Association, Hamden County Bar Association, the U.S. Department of Housing and Urban Development, the U.S. Equal Opportunity Commission, and the Commonwealth's Human Resources Division. Investigators were given the opportunity to obtain training in mediation and alternative dispute resolution strategies.

Finally, our robust internship/volunteer program, which includes undergraduates, graduate students, and law students, trained over 40 interns, who as a group assisted with intake, administration, and investigations. Interns accounted for the successful completion of 250 investigative dispositions.

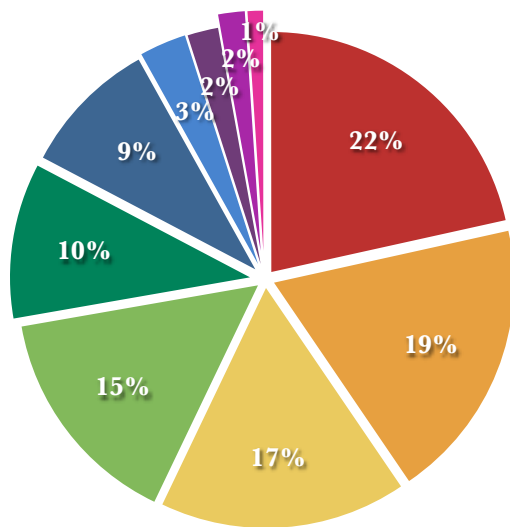
**COMPLAINTS FILED BY JURISDICTION IN 2014**

Number of Complaints Filed by Jurisdiction		
● Employment	2,557	
● Housing	367	
● Public Accommodation	184	
● Education	18	
● Credit	1	
<b>Total</b>	<b>3,127</b>	



This graph shows the total number of complaints filed in 2014 by jurisdiction. The pie chart visualizes the percentage of cases filed in each jurisdictional category against the total. As in years past, the vast majority of new complaints alleged employment discrimination (81.7%), followed by Housing (11%) an increase of 11 cases over 2013, and Public Accommodation at (5.8%), essentially equivalent to 2013 (5.7%).

**COMPLAINTS: FILED BY PROTECTED CATEGORY IN 2014**



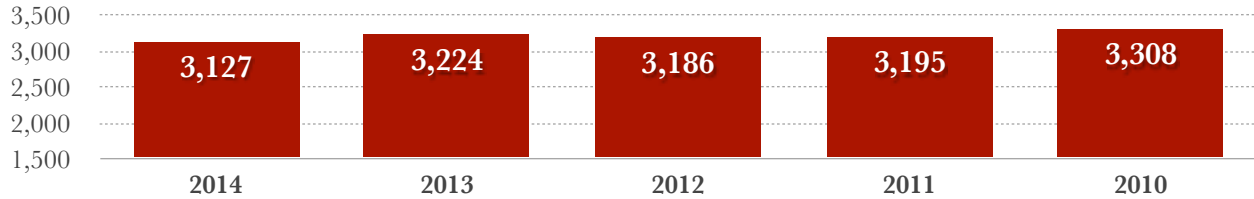
**Complaints Filed by Protected Category**

● Disability	1,181
● Race / Color	1,039
● Retaliation	911
● Sex	830
● Age	573
● National Origin	505
● Other*	173
● Sexual Orientation	114
● Creed	98
● Children	57

\*Arrest Record, Familial, Gender Identity, Genetic Information, Lead Paint, Marital Status, Military Status, Public Assistance.

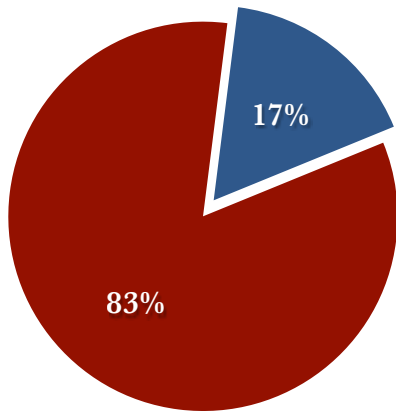
This data shows the total number of cases filed in 2014 broken down by each major protected category. Many of the cases filed assert more than one protected category. The pie chart visualizes the percentage of complaints in each category as compared to the total number of new complaints filed in 2014. In 2014, Disability and Race/Color remained the most frequently cited categories of discrimination. While the protected category of Sex declined to 830 cases, down from 986 in 2013, this decrease may be due in part to the variety of additional sex-related protected categories since the MCAD now distinguishes between Sex, Gender Identity, and Sexual Orientation—which, combined, account for 960 cases—an increase from 2013 of 130 cases that alleged sex-based discrimination. Retaliation claims saw a decrease of 85 over 2013 (996 cases), but still account for the third most frequently cited category of discrimination.

**COMPLAINTS FILED ANNUALLY**



This graph represents all employment, housing, education, credit, and public accommodation complaints filed in 2014 and the preceding four years. In 2014, the MCAD received 3,127 new complaints.

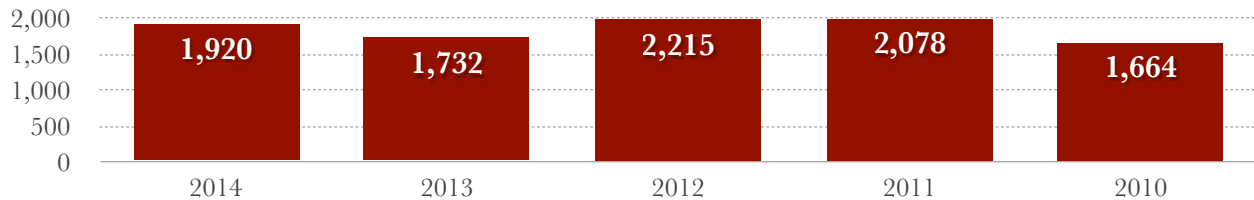
**SUBSTANTIVE DETERMINATIONS IN 2014**



Substantive Dispositions	
Lack of Probable Cause (LOPC)	1,597
Probable Cause (PC)	323
<b>Total</b>	<b>1,920</b>

The data shows the number of cases in which substantive determinations — Probable Cause (PC) and Lack of Probable Cause findings (LOPC) — were issued in 2014 by the Enforcement Division. This pie chart visualizes the percentage of LOPC findings (83%) and PC findings (17%). The percentage of PC findings in 2013 was 24% and the percentage of LOPC findings was 75%. The percentage of Probable Cause findings in 2012 and 2011 were 26% and 25% respectively and the percentage of Lack of Probable Cause findings in 2012 and 2011 were 74% and 75% respectively.

**SUBSTANTIVE DETERMINATIONS COMPLETED ANNUALLY**

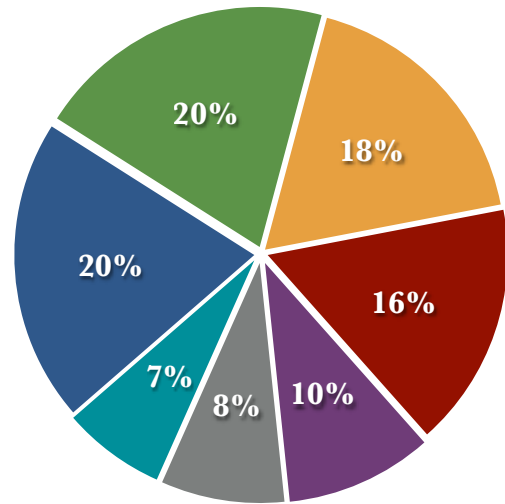


This graph represents the total number of Probable Cause and Lack of Probable Cause determinations issued in 2014 compared to the last four years. 2014 saw nearly an 11% increase in productivity over 2013, with 188 more dispositions issued than the previous year.

**ADMINISTRATIVE RESOLUTIONS IN 2014**

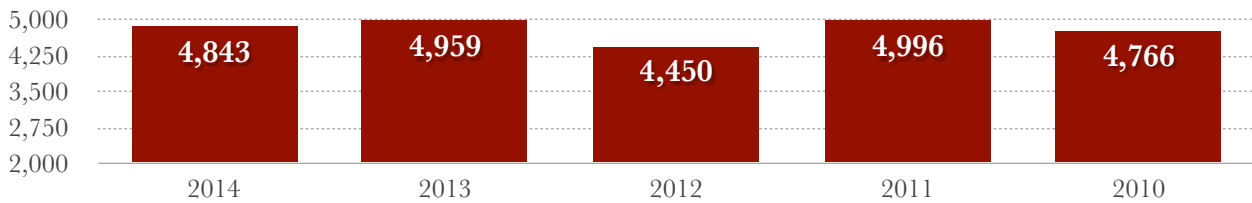
Administrative Resolutions	
● <b>Removal to Court (Ch. 478)</b>	<b>358</b>
● <b>Withdrawn with Settlement</b>	<b>354</b>
● <b>Conciliation</b>	<b>313</b>
● <b>Pre-Determination Settlement</b>	<b>289</b>
● <b>Withdrawn</b>	<b>174</b>
● <b>Other*</b>	<b>146</b>
● <b>Lack of Jurisdiction</b>	<b>122</b>
<b>Total</b>	<b>1,756</b>

\* Administrative closures includes cases adjudicated at public hearing, cases when the complainant was unable to be located or their failure to participate in the process. When the complainant sought judicial review from the Attorney General's office, or bankruptcy.



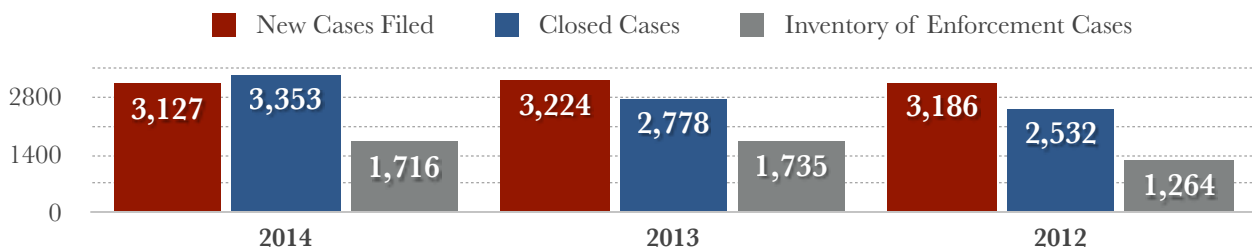
This data shows the total number of cases that were administratively resolved in 2014. The pie chart shows the percentage of cases closed in each category. The total number of administrative resolutions was (1,756). The majority (956 cases) were resolved by settlement or conciliation, a reflection of the MCAD's strong commitment to mediation efforts.

**INVENTORY OF ENFORCEMENT CASES ANNUALLY**



This graph represents the total number of active cases that continue to be investigated in the Enforcement Division as of December 31, 2014 and compares the 2014 end of year inventory to the preceding four years. The MCAD's commitment to timely resolution of cases remained consistent with the past two years at 18 months, the case inventory was reduced by 116 cases over last year.

**CASES CLOSED COMPARED TO INVENTORY ANNUALLY**

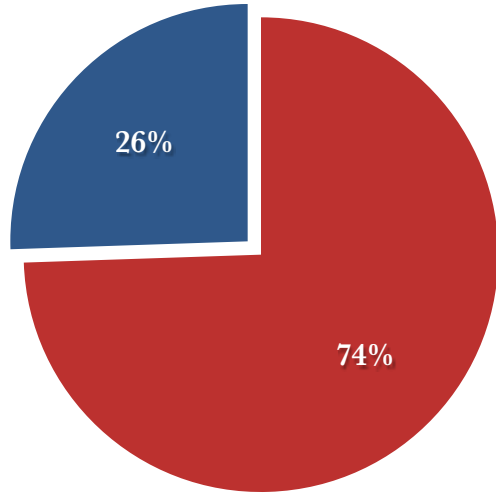


This graph shows the number of new cases filed at MCAD compared to the total number of closed cases for the year (cases that received a Lack of Probable Cause determination and those cases that were settled or removed to court). In 2014, the MCAD received 3,127 new cases and we closed 3,353 cases (575 more than last year), and reduced the 2013 inventory by 116 cases.

HOUSING CASES

**Substantive Housing Dispositions**

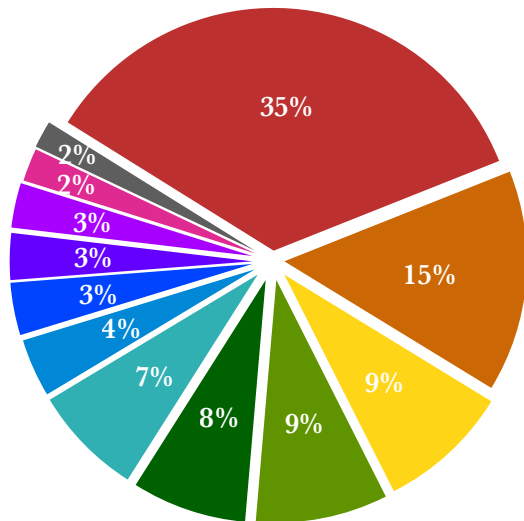
● Lack of Probable Cause	175
● Probable Cause	60
<hr/>	
<b>Total:</b>	<b>235</b>



**Housing Complaints Filed by Protected Category**

● Disability	271
● Race/Color	114
● Public Assistance	68
● Retaliation	68
● National Origin	59
● Children	57
● Sex	30
● Lead Paint	27
● Other*	24
● Familial	23
● Sexual Orientation	17
● Age	14

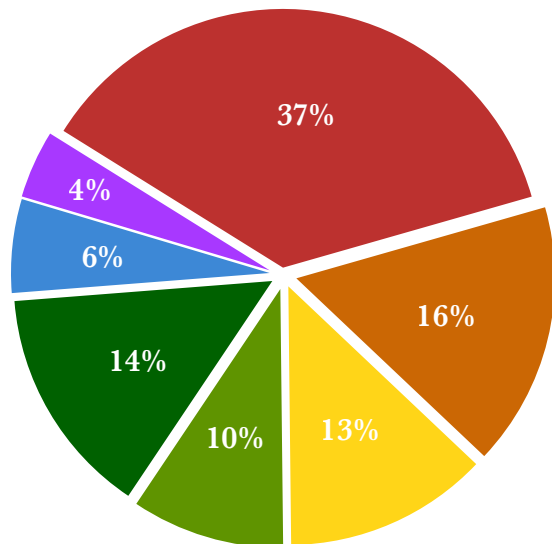
\* **Other** includes Marital Status, Creed, Veteran Status, and Gender Identity



**Housing Administrative Resolutions**

● Pre-Determination Settlement	60
● Conciliation	31
● Withdrawn	24
● Judicial Review	18
● Other*	27
● Lack of Jurisdiction	11
● Failure to Cooperate	8

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





## 2014 EEOC Substantial Weight Cases

In these cases the original charge of discrimination was filed and investigated with the EEOC. After an 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	3
Withdrawn with Settlement	19
Chapter 478 (removed to Court)	20
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 provides legal and administrative services to the Commission in furtherance of its legislative mandate to eradicate discrimination through enforcement of the Commonwealth's anti-discrimination laws. It supports the Commission's objectives through administrative proceedings, litigation and appellate practice in Massachusetts state and federal courts. It also provides legal and procedural advice to the Commission, including advice concerning enforcement, investigations and proposed legislation. The Legal Division is comprised of the General Counsel, Deputy General Counsel, six Commission Counsel and the Clerk's Office.

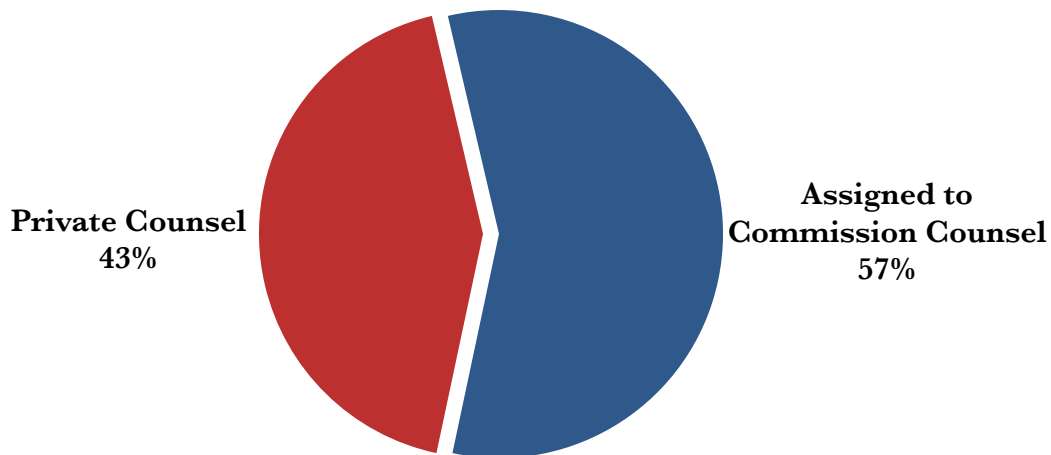
Commission Counsel in the Legal Division evaluate and litigate individual complaints in which the Investigating Commissioner has found Probable Cause, prosecute Commission-initiated complaints, and participate in conciliation proceedings. Additionally, Commission Counsel are responsible for defense of all final agency decisions when judicial review is sought in Superior Court and/or the State's appellate courts pursuant to M.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 provides legal support for the Commissioners on public interest Commission-initiated complaints. Members of the Legal Division also participate in outreach and training efforts to educate staff and the public. It also files friend of court (amicus) briefs on important issues arising under the anti-discrimination laws in cases litigated by private parties in the appellate courts. The Legal Division works with the Attorney General's Office when appropriate to defend the agency and its enforcement powers in administrative and litigation matters.

The Clerk's Office within the Legal Division is made up of the Clerk of the Commission, Hearings Clerk, Appeals Clerk, Conciliation Clerk, and two Enforcement Clerks. In Springfield, the Clerk's Office consists of an Assistant Clerk and First Assistant Clerk. The Clerk's Office responsibilities include overseeing and scheduling Commission Hearings and Full Commission appeals, lack of probable cause appeals, assignment of motions to hearing officers, issuing Commission decisions and responding to public inquiries. During 2014, the Clerk's office responded to over 300 public records requests. The Clerk's Office also handles subpoenas served upon the Commission and manages the significant number of motions, notices, withdrawals and other filings with the Commission.

## Commission Counsel Case Assignments and Settlements

After a finding of Probable Cause by the Investigating Commissioner, the General Counsel assigns Commission Counsel to proceed in the public interest to eradicate discriminatory practices by obtaining affirmative relief and to obtain victim-specific relief for Complainants who are not represented by private legal counsel (pro se complainants). Of the 323 cases that received a Probable Cause determination in 2014, the Legal Division received 211 of those to prosecute, all of which were filed by pro se complainants. Commission Counsel conducted four Public Hearings on behalf of pro se complainants during the year. Counsel also continued to handle the existing caseload of over 200 additional cases which were pending as of December 31, 2013.

### CASES ASSIGNED TO COMMISSION COUNSEL IN 2014 AFTER PROBABLE CAUSE DETERMINATION



Commission Counsel resolved 112 cases through conciliation and negotiation, resulting in compensation of over \$1,407,790 to Complainants for alleged 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 a position or awarding a promotion.

## Noteworthy Settlements

### Employment

- ◆ In a complaint alleging failure to hire based on race/national origin discrimination filed by Cape Verdean police sergeant against a town on Cape Cod, the Police Department agreed to resolve the matter with payment of \$21,000 and the adoption of a recruitment plan. The plan involved publicizing the police officer/firefighter civil services exams in local minority news media; placing ads and notices of vacancies with organizations, clubs and news media targeted at the Cape Verdean and African American communities; recruiting at high schools, colleges and communities colleges with high enrollment of women and people of color. (Barnstable County)

- ♦ In a case brought by a female salesperson claiming that she was subject to different terms and conditions in the workplace by her supervisor, the company agreed to resolve matter for \$30,000, training for the supervisor, a positive reference letter for the Complainant, and extensive training for six HR representatives on conducting internal discrimination complaint investigations. (Essex County)
- ♦ In a complaint of discrimination in employment based upon disability, Complainant, an individual who suffered from depression and anxiety, was terminated from her receptionist position at Respondent after she requested an accommodation to aid in the treatment of her disability. Respondent allegedly refused to engage in an interactive dialogue with Complainant regarding her requested accommodation and instead accused her of violating internal company policies. The terms of the settlement provided \$30,000 in compensatory relief for the Complainant. (Essex County)
- ♦ In a complaint alleging discrimination based on disability, sex/pregnancy, national origin, and retaliation, Respondent was alleged to have unlawfully denied maternity leave in addition to failing to provide a reasonable accommodation. The matter settled for \$32,500 and Respondents agreed to submit applicable policies for review by the Commission. All supervisors were required to attend anti-discrimination training. (Hampden County)
- ♦ In a complaint alleging gender discrimination by a union member against a union, Respondent agreed to outsource investigations relating to gender discrimination by union officials, and to provide MCAD with a tri-annual report documenting internal complaints of discrimination. (Norfolk County)
- ♦ In a complaint alleging sexual harassment and retaliation brought by a secretary against a national financial institution, the case resolved for \$75,000 and training on conducting an internal investigation of discrimination for the Boston Branch Manager. The alleged harasser separated from employment with Respondent during the negotiation of the matter. (Suffolk County)
- ♦ In a complaint of discrimination based on sex and sexual harassment, Complainant, a newly-hired assistant to the Chief Executive Officer of multiple technology and research firms, alleged that she was subjected to comments and e-mails of a sexual nature during her employment. Complainant's supervisor is alleged to have required that Complainant accompany him to personal events outside of working hours unrelated to company business. Complainant asserted that her attempts to report the sexual harassment were ignored by Respondents' human resources department and within a short time after making her complaint, Respondents terminated her employment. As terms of settlement, Respondents agreed to training on anti-discrimination in employment, institution of a sexual harassment policy in conformance with the Commission's model sexual harassment policy, to have its employees sign acknowledgement forms of the new sexual harassment policy and to provide these forms to the Commission's Director of Training. The settlement terms also included payment to Complainant of \$30,000 in compensatory damages. (Suffolk County)
- ♦ In an employment case based on race (harassment) filed by a chef against a hotel, Respondent agreed to pay Complainant \$30,000, provided Complainant with a positive letter of reference, undergo fair employment training, and subject its EEO policy to MCAD review. (Suffolk County)
- ♦ In a complaint filed by a physician applying for a position as a resident at a major Boston hospital who alleged that he was discriminated against in the interview process because of his religion, i.e. Muslim, the hospital agreed to change its written interview procedures manual; to issue letters of apology to the complainant; to have a senior physician involved in interviewing undergo discrimination training, and to pay the complainant \$12,500 in damages. (Suffolk County)

- ♦ In a complaint of race discrimination in employment by an approximately 30-year employee of the Respondent, the terms of the settlement provide for Complainant to receive an immediate payment of \$20,000, and a promotion which guarantees Complainant a yearly increase in salary of approximately \$10,000, which represents over \$200,000 of additional income to Complainant over his lifetime. (Worcester County)
- ♦ In a complaint of retaliation brought against a police department by an officer who alleged that he was demoted and forced to retire after supporting a discrimination complaint brought by another officer, the matter settled for a negotiated sum and Respondent agreed to training for certain ranked officers, as well as the Director of Human Resources. The Respondent was also required to submit its employment policies for review by the Commission to ensure compliance with all applicable laws. (Worcester County)
- ♦ In a complaint for wrongful termination based on sex/pregnancy discrimination, the matter was settled for a negotiated sum and Respondent agreed to undergo training for at least two employees. Respondent was also required to immediately cease and desist use of its then-current maternity leave policy, which was not in compliance with Massachusetts law, and to work with the Commission to develop a lawful maternity leave policy. (Worcester County)
- ♦ An age discrimination complaint filed at the MCAD was settled for both victim-specific relief and affirmative relief. Respondent organization was a savings bank headquartered in Worcester County. The Respondent was alleged to have terminated its Chief Financial Officer (CFO), who was a long-term employee and who was 63 years old at the time of separation. The complaint stated that the CFO was less than two years away from fully vesting his pension benefits and the termination was specifically due to his high salary and the anticipated vesting of his pension benefits. The complaint further asserted the Respondents' performance deficiency claims were pretextual in light of his positive annual work evaluations. The matter settled for \$175,000 for the Complainant, and affirmative relief which included age discrimination training for the bank's Chief Executive Officer and other managers. (Worcester County)

## Housing

- ♦ In a complaint of housing discrimination based on race and national origin by a husband and wife of Chinese descent, Complainants alleged that Respondents, landlords and building management company, allegedly refused to allow them to display a sign on their front door in celebration of the Chinese New Year and removed the sign from Complainants' apartment door without their permission. The Commission successfully secured equitable relief in the form of training for all Respondents in the fair housing laws and \$5,000 in compensatory relief for Complainants. (Middlesex County)
- ♦ In a complaint of housing discrimination against Respondent landlords, Complainants, who were expecting a child, alleged that upon learning this news, Respondent informed them they would have to move because the premises were not de-leaded. Respondents allegedly refused to de-lead the house and refused to renew Complainants' lease. The settlement of this matter included equitable relief in the form of a lead inspection of the premises, training for Respondents in the fair housing laws, and \$7,000 in compensatory relief for Complainants. (Middlesex County)
- ♦ In a case alleging housing discrimination on the basis of disability due to denial of service dog (hearing assistance dog), Respondent landlord agreed to pay \$856 for Complainant's out of pocket expenses related to the Complainant's housing search, to make a \$2,800 charitable donation to International Hearing Dog

Inc., to adopt a reasonable accommodation policy for MCAD’s review and to be trained in the fair housing laws. (Middlesex County)

- ♦ In a complaint alleging Section 8 housing discrimination, property owners agreed to prominently include “Section 8 welcome” in all its ads, to undergo training in the fair housing laws, and to reimburse Complainant for moving expenses and emotional distress. (Suffolk County)
- ♦ A disability discrimination complaint filed at the MCAD was settled following a Conciliation Conference. The settlement included a monetary component and affirmative relief. A large property management company in Worcester was alleged to have utilized waiting list practices which discriminated against disabled tenants at a 1200+ unit apartment complex. Specifically, the complaint alleged that property manager, property management company, and property owner failed to prioritize disability transfers for existing disabled tenants ahead of the placement of new tenants. The complainant alleged waiting over four years to be transferred to a unit on the same floor as the laundry facilities. The matter settled for \$52,000 in emotional distress damages for the complainant at conciliation. Additionally, to preclude the filing of subsequent pattern-and-practice complaints, the settlement included specific relief of \$4,000 per person affected by the respondents’ discriminatory waiting list practices. Further remedies included (1) fair housing training for all of Respondents’ employees, contractors, managers, and owners and (2) quarterly reporting on respondents disability accommodation practices, and (3) multi-jurisdictional monitoring of respondents’ disability accommodation practices at all properties in Massachusetts (13 properties), Connecticut (55 properties), and Rhode Island (4 properties). (Worcester County)

## Public Accommodations

- ♦ In a public accommodations discrimination complaint brought against a Massachusetts hospital based on an alleged unlawful refusal to provide a transgendered person with reproductive services, Complainant who identified as male, but remained biologically a female, had no biological or chemical barriers to insemination. Complainant subsequently received services from another medical facility and successfully gave birth. The matter was settled for a negotiated monetary sum. (Hampshire County)
- ♦ In a public accommodations complaint alleging discrimination based upon disability and use of a service animal, Complainant alleged he was denied access to a local Veterans Post because he was accompanied by his service dog. Respondent’s patrons allegedly taunted Complainant as he exited with his dog. As terms of settlement, Respondent agreed to adopt and implement a Commission-drafted policy prohibiting discrimination in its place of public accommodation, to post a Commission-approved Notice to Customers regarding its acceptance of all individuals accompanied by service animals, and to have a member of its management staff undergo training by the Commission on the public accommodation laws regarding discrimination. (Norfolk County)

## M.G.L. Chapter 30A Litigation

Commission Counsel were assigned to defend four G. L. chapter 30A petitions filed in the Massachusetts Superior Courts in 2014 seeking judicial review of the final agency decision of the Commission (Full Commission Decisions). Commission Counsel, through briefing and oral argument, seek to uphold and defend the decisions of the Hearing Officers and Full Commission.

**Brighton Gardens Apts, L.P Lombardi Corp., et al. v. MCAD**, Suffolk County Civil Action No.14-02112. The MCAD filed its answer and counterclaim for enforcement of the final agency decision in favor of Complainant for housing discrimination based upon denial of a service animal, the Superior Court (Liebensperger J.) dismissed Respondent's c. 30A appeal for failure to prosecute, conditioned upon Respondent filing a motion for judgment on the pleadings within 30 days of December 17, 2014.

**Massasoit Industrial Corp. v. MCAD, et al.**, Plymouth County Civil Action No. 14-000694. The MCAD filed its answer and counterclaim for enforcement in a c. 30A appeal of the final agency decision in favor of Complainant in an age discrimination employment case. The respondent served its motion for judgment on the pleadings on December 12, 2014.

**Shriners Hospital v. MCAD, et al.**, Suffolk County Civil Action No. 14-02839. The MCAD filed its answer and counterclaim for enforcement on December 16, 2014 in this c. 30A appeal of a final agency decision for Complainant finding sexual orientation discrimination in employment based on Respondent's denial of certain medical benefits to Complainant's spouse who was of the same gender.

**United Parcel Service, Inc. v. MCAD, et al.**, Hampden County Civil Action No. 14-00032. The MCAD filed its answer and counterclaim for enforcement, and filed a brief opposing Respondent's motion for judgment on the pleadings in this c. 30A appeal of a decision in favor of Complainant on his claim of disability discrimination in employment. Oral argument on the parties' respective motions for judgment on the pleadings was heard by the Superior Court (Sweeney J.) on October 7, 2014.

In addition to the four Chapter 30A court cases assigned in 2014, Commission Counsel were responsible for the on-going defense of six additional Chapter 30A lawsuits that remain pending in the Massachusetts Superior Courts. The MCAD prevailed in two of these cases in 2014, and is awaiting decisions on the remainder of the cases.

**Bellanti v. MCAD, et al.**, Essex County Civil Action No. 13-1067. The Commission's Motion for Judgment on the Pleadings in support of the final agency decision in favor of Complainant in a sexual harassment complaint against her employer was filed in 2014 and remains pending before the Superior Court.

**Costco Wholesale Corporation v. MCAD, et al.**, Suffolk County Civil Action No. 11- 03170. The MCAD prevailed on March 5, 2013 in a Chapter 30A appeal by the Respondent in this public accommodation case in favor of Complainant who was denied access to a place of public accommodation with his service animal. (MacLeod, J.). As intervener, the Complainant sought additional attorneys' fees which were denied in part by the Superior Court in 2014. Respondent and Complainant have filed Notices of Appeal.

**Nubar Hagopian and Newbury Guesthouse v. MCAD, et al.**, Suffolk County Civil Action No. SUCV 13-3897. The Massachusetts Superior Court (Lauriat, J.) on December 8, 2014 affirmed the final agency decision of the MCAD in an employment discrimination case in favor of Complainants, based on race and retaliation. The Superior Court also upheld the Commission's authority to impose prejudgment interest on the award of damages and the imposition of a \$10,000 civil penalty against Respondent.

**MCAD, et al. v. Defazio**, Suffolk County Civil Action No. 13-03005-F, Middlesex County Civil Action No. 13-03344. The Commission's enforcement action to uphold a decision in favor of Complainant in a housing discrimination case based on race and Respondent's Chapter 30A appeal were consolidated into a single action in Middlesex Superior Court. Following the denial of the Commission's motion to dismiss for Respondent's failure to prosecute, motions for judgment on the pleadings and briefs were filed. The Massachusetts Superior Court (Pasquale, J.) heard argument on December 5, 2014, sought additional briefing concerning emotional distress damages and took the matter under advisement.

**Anthony Luster v. MCAD, et al.**, Worcester County Civil Action No. 12-0861D. Plaintiff's Motion for Judgment on the Pleadings was denied on August 22, 2013, and the Court affirmed the MCAD decision dismissing Complainant's disability discrimination complaint. Plaintiff filed a Notice of Appeal, but failed to take necessary steps to assemble the record, and the Commission has moved for dismissal of the appeal for failure to prosecute.

**YRC Inc. v. MCAD, et al.**, Suffolk County Civil Action No. 12-1699. The Massachusetts Superior Court (Ames, J.) allowed the Commission's Motion for Judgment on the Pleadings on July 1, 2014, and affirmed the Full Commission's decision in favor of Complainant in this disability discrimination case. No appeal was filed.

## Other Litigation and Appeals Handled by Commission Counsel

Commission Counsel also defend the agency in lawsuits which challenge the Commission's jurisdiction, preliminary determinations and procedures, but are not brought as Chapter 30A administrative appeals. Commission Counsel also file enforcement actions on behalf of the agency. In 2014, Commission Counsel handled ten litigation matters pending in the Massachusetts Superior Courts.

**Araujo v. MCAD, et al.**, Suffolk County Civil Action No. SUCV2013-02843E. On September 20, 2013 the Superior Court granted the Commission's Motion to Dismiss complainant's challenge to the Commission's lack of probable cause finding and subsequently denied complainant's Motion to Vacate the Dismissal, affirming its earlier judgment. Complainant filed a notice of appeal, but failed to take further action. On December 9, 2014, the Superior Court (Davis J.) granted the Commission's Motion to Dismiss for Failure to Prosecute, which Complainant has appealed and the Commission has opposed.

**Harold Bertino v. MCAD, et al.**, Plymouth County Civil Action No. 2013-01079. In a complaint challenging the Commission's lack of probable cause finding, the Commission's Motion to Dismiss was allowed by the Superior Court (Davis J.) on February 11, 2014.

**Boisselle, Morton & Associates, et al. v. MCAD**, Hampshire County Civil Action No. HSCV2014-00065. Respondents' complaint challenging the Commission's denial of its motion to dismiss for lack of jurisdiction was voluntarily withdrawn on April 15, 2014, after service of MCAD's Motion to Dismiss the court complaint. The case is proceeding in MCAD investigations.

**De Almeida v. MCAD, et al.**, Suffolk County Civil Action No. SUCV2013-03756. The Commission's Motion to Dismiss this complaint challenging the MCAD's lack of probable cause finding was allowed by the Superior Court (J. Lauriat) on April 22, 2014.

**Richard Fleming v. MCAD, et al.**, Suffolk County Civil Action No. SUCV2013-03480. The Commission's Motion to Dismiss a complaint challenging the MCAD's lack of probable cause finding was allowed by the Superior Court (MacLeod J.) on January 21, 2014 with final judgment issuing on April 14, 2014.

**MCAD, et al. v. Fung Wah Bus Transportation, Inc. and Pei Lin Liang**, 84 Mass. App. Ct. 1106 (2013) (Rule 1:28 disposition). The MCAD and the Commonwealth ( Massachusetts Attorney General's Office) filed a Superior Court enforcement action to enforce the MCAD's final decision in this disability discrimination/ service animal public accommodation case. 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 2013. The Massachusetts Attorney General's



Office obtained a writ of execution on April 18, 2014 on behalf of the MCAD to collect the damages and penalty assessed and awarded by the Commission. The MA Attorney General's Office is pursuing collection.

**MCAD, et al. v. 3Js, Inc. d/b/a White Hen Pantry**, Barnstable County Civil Action No. BACV2013-0628. The Complainant, as an authorized agent of the Commission, brought an enforcement action against Respondent to enforce the MCAD's decision in this employment discrimination case. Commission Counsel intervened to respond to procedural issues raised by the Superior Court. A final judgment in favor of the MCAD and Complainant was issued on October 30, 2014.

**Kyl Myrick v. MCAD**, Suffolk County Civil Action No. SUCV2013-03227. The Commission's Motion to Dismiss a pro se complaint challenging the MCAD's lack of probable cause finding was allowed by the Superior Court (Ames J.) on January 13, 2014.

**Ngo v. MCAD, et al.**, Suffolk County Civil Action No. SUCV2013-04291. The Commission's Motion to Dismiss a complaint challenging a lack of probable cause finding was argued on May 27, 2014 and taken under advisement. After a Suggestion of Death of Complainant/plaintiff was filed on August 22, 2014, the Superior Court entered a judgment of dismissal on September 24, 2014 (Fahey, J.).

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

## Massachusetts Appeals Court Activity

Commission Counsel also defended the agency's procedures and decisions in several matters pending at the Massachusetts Appeals Court.

**Matthew Connor v. MCAD**, Massachusetts Appeals Court 2013-P-0788. The Appeals Court affirmed the Superior Court's dismissal of a pro se complaint challenging the Commission's lack of probable cause finding and raising other substantive and procedural challenges. Following dismissal on March 29, 2014, the Appeals Court denied complainant's Petition for Rehearing on May 16, 2014.

**ISO New England v. MCAD, et al.**, Massachusetts Appeals Court 2014-P-1060. Respondent appealed the April 16, 2013 decision of the Superior Court (Gordon, J.) denying in part and allowing in part plaintiff's motion for judgment on the pleadings. (Suffolk County Civil Action 2011-04272) The Superior Court affirmed the MCAD decision in all respects with the exception of a front pay award, which was reduced based on the Superior Court's conclusion that the complainant failed to mitigate his damages. The Complainant cross-appealed. The Commission filed its Appellate brief on October 17, 2014 urging denial of respondent's appeal and affirmation of the Commission's decision on the issue of liability in its entirety.

## Amicus Briefs

**Sean Pugsley v. Commonwealth of Mass. Human Resources Division & others**, Massachusetts Supreme Judicial Court; No. SJC-11740. The Commission responded to the Supreme Judicial Court's call for amicus briefs on the question of: "Whether, and in what circumstances, gender can constitute a bona fide occupational qualification [BFOQ] for purposes of M.G.L. c. 151B, § 4(1) in a police department's hiring." The Commission's amicus brief filed on November 17, 2014 discusses prior Commission law enforcement

related BFOQ decisions, urges a narrow construction of the BFOQ defense, and stresses that employment decisions must be based on job qualifications, not on gender.

## **Other Significant Massachusetts Court Decision**

**Sirva Relocation, LLC and Aetna Life Ins. Co. v. Julian T. Tynes, et al.**, U.S. District Court of MA; 1:13-CV-12530-NMG. Respondents in a case scheduled for public hearing sought to enjoin the Commission from adjudicating a disability discrimination claim, arguing that the Commission's proceedings are preempted by the Employee Retirement Income Security Act (ERISA). On August 8, 2014 U.S. District Judge Gorton denied the Respondents' request for an injunction and dismissed the complaint. The U.S. District Court recognized that it must abstain from exercising jurisdiction under the doctrine of Younger Abstention and that Respondents must assert their ERISA preemption defense in the ongoing MCAD civil enforcement proceeding, not in a collateral federal court challenge to the MCAD's jurisdiction. Respondents appealed the ruling on September 3, 2014. The Massachusetts Attorney General's Office is representing the Commission in the appeal.

# HEARINGS DIVISION

The Hearings Unit includes two full-time hearing officers and one part-time hearing officer and the three Commissioners. The Hearing Officers also conduct mediations and conciliations, certification conferences on behalf of the Investigating Commissioner, and rule on post-certification discovery matters and motions.

In 2014 the Hearings Unit scheduled 97 public hearings. Of the 97 cases scheduled, hearings were held in 29 cases and 49 cases settled prior to the hearing. The remaining 19 cases were continued or dismissed. The Hearings Unit scheduled 169 pre-hearing conferences. Of that number, 96 pre-hearing conferences were held, and 18 cases settled prior to the conference. The remaining 55 cases were continued or dismissed. The Hearings Unit issued 29 hearing decisions. One decision was issued by former Chairman Julian Tynes and one was issued by Commissioner Sunila Thomas George. Eight decisions were issued by Hearing Officer Eugenia Guastaferrri, ten by Hearing Officer Betty Waxman and nine by Hearing Officer Judith Kaplan.

The vast majority of the decisions, 27, were in employment cases, with disability claims leading the count and retaliation claims coming in second. Two decisions were issued in public accommodations cases. Of the 27 decisions issued in employment cases, nineteen (19) were in favor of Respondents and eight (8) were in favor of Complainants. Both public accommodations decisions were in favor of Respondents.

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 Decisions

**MCAD and Nancy Dalrymple v. Town of Winthrop**, 36 MDLR 10 (2014) (Gender discrimination/Retaliation)

The Hearing Officer found for Complainant, a female Winthrop police officer on her complaint against the Town of Winthrop for gender discrimination and retaliation as a result of her being denied promotion to sergeant during her more than 25 years on the Winthrop Police Force. Prior to bringing the present case, Complainant had successfully sued the Town for gender discrimination and was awarded substantial monetary damages. Thereafter, throughout her career as a police officer, Complainant's efforts to become sergeant were thwarted by the Town which failed to make any sergeant promotions whenever Complainant topped civil service eligibility lists for sergeant, promoted other candidates when Complainant was not the top-scoring candidate, allowed other candidates to serve as acting sergeants and attend command school, and evaluated Complainant more rigorously than her competitors. The Hearing Officer found for Complainant, ordered her to be promoted to sergeant, retroactive to 2002, awarded back pay consisting of the differential between her patrol officer salary and what she would have earned as sergeant, awarded Complainant \$50,000 in emotional distress damages, imposed a civil penalty on the Town of Winthrop in the sum of \$50,000, and ordered the Winthrop Police Department's managers and supervisors to undergo training regarding gender discrimination and retaliation.

**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 a Section 8 rental subsidy and was 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 bedroom 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 Section 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 of 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 & Santagate v. FGS, LLC**, 36 MDLR 23 (2014) (Disability/Termination) The Hearing Officer found that Respondent discriminated against Complainant on the basis of handicap, by terminating his employment after he had exhausted FMLA leave, despite knowing that Complainant would return to work within a few short weeks. Since Respondent was unable to establish that Complainant's absence caused the company undue hardship the Hearing Officer concluded that extending an additional brief period of leave was a reasonable accommodation.

Complainant worked as a shipper and receiver for Respondent printing company and his primary duties were loading and unloading trucks. During the course of his employment, Complainant was diagnosed with a vascular disease and blood clotting disorder that required him to take blood thinners. He also underwent surgery on both legs to prevent the worsening of his condition, which required him to take a leave of absence from work. During his absences, Respondent had no difficulty finding temporary replacements. After his second surgery, acting on Respondent's advice, Complainant applied for and received short-term and long-term disability benefits. Complainant apprised his supervisors of his progress, and gave them a date certain for his return to work with no restrictions. Prior to his return, Complainant's employment was terminated because he had exhausted his 12 weeks of FMLA leave. The Hearing Officer found that a few additional weeks of leave was not an unreasonable accommodation under M.G.L. c. 151B given the circumstances. She rejected Respondent's argument that Complainant would have been laid off because Respondent hired a replacement for Complainant after terminating his employment. She also rejected Respondent's assertion that Complainant would not be able to perform his job, since his vascular surgeon stated that he could return to full duty with no limitations. Complainant was awarded \$50,000 in damages for emotional distress and \$83,232.33 for lost wages.

**MCAD & Robert Lazaris v. Massachusetts Human Resources Division**, 36 MDLR 29 (2014) (Handicap discrimination/Aiding and Abetting /Interference) The Hearing Officer found that Respondent Massachusetts Human Resources Division violated M.G.L. c. 151B s. 4(4A) and 4(5) when pursuant to the Civil Service process, it validated and approved the City of Lynn's by-pass of Complainant for a firefighter position for reasons related to his disability.

Complainant suffered from lifelong depression, anxiety and social phobia. He had taken and passed the Civil Service exam to be a firefighter for the City of Lynn on two occasions, but no position was ever filled. After working for the U.S. Postal Service for several years Complainant took a disability retirement under terms which stated he was disabled only from working in that position.

In 2006, Respondent HRD was responsible for administering the firefighters' exam and approving or denying the by-pass of applicants for municipal firefighter positions. In May of 2006, Complainant took the firefighter's civil service examination once again. Based on his score and statutory preferences, Complainant was selected for an interview with the Lynn Fire Department in July of 2006. Complainant noted on his application that he left the Postal Service for "medical reasons." The Hearing Officer found that at the job interview, panel members made an inappropriate inquiry about Complainant's mental health and subsequently requested Respondent's approval to by-pass Complainant because of concerns about a medication Complainant took and because of his poor interview. Respondent approved the by-pass and knew or should have known of the improper reason. Respondent failed to make further inquiry into the hiring process or to otherwise challenge the use of improperly acquired medical information.

The Hearing Officer found that in validating and approving the City's by-pass of Complainant, Respondent acted in deliberate disregard of Complainant's rights and aided and abetted discrimination in violation of 151B s. 4(4A) and 4(5). (The underlying claim for discrimination against the City was settled and not before the Hearing Officer) The Hearing Officer did not award damages to Complainant finding that his losses were compensated by a separate settlement agreement with the City and because he did not prove that but for the by-pass, he would have been able to perform the position of firefighter.

**MCAD & Thomas Flint v. Massachusetts Trial Court**, 36 MDLR 49 (2014) (Race and Color Discrimination/ Termination) The Hearing Officer found for Respondent dismissing Complainant's claim that he was subjected to disparate treatment and terminated from his position as a court officer on account of his race and color.

Complainant, who is African-American worked for Respondent Massachusetts Trial Court as a court officer from 1989 until his termination in November of 2009. His duties were to provide security in the courts for the public and staff and to work cooperatively with other court officers to ensure the safe functioning of court proceedings. Complainant alleged that he was subjected to disparate treatment and his employment terminated because of his race and color. Throughout his tenure, Complainant was involved in disputes with co-workers, supervisors and judges and was transferred to a number of different courts. He was subjected to discipline Complainant's employment was terminated following a disciplinary hearing.

The Hearing Officer found no evidence that Complainant was treated differently or terminated on account of his race. There was evidence that the Director of Security terminated nine white officers and two African American officers, including Complainant in the previous six years. The uncontroverted evidence demonstrated that Complainant was given an extraordinary number of chances to conform his behavior to the rules of the job, but repeatedly flouted the rules by fighting with coworkers and superiors, demonstrating hostility and belligerence toward coworkers, and being unwilling to collaborate in a job where working in harmony is critical to the safety of the courthouse environment. The Hearing Officer credited testimony that Complainant's employment was terminated because of his repeated infractions of the code of conduct for a court officer, his lengthy disciplinary record and the altercation with a coworker that ensued after a final warning. His complaint was dismissed.

**MCAD & Joseph Sasso v. Servisair, LLC**, 36 MDLR 57 (2014) (Age Discrimination/Termination, Refusal to hire) The Hearing Officer found that Respondent did not discriminate against Complainant on account of his age when it laid him off and eliminated his position of Ramp Department Manager at Logan Airport in 2008. The Hearing Officer concluded that Respondent offered credible evidence of a downturn in business and decline in revenues resulting from the loss of a major contract with an airline. A number of other employees were laid off on or about this time and Respondent determined that his limited administrative duties could be done by remaining employees. There was no evidence that this reason was a pretext for age discrimination. However the Hearing Officer concluded that Respondent was liable for its refusal to transfer

Complainant because of his age to the position of Duty manager in the Ramp Department, an open position for which it sought candidates.

Complainant was 58 years old at the time of the events in question. He had worked for Respondent since 1974, some 34 years in various capacities. The Hearing Officer found that Complainant had made sufficient inquiries about the open positions to indicate his interest in the positions and she did not credit Respondent's assertion that he had not applied for the jobs. She also did not credit Respondent's reason for not transferring Complainant to the open position, i.e. that he was not qualified for the job. She found that the Respondent was seeking younger candidates, who they believed would have more flexible schedules, and was having difficulty filling the positions.

The Hearing Officer found that Complainant suffered great stress and anxiety as a result of not being considered for the open positions after 34 years of service to the company and suffered from depression, sleeplessness, stopped socializing, withdrew into himself and became uncommunicative. Complainant was awarded damages for emotional distress in the amount of \$125,000, but was not awarded back pay because he became permanently disabled within a short time of his lay off and it was unclear how long he would have been able to continue working had he been awarded the position. The Hearing Officer also order Respondent to conduct training.

**MCAD and Sheila Leahy-Cronin v. City of Boston**, 36 MDLR 64 (2014) (Sexual Harassment/Retaliation)

The Hearing Officer found that Complainant's sexual harassment claim against the City of Boston Fire Department was untimely, but found for Complainant on one of her claims of retaliation, that she was not permitted to return to her prior worksite.

Complainant, a female Boston firefighter filed a complaint for sexual harassment arising out of actions of her supervisor and for retaliation arising from her subsequent removal from the Fire Department for violating the City's residency ordinance. Complainant's alleged harasser was suspended by the Fire Department for one year. His sister subsequently reported to the City of Boston that Complainant did not live in the City. Following this report, Complainant was placed on administrative leave and was forced to resign. Complainant thereafter moved into the City of Boston and requested reinstatement by the Fire Department. Her request was granted, but she was not allowed to return to her former fire house because the alleged harasser's brother-in-law worked there.

The Hearing Officer determined that Complainant's sexual harassment claim was untimely because there was no anchoring event inside the limitations period. The Hearing Officer also found that the proximate cause of Complainant's resignation from the Fire Department was not retaliation but Complainant's own failure to comply with the City of Boston's residency ordinance. However, the Hearing Officer determined that when the City reinstated Complainant, it refused to assign her to her prior work site based on deference to the alleged harasser's brother-in-law who worked at her prior fire house and did not want to associate with her. The Hearing Officer characterized this action as retaliatory and awarded Complainant \$25,000 in damages for emotional distress.

**MCAD and Richardo Haynes v. General Electric Company**, 36 MDLR 79 (2014) (Disability

Discrimination /Termination) The Hearing Officer found that Respondent was not liable for disability discrimination when it refused to allow Complainant to return to work after several injuries to his wrist and ultimately terminated his employment because he was unable to perform the requirements of the job safely.

Complainant was a repairman for appliances who often worked on large and heavy machines. He injured his wrist while performing his job on two occasions, and after the second injury was placed on light duty for a period of time with a 10 lb. lifting restriction. For several months he worked a shorter work day but performed all his duties, pending surgery on his wrist. Complainant then suffered a third on-the-job injury to

his wrist, underwent surgery and remained out of work for four months and then had a further procedure on his wrist. During this time he received workers compensation and disability insurance payments. Complainant sought to return to work with a 10-20 lb. lifting restriction. Respondent refused to allow him to return to work concluding that he was unable to perform the essential functions of the job which included the moving and lifting of large heavy machines and the carrying and use of heavy equipment. Respondent asserted that light duty was not a permanent assignment, but an accommodation made on a temporary basis to allow an injured employee to recuperate.

The Hearing Officer credited the Respondent's assertion that heavy lifting was an essential function of Complainant's job and that with a permanent lifting restriction, he was not able to perform the job safely, and that no accommodations were feasible. The Complaint was dismissed.

**MCAD & Nathaniel Hedvat v. Jennings Road Mgmt. d/b/a Herb Chambers Companies and Herb Chambers 1172, Inc. d/b/a Herb Chambers BMW of Boston**, 36 MDLR 113 (2014) (Religious discrimination/failure to accommodate/termination) The Hearing Officer found for Respondent on a claim of religious discrimination including failure to accommodate Complainant's religious beliefs and termination. She found that Respondent had adequately accommodated Complainant's need for time off to attend to religious obligations and terminated his employment because of a significant decline in his attitude and approach to the job.

Complainant is Jewish and immigrated to the United States from Iran when he was a child. He was not religiously observant for most of his childhood and young adult life. Complainant was hired by Herb Chamber BMW as a sales consultant in 1999 and was promoted to Sales Manager in 2003 and General Sales Manager in 2005. Complainant was a very successful sales consultant and manager. In 2001 Complainant began dating a co-worker who was not Jewish and after several years of dating and living together, they decided to marry. Upon advice from his brother, an observant orthodox Jew who lives in an orthodox community in Newton, Complainant and his fiancée stopped living together and she was advised to convert to Judaism. Complainant purchased a home in the Newton community near his brother and began attending classes to assist his fiancée with her conversion. He testified that he gradually began to adopt the religious tenets of Judaism as part of his everyday life and to become more devout. He sought and was given time off from work to attend classes and for Sabbath services and religious holidays.

Complainant alleged that the General Manager of the Dealership expressed frustration with his absences, how long the conversion was taking and commented on all the holidays he took off. Notwithstanding these assertions, Complainant was promoted to General Sales Manager and was responsible for overseeing the entire sales function of the dealership. He was remunerated handsomely as one of the highest paid General Sales Managers in the Chambers Network. Respondent asserted that in 2007 Complainant began expressing dissatisfaction with his income on multiple occasions and thereafter his attitude toward the job began to change. He abdicated his leadership role and became uncommunicative. He was no longer helpful to sales consultants, his enthusiasm for the job waned, morale in the salesforce plummeted, and his co-workers began to complain. After observing Complainant's declining performance for many months and receiving complaints from the sales force, the General Manager terminated his employment. The Hearing Officer concluded that Complainant's termination was motivated by his poor attitude and performance and dereliction of his duties, and not by his need to take time off for religious observances. She also concluded that Respondent had never denied Complainant any religious accommodation or prevented him from taking time off. The Complainant was dismissed.

**MCAD & Michele Falzone v. Seaview Retreat Inc., et al.**, 36 MDLR 141(2014) (Retaliation) The Hearing Officer found for Complainant on her claim that she was terminated from her employment as a housekeeper at Respondent Sea View Retreat, a 60-bed nursing home located in Rowley, MA, in retaliation for complaining about sexual harassment. Respondent is a family owned business in operation since 1954.

Complainant began working for Respondent as a housekeeper in October 2010. In November 2010, Complainant was entering an elevator with two other housekeepers when a male CNA made a very offensive sexual remark to the male housekeeper. Complainant was shocked and disgusted by the comment and reported the incident to management. The offending employee was suspended for three days and he thereafter complained to co-workers that Complainant had gotten him in trouble. This resulted in some employees shunning Complainant and stating she had a big mouth, behavior she relayed to management.

Complainant's employment was terminated in 2011 purportedly for poor performance and for spending too much time talking to patients. After being terminated, Complainant filed a complaint of sexual harassment and retaliation with the MCAD. The sexual harassment claim was dismissed after investigation.

The Hearing Officer did not credit Respondent's reasons as the primary motive for the termination. While concluding that there was some truth to Respondents' assertions that Complainant spent excessive time with patients and that her performance declined after she complained of harassment, the Hearing Officer found that the decision to terminate her employment was driven primarily by her complaint about an employee's sexually offensive language, which Respondent dismissed as having no merit. She found Respondent administrator's testimony that Complainant was the worst employee ever, to be gross hyperbole and disingenuous in other ways as to cast doubt on its credibility. Similarly, the testimony of Complainant's direct supervisor at hearing differed in so many respects from her deposition testimony as to tarnish her credibility as well, particularly with respect to Complainant's performance and evaluation. The lack of candor and inconsistent testimony of these witnesses led the Hearing Officer to conclude that their criticism of Complainant's performance was greatly exaggerated and an ex post facto justification for terminating her employment. Complainant was awarded \$6940 for back pay and \$25,000 for emotional distress.

**MCAD, Wayne Sylvester, and Dennis Damata v. Town of Wareham Police Department**, 36 MDLR 147 (2014) (Race) The Hearing Officer found that Respondent Town of Wareham Police Department did not discriminate against Complainant Sylvester on account of his race when Respondent removed him from a detective assignment. She also found that Respondent did not retaliate against him when it denied his injured on duty claim, suspended his license to carry a firearm, and denied him sick bank benefits. She also found that Respondent did not discriminate against Complainant Damata who alleged that the Town of Wareham Police Department removed him from a detective assignment on account of his race (Caucasian) along with two Black detectives in order to deflect charges of race discrimination and retaliated against him by giving him fewer paid details than other officers.

The Hearing Officer denied all the claims, finding that the Town's concerns about Complainant Sylvester's investigatory and writing skills were sufficient to rebut his prima facie case of disparate treatment, that the Town's reluctance to give him a detailed rationale for his removal as a detective stemmed from a desire to avoid confrontation, and that stray remarks cited by Complainant did not support a claim of race discrimination. The Hearing Officer also rejected his retaliation claim based on the lack of a causal connection between adverse actions cited by Complainant and the filing of a demand letter by Complainant's counsel. Regarding Complainant Damata, the Hearing Officer found that removing a Caucasian officer along with two Black officers as detectives did not support a circumstantial case of race discrimination. Although Damata presented direct evidence that purported to show he was removed as a detective for discriminatory reasons, the Hearing Officer rejected the evidence on the basis that some of the proffered statements were untrue and others did not support invidious discrimination. Regarding Damata's claim of retaliation, the Hearing Officer determined that the alleged adverse actions were de minimus and quickly resolved.

**MCAD & Harold Murphy, Trustee of the Bankruptcy Estate of Richard Shanahan v. S & H Construction**, 36 MDLR 160 (2014) (Disability Discrimination/ Retaliation) The Hearing Officer found for Respondent on Complainant's claim of disability discrimination concluding that Complainant was not harassed or terminated from his job as a carpenter because of his hearing impairment. However, she concluded that Respondent retaliated against



Complainant when, after he filed his MCAD complaint, it filed a lawsuit to recover monies Complainant owed the company and took possession of a car in satisfaction of the judgment, offering to return the car only if he would dismiss his MCAD complaint.

Complainant suffered from a hearing impairment since birth and used hearing aids. He was hired by Respondent as a carpenter; left the company's employ and was subsequently rehired. Complainant claimed that during his second term of employment a co-worker made fun of his hearing impairment and called him offensive names and that other co-workers were frustrated and asked not to work with him because of his hearing impairment. Complainant claimed that when his hearing aid malfunctioned and he could not afford to purchase a new one, he was forced to attend supervisor's meetings where he could not hear and was mocked by co-workers. Complainant was terminated when he was out of work for three days and did not comply with Respondent's call-in policy. He claimed that he called the job supervisor and that Respondent knew he was sick with the flu. Respondent asserted that Complainant had a reputation for having a poor work ethic, an assertion that was corroborated by a number of witnesses, and that work he did on a project had to be redone. Respondent claimed that Complainant's work ethic and failure to inform job supervisors of his whereabouts were the reasons others did not want to work with him.

The Hearing Officer found that that there was insufficient evidence that Complainant was subjected to a hostile work environment because of his hearing impairment. He worked only twice with the alleged offending supervisor and never complained to Respondent's principals about mistreatment. In addition, the Hearing Officer credited Respondent's reasons for Complainant's termination, finding that his failure to comply with the call-in policy for almost four days on a job that needed to be completed was the final straw that prompted his termination.

The Hearing Officer concluded that Respondent did however retaliate against Complainant for filing an MCAD complaint when it sued him to recover monies the company lent to him, where it had not done so with other employees who owed money. To satisfy the judgment Respondent took possession of a car used by Complainant's ex-wife to transport their children. When she begged Respondent to return the car to her, she was told that would happen only if she prevailed upon Complainant to dismiss his MCAD lawsuit. The Hearing Officer found that these actions constituted retaliation. When Complainant refused to withdraw his complaint, the car was not immediately returned and his ex-wife's parents paid a significant amount to have the car released. Complainant testified that the entire episode caused great upheaval in his family resulting in great deal of emotional distress to him. He was awarded \$25,000 for emotional distress and Respondent was ordered to pay a civil penalty of \$5000 because of the egregious nature of its conduct which the Hearing Officer found to be a knowing and willful violation of M.G.L. c. 151B s. 4(4).

**MCAD and Marilda Colon v. East Boston Savings Bank**, 36 MDLR 169 (2014) (National Origin Discrimination) The Hearing Officer found for Complainant on her charge of employment discrimination alleging that her termination was due to discrimination based on her Puerto Rican national origin.

During the time that Complainant worked for the Bank as a teller and teller-supervisor at two different bank branches, Respondent had no Hispanic senior officials or branch managers. Complainant's branch office, while she worked there, was racially diverse but after her termination it consisted of three Caucasian individuals. Complainant had a spotless record as a bank employee until a new supervisor was hired as her branch manager. He disciplined her for: 1) returning late from a scheduled vacation even though she frequently filled in for co-workers, whereas he did not discipline a Caucasian bank employee for returning late from vacation for similar reasons; 2) refusing to sign a warning even though a Caucasian employee was not disciplined for failing to sign a warning; 3) making an account error even though other bank employees were not disciplined for making similar mistakes on related accounts; 4) requesting a waiver of overdraft fees even though the request was ultimately granted; and 5) overriding an account hold on behalf of a regular bank customer. The supervisor who recommended Complainant's termination was himself terminated for insubordination and arrogance.

The hearing officer concluded that Complainant had been subjected to disparate treatment and awarded her \$97,528.38 in lost income and out-of-pocket costs and \$50,000 for emotional distress.

**MCAD and Eric Madonna v. Fall River Police Department**, 36 MDLR 198 (2014) (Disability Discrimination) The Hearing Officer found for Respondent dismissing the charges of Complainant, a police officer on the Fall River Police Department, who alleged he was denied permission to work details and overtime following his diagnosis of PTSD arising from two tours of duty in Iraq. Complainant successfully completed a three-month PTSD program to deal with symptoms of depression, sleep disruption, drinking, and three suicide attempts. He thereafter sought to return to the Police Department's day shift but the Chief did not believe it was prudent for Complainant to have contact with the public and, instead, offered Complainant a position as the Department's evidence custodian. Complainant accepted and initially performed well in the position but became upset after learning that he would not be allowed to perform detail work and overtime. When Complainant left work without permission and exhibited stress, the Chief sought to obtain Complainant's service revolver and personal weaponry. Complainant refused to turn over his personal weapons to the Chief until family and friends intervened. Complainant remained out of work for four years on injured-on-duty leave until he retired from his police officer position.

The Hearing Officer determined that the Chief provided a reasonable accommodation for Complainant's PTSD disability by allowing him to serve as evidence custodian. The evidence custodian position addressed the Complainant's concern about maintaining a regular sleep routine and addressed the Chief's concern about keeping Complainant "off the street." The Hearing Officer also concluded that the Chief made a reasonable decision to obtain Complainant's weapons after Complainant left work without permission and exhibited signs of turmoil and stress, particularly given his psychiatric history and concerns that he might be a threat to his own safety. Accordingly, the charge of disability discrimination was dismissed.

**MCAD and Amy Sellers v. Massachusetts Trial Court**, MDLR (2015) (Religious Discrimination) The Hearing Officer found for Respondent on Complainant's charge of religious discrimination and retaliation against the Massachusetts Trial Court based on allegations that she is Muslim and was not permitted to wear a head scarf at work, and that after she grieved the matter, she was re-assigned to a job location far from her home. The Hearing Officer found that the Trial Court initially prohibited Complainant from wearing a head scarf to work for reasons of public safety, but that after she filed a grievance, the Department reversed its position within a few short weeks of the initial request and granted the accommodation. Based on this sequence of events, the Hearing Officer concluded that Respondent made a sincere effort to reconcile Complainant's religious beliefs with the maintenance of a safe and secure workplace. The Hearing Officer also rejected the claim of retaliation on the basis that Complainant was not subjected to adverse action following her protected activity. Complainant's allegation that she was transferred to a Greenfield worksite 37 miles from her home was not supported by the record. Based on the foregoing, Complainant's charges were dismissed.

**MCAD and Albertine DeCossa v. Allied Barton Security Services, et.al.**, MDLR (2015) (Pregnancy/gender discrimination) The Hearing Officer found for Complainant on her charge of gender/pregnancy discrimination after Respondent refused to hire her to a new position when she was 7 and 1/2 months pregnant and where her then current position had been eliminated. The Hearing Officer found that Complainant was qualified for the position, was interviewed and offered the position and the offer was retracted the following day. The testimony of the Senior Manager that he had decided to eliminate the position was found not to be credible, given that Respondent continued to interview for the position, there were no other positions downsized or eliminated and the plan had been to create the position in question prior to Complainant interviewing. The Hearing Officer determined that but for her pregnancy, Complainant would have secured the position. She was awarded back pay of \$3,886 and \$20,000 in damages for emotional distress.

## Public Accommodation Cases

**MCAD and Doran v. The Rose Fund, Inc.**, 36 MDLR 35 (2014) (Gender Discrimination) The Hearing Officer found for Respondent, a private charitable fund on Complainant's claim that he was denied services based on his gender. The Respondent is a charitable fund that provides for cosmetic and reconstructive surgery for female victims of domestic violence. Complainant was a male victim of domestic violence who was denied services from the fund and claimed that this was gender discrimination in a place of public accommodation in violation of M.G.L. c. 272 92A and 98. The Hearing Officer found that the fund was not a place of public accommodation within the meaning of the statute, but a genuinely selective and private charitable fund and dismissed the claim.

**MCAD and Mahoney v. Unident Dental Center**, 36 MDLR 38 (2014) (Disability Discrimination/Guide Dog/Service Animal) The Hearing Officer found for Respondent on Complainant's claim that she was denied the services of a dentist when was not allowed to bring her small dog into the treatment room during a root canal. Complainant, who is hearing impaired and suffers from psychiatric disabilities, is assisted by her dog in tasks such as hearing her doorbell at home, and to comfort her anxiety, stress and other symptoms of her emotional disabilities. There was a dispute about whether Complainant sought to have the dog sit on her lap during the treatment, but the Hearing Officer found that Respondent raised significant public health and safety considerations that outweighed the Complainant's right to have her dog present for emotional support during dental surgery.

## Significant Full Commission Decisions

The Full Commission issued eight decisions and six dismissal orders in 2014. The following summarizes some of the decisions issued.

**MCAD and Lulu Sun v. University of Massachusetts, Dartmouth**, 36 MDLR 85 (2014) The Full Commission affirmed the decision of the Hearing Officer awarding \$200,000 in damages for emotional distress to Complainant, a professor at UMass Dartmouth, who prevailed on her claim that she was denied promotions and retaliated against based on her gender, race, ancestry and national origin. The Hearing Officer also ordered that Complainant be promoted to Full Professor, awarded her \$154,503 for back pay and ordered Respondent to pay a civil penalty in the amount of \$10,000 and undergo training. On appeal, Respondent challenged only the award of damages for emotional distress and the imposition of the civil penalty and training requirements.

Respondent claimed there were no corroborating documents or medical records to support the nature, severity and duration of Complainant's emotional distress or any attempts to mitigate the distress, and that the witness testimony was biased. The Full Commission discussed the role of the fact-finder in assessing the credibility of witnesses and deferred to the Hearing Officer's findings that witness testimony was compelling and credible. It also noted that physical manifestations are not required to prove emotional distress and deferred to the Hearing Officer's findings based on credible testimony that Complainant's personality had undergone a significant change from an individual who was vigorous and confident to someone who was fragile, timid and wan.

The Full Commission also upheld the civil penalty and training requirements as remedies that were well within the discretion of the Hearing Officer and rejected Respondent's argument that the Commission was acting as a "super promotion committee," noting that Respondent had not appealed the Hearing Officer's decision on liability. The Full Commission also awarded attorney's fees to Complainant in an amount just short of \$420,000, the highest award on record for fees at the Commission. Notably, however, the fees sought were significantly discounted by the Commission due to the lack of specificity in the billing records.

**MCAD and Richard Blake v. Brighton Gardens Apartments, L. P., et al.**, 36 MDLR 99 (2014) The Full Commission affirmed the Hearing Officer's finding of disability discrimination in housing due to respondents' institution of a no-pet policy and threat of eviction. The respondents were defaulted for failure to appear at the public hearing after due notice. The award of \$25,000 in emotional distress damages to the tenant who used a service animal to alleviate his disability was affirmed. The Full Commission also affirmed the civil penalty of \$5,000 and other affirmative relief and awarded the full request for attorneys' fees of \$3,487.50.

**MCAD and William Glynn v. Massasoit Industrial Corporation**, 36 MDLR 110 (2014) The Full Commission upheld a decision of the Hearing Officer finding that Complainant was discriminated against based on his age and handicap when his employment was terminated at age 74 after 22 years with Respondent because he was absent from work for one month after being hospitalized for a heart attack and pneumonia. It also upheld the award for back pay to the Complainant but reduced the back pay award for five years from \$55,600 to \$54,600 to correct a miscalculation, and affirmed the award of \$35,000 for emotional distress. The Full Commission upheld the finding that Complainant was disabled within the meaning of the statute because he had a record of impairment and was perceived as impaired by Respondent. It also rejected Respondent's challenge to the Hearing Officer's finding that Complainant was performing his job acceptably. Respondent asserted that his failure to report his absence was tantamount to non-performance of his duties.

The Full Commission deferred to the credibility findings of the Hearing Officer that Respondent was on notice of Complainant's hospitalization because both he and his daughter-in-law had notified his immediate supervisor of his absence and the reasons therefor and the supervisor assured them he would relay the information up the line. It also upheld the Hearing Officer's conclusion that Complainant's termination for being a "no call/no show" was a pretext for age and disability discrimination, where he had a record of 22 years with a perfect attendance record and it defied credulity that Respondent would have made no effort to inquire why he stopped coming to work. The Full Commission also affirmed an order for training and granted attorney's fees to Complainant in the amount of \$46,660.

**MCAD and Christine Gammons. et al. v. City of Revere, et al.**, 36 MDLR 187 (2014) The Full Commission dismissed a sexual harassment claim against respondents based upon lack of jurisdiction over allegations of unlawful conduct occurring in a non-vocational school under M.G.L. c.151C. The Full Commission recognized that MCAD charges under M.G.L. c.151C are limited to 1) individuals seeking admission to any education institution and 2) individuals enrolled in a vocational training institution. Since the alleged wrongful conduct occurred while the student was already enrolled in a non-vocational school and the claims were unrelated to the school's admission practices, the MCAD lacked jurisdiction.

**MCAD and Annette Whitehead-Pleaux v. Shriners Hospital for Children**, 36 MDLR 137 (2014) The Full Commission upheld an award of the Hearing Commissioner finding that Respondent employer had discriminated against Complainant on the basis of sexual orientation when it denied and delayed in providing health care benefits to her same-sex spouse. It also affirmed the award of damages for emotional distress in the amount of \$30,000 and awarded attorney's fees in the amount of \$13,648.

The Full Commission affirmed the finding of the Hearing Commissioner that three benefit programs that Respondent made available to its employees were not ERISA plans and that the Commission was not therefore preempted from ruling on the matter. It rejected Respondent's argument that the delay in coverage for Complainant and her spouse under these non-ERISA benefit programs of approximately seven weeks did not pose a material disadvantage to Complainant, where there was ultimately no actual denial of coverage and allegedly no harm to Complainant or her spouse from the delay. The Full Commission held that that denial of a medical benefit designed to ensure peace of mind creates unwarranted stress and anxiety that is

compensable even in the absence of a medical catastrophe and the extended process required for coverage was not so trivial as to be merely inconvenient. The Full Commission also rejected Respondent's assertion that the class of comparators was overly broad and should have been only those heterosexual employees who were affected by a recent change in the law, but did not experience a delay in securing an employee benefit. Instead, it accepted the Hearing Commissioner's determination that the comparator class consisted of employees of Respondent who applied for and received insurance benefits for themselves and their heterosexual partners.

The Full Commission rejected the argument that the Respondent's non-ERISA benefit programs were so "inextricably entwined" with other separate employee welfare benefit plans maintained by Respondent and regulated by ERISA as to require preemption. Respondent argued that because the non-ERISA products relate to the ERISA products the discrimination claims should have been preempted in their entirety. The Full Commission recognized that the term "related to" as used in ERISA "cannot be interpreted to extend to its furthest stretch of its indeterminacy," for to do so would "read the presumption against preemption out of the law." [citations omitted] It concluded that the non-ERISA benefits offered by Respondent were independent insurance benefits and Respondent was not protected from challenge under a state law of general applicability merely because separate ERISA benefit programs were also offered to certain employees. The Hearing Commissioner made no material error of law where he limited his ruling under state law only to the non-ERISA insurance products offered by Respondent. The Full Commission affirmed that the application of the state anti-discrimination laws to the provision of employee benefits not regulated by ERISA is not preempted.

The Full Commission reasoned that the U.S. Supreme Court's determination that the definition of "spouse" in Section 3 of the federal Defense of Marriage Act is unconstitutional—relied upon by Respondent to define "spouse" under its ERISA plans to exclude Complainant's spouse—undermines any argument that the Respondent's discriminatory activities were permissible because of ERISA preemption or that ERISA should preempt Massachusetts from enforcing its anti-discrimination laws to prohibit unconstitutional activity. The Full Commission recognized that the U.S. Department of Labor has explained that "spouse" under ERISA governed plans shall include same-sex spouses where marriage is recognized by state law. ERISA preemption arguments are generally grounded on the proposition that state law should not interfere with the uniform administration of ERISA plans by imposing inconsistent regulation of such plans. Here, the U.S. Department of Labor has recognized that defining "spouse" as including same-sex spouses even in ERISA governed plans—is consistent with the goal of a uniform body of benefits law. The Full Commission determined that the rejection of Respondent's argument for wholesale preemption was not a material error of law.

## Relief Awarded

Awards for Emotional Distress were made in cases as follows:

Dalrymple (employment/gender)	\$ 50,000
Santagate (employment/disability)	\$ 50,000
Sasso (employment/age)	\$ 125,000
Leahy (employment/retaliation)	\$ 25,000
Falzone (employment/retaliation)	\$ 25,000
Murphy t/ee of Bankruptcy estate of Shanahan (retaliation)	\$ 25,000
Colon (employment/ national origin)	\$ 50,000
DeCossa (employment/ pregnancy)	\$20,000

## Back pay Awarded

Dalrymple	\$ differential in pay for Sgt. from 2002 to time of hearing	
Santagate		\$ 83,232
Jarmilo-Duque		\$ 11,736
Falzone		\$ 6,940
Colon		\$ 97, 528
DeCossa		\$ 3, 886

## Civil Penalties

Dalrymple	\$50,000
Jarmilo-Duque	\$10,000
Murphy t/ee of Bankruptcy Estate Shanahan	\$5,000

## Alternative Relief Awarded

Dalrymple - promotion to Sgt. Effective March 2002; Training

Lazaris v. HRD - Commission review of policies and procedures utilized by HRD for approving by-pass candidates for promotion of municipal police officers

Sasso- Training

Colon- Training

# ADMINISTRATION & FINANCE DIVISION

The Administration and Finance Division is comprised of the Office of Human Resources, Fiscal and IT operations, and Training and Alternative Dispute Resolution (ADR) programs. These functions are overseen by the Chief of Administration and Finance, Lennie De Souza Smith.

The Office of Human Resources provides all aspects of personnel administration and human resource direction and support for the employees of MCAD. Some of the services that the Office of Human Resources provides include, but are not limited to, payroll administration, benefits and leaves administration, labor and employee relations, handling of ADA requests and accommodations, diversity considerations and opportunities for professional development as well as organizational development.

The Fiscal/IT Unit handles all budget and fiscal matters and provides IT services and support for the MCAD. This past year the Fiscal/IT Unit was instrumental in the coordination of the new location of the Worcester Office.

The Alternative Dispute Resolution (ADR) programs at MCAD consist of Conciliation and Mediation. ADR is strongly promoted throughout and following the investigative process, additionally Massachusetts law mandates conciliation for all cases which receive a finding of Probable Cause.

## Conciliations / Mediations

In 2014 the Conciliations Division scheduled 482 sessions. This includes Probable Cause conciliations, some post-discovery mediation, and the cases in the voluntary pre-determination mediation project where the parties have representation by counsel.

Of the 241 sessions held, 176 resulted in settlement. This settlement rate is slightly higher than last year. This high settlement rate significantly stems the flow of cases advancing to the adjudication stage.

The agency is mandated to attempt conciliation after Probable Cause has been found, and thus post-Probable Cause conciliations are the bulk of the Division's activity. Unlike mediation, it is not voluntary, but, it does, however, present a significant opportunity for parties to resolve a claim sooner rather than later.

	Scheduled	Held	Settled	\$ Amount
<b>Total 2014</b>	482	241	176	\$5,680,095
<b>Total 2013</b>	430	257	164	\$4,700,249

## Post-Discovery Mediations

The Conciliations Division also assists in mediating cases nearing public hearing, as time and resources permits.

	Scheduled	Held	Settled
<b>Total 2014</b>	10	9	6
<b>Total 2013</b>	10	9	8

The breakdown by type of session remained constant at 80% conciliations. Of the remaining sessions, roughly 20% were either post-discovery mediations or voluntary pre-disposition mediations with attorney

representation. Channeling more cases to pre-disposition resolution increases efficiency because cases which resolve earlier in the process ultimately involve a more productive and positive use of the Commission’s scarce resources.

Cases involving Commission Counsel fell slightly from 40% to about 33% of the sessions scheduled.

## Mediation Program

### Represented Cases

	Scheduled	Held	Settled
Early 2014	175	184	130
Early 2013	62	44	34

These cases are referred by an investigator, the pro se mediation program, or the parties want to come in to mediate. Although referrals to the early mediation program did not rise, a higher acceptance rate fueled increased participation. The settlement rate for these cases continues to be robust. Since cases that resolve early tend to preserve investigative resources, the Commission strongly encourages more referrals into this productive program.

### Perspective

Even though the number of cases scheduled was slightly less than last year, the total dollar volume of settlements remained consistent. Most notably, for the first time in over 25 years of the Division’s record keeping, the total dollar value of settlements in a given month exceeded \$1,000,000 in January of 2014.

### Pro Se Mediation Program

Agency wide, mediations continue to be a resource for parties. Participants are provided administrative and mediation services from experienced mediators. The Early Intervention pro se Mediation program contacted 394 parties. The result was 185 mediations scheduled, and 158 conducted. Of the 158 conducted, 125 were settled, which is an 80% rate of settlement. The resulting total monetary amount of these settlements was \$1,082,4478.

The Early Intervention pro se mediation program’s success continues as it enters its 15th year. The formula for such success is owed to a combination of offerings: free, voluntary participation in sessions which are administrated and conducted by an experienced attorney-mediator who has practiced employment law for more than 20 years and has mediated and/or consulted on more than 2,000 cases since the program’s inception in February, 2000.

## Training Unit

The Training Unit provides internal and external employment and housing discrimination prevention trainings as well as a robust internship program.

During 2014, the MCAD training unit and other staff conducted 111 external employment and housing discrimination prevention training sessions and presentations attended by 2,420 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. Special thanks to all the staff that assisted with providing training programs in western Massachusetts this year. Fees collected and/or payable for training sessions during 2014 totaled \$121,310, not including the Courses for EEO Professionals (see below).



The MCAD outreach program, “Spreading Education to End Discrimination” or “S.E.E.D.” completed 117 presentations in 2014, reaching 2,243 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 fifteenth annual MCAD-Certified Courses for EEO Professionals this year, including four half-day prerequisite sessions, two Train-The-Trainer modules each encompassing two to three days, and three EEO practitioner modules each encompassing two to three days. For the second time, the Commission offered the internal investigations course twice in 2014. Fees collected for these Courses this year totaled \$92,195.

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 programs included three diversity training program for all employees who had not previously participated, including a day-long session for all Boston employees, a day-long session for all Worcester and Springfield employees, and a half-day session for all supervisors and managers throughout the agency. In addition, we repeated our mandatory session for enforcement personnel regarding transgender issues for all Boston employees who had not previously attended, plus our summer interns. That session was skillfully conducted by the new Executive Director of the Mass. Transgender Political Coalition, Mason Dunn.

In honor of Holocaust Remembrance Day, the MCAD’s Boston office, with participation by employees statewide, hosted guest speaker Janet Singer Applefield. Ms. Applefield generously shared her experiences as a child in occupied Poland during World War II. For the Commission’s annual Boston observance of the national campaign to Stand Against Racism, we hosted Constance and Dain Perry who presented and discussed, “Traces of the Trade,” an extraordinary documentary about one New England family’s history as slave-traders. The Boston office was inspired by guest speaker Joanne Dunn, Director of the Native American Indian Center of Boston, who shared her perspective on current issues facing Native Americans in Massachusetts and beyond.

The Commission held its annual summer series of nine brown bag lunch discussions on various topics for Boston interns and employees, and two special brown bag lunches: one on the dynamics of successful mediation, and one on special issues regarding confidentiality during the investigations process, both open to all employees via videoconferencing.

The MCAD’s internship program continued to flourish, with 82 undergraduate, law student, and attorney volunteers working at the Commission in 2014. Interns completed hundreds of investigative dispositions, conducted hundreds of intake meetings with complainants, and held over a hundred outreach presentations. The training unit, headed by Becky Shuster, oversees the Commission’s internship program at all four offices. Ms. Shuster works closely with Geri Fasnacht in the Boston office, Gilbert May and Kristen Sopot in the Springfield office, and a team of intern supervisors across the agency.

As of the close of 2014, the training unit has monitored compliance in a total of 642 cases where the hearing decision or settlement included a training requirement. Of those, 510 cases are no longer active, primarily because the training was completed. Internally, the training unit began participating in development of the MCAD’s Language Access Plan for parties with limited English proficiency. Externally, the training unit began providing program support to ArtsEmerson’s One Boston initiative, aiming to foster civic transformation through shared experiences of art and public dialogue. The training unit also 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.

# 2014 MCAD STAFF

Lisa Adams <sup>†</sup>	Elizabeth Hickey	Charlotte Golar Richie
Melvin Arocho*	Marzella Hightower*	Lila Roberts
Deborah A'Vant*	June Hinds-Zabala*	Yanarilet Rosario-Cumbas <sup>†</sup>
Joel Berner	Clare Horan	Olga Serafimova
Jason Bethea	Maria Joseph*	Caitlin Sheehan*
Sarah Biglow	Judith Kaplan*	Rebecca Shuster*
Eric Bove	Theresa Kelly	Dina Signorile-Reyes
James Brislin <sup>†</sup>	Nomxolisi Khumalo	Andre Silva
Maryann Brunton*	Jennifer Laverty	Alexander Smith <sup>†</sup>
<b>Marlania Bugg*</b>	Audrey Lee	Lennie De Souza Smith
Emily Caplan* <sup>†</sup>	Shirley Lee*	Myrna Solod*
Wendy Cassidy*	Simone Liebman*	Kristen Sopot
Janet Cha	Joshua Lopez	Abigail Soto-Alvira*
Amy Chow	Melanie Louie-Tso*	Ethel Stoute*
Kathleen Chung <sup>†</sup>	Sheila Mathieu	Tania Taveras*
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Alexandria De Aranzeta	Sheree McClaine	Korey Thiffault
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Eugenia Guastaferrri*	Pamela Myers	Jamie Williamson
Yaw Gyebi, Jr.	Nicole Newman	Paul Witham*
SuJin Han	Yudelka Peña*	Patty Woods
H Alex Harrison	Michelle Phillips	Carmen Zayas
Keith Healey	Jeannine Rice*	

\* Identifies individuals who have ten or more years of service with the Commission

<sup>†</sup> Identifies contractors who provided services to the MCAD.

**Bold identifies employees who retired in 2014**

## 2014 MCAD ADVISORY BOARD MEMBERS

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## 2014 MCAD INTERNS

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# GLOSSARY OF TERMS

**Alternative Dispute Resolution:** The process in which a third-party neutral mediator 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 withdrawn from MCAD removed to the Court.

**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.”

**Determination:** The Investigating Commissioner’s findings with respect to the allegations in the complaint, made after an appropriate investigation and with respect to each allegation, as to whether the respondent may have committed an unlawful practice.

**Disposition:** The official document issued stating the determination by the Investigating Commissioner.

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

**HUD:** United States 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 establishing 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 by the Investigating Commissioner of 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 trained mediators.

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

**Probable Cause:** A determination of the Investigating Commissioner 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:** 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:** The 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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