

MCAD

2015 Annual Report

familial status hearings training credit religion
sex **civil rights** prevention
151B access legislation age lending Tenants laws
HUD marital status business progress
military reasonable accommodation
public accommodation employment EEOC
rights **Enforcement** gender identity
color mortgages jurisdiction mediation inclusion
disability opportunities diversity justice genetics
unconscious bias disparate impact



TABLE OF CONTENTS

LETTER FROM THE COMMISSIONERS	2
MCAD BUDGET FOR FY15, FY16, AND FY17 Ask	5
FLOW CHART OF MCAD CASES	8
ENFORCEMENT DIVISION	10
CASES PROCESSED	11
HOUSING CASES PROCESSED	14
2015 EEOC SUBSTANTIAL WEIGHT CASES	15
ADMINISTRATION & FINANCE DIVISION	16
LEGAL DIVISION	18
COMMISSION COUNSEL CASE ASSIGNMENTS	18
NOTEWORTHY SETTLEMENTS	19
HEARINGS DIVISION	23
SIGNIFICANT HEARING DECISIONS	23
SIGNIFICANT FULL COMMISSION DECISIONS	27
2015 MCAD STAFF	30
2015 MCAD ADVISORY BOARD MEMBERS	31
2015 MCAD INTERNS	31
GLOSSARY OF TERMS	32
MCAD ORGANIZATIONAL STRUCTURE	33
MCAD OFFICES	33

LETTER FROM THE COMMISSIONERS

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

We are pleased to submit the 2015 Annual Report of the Massachusetts Commission Against Discrimination (MCAD), and in accordance with state law, provide data and highlights of the Commission's work. We thank the Governor and Legislature for their support of budget proposals and funding that allowed the MCAD to continue its work as the nation's second oldest Fair Employment Practice Agency, and as the agency with primary responsibility for enforcing the state's anti-discrimination law, M.G.L. Chapter 151B.

Another Historic Year for Civil Rights

Just as 2014 marked the 50th anniversary of the U.S. Civil Rights Act of 1964, 2015 saw significant advances in civil rights, highlighted by the Supreme Court's decisions upholding the constitutional right of gay and lesbian people to marry in every state of the Union, the recognition of claims of disparate impact discrimination brought under the Federal Fair Housing Act, and the rights of pregnant employees to be accommodated under the Pregnancy Discrimination Act. The year 2015 also marked the 25th anniversary of the Americans with Disabilities Act (ADA). In Massachusetts and across the nation, issues of discrimination and civil rights based on race, gender, disability, sexual orientation, gender identity, religion, national origin, and mortgage lending dominated headlines and public debate, and continued to be filed at the MCAD.

Here at home, the jurisdiction of MCAD was expanded with the enactment of two major pieces of state legislation that went into effect in 2015: the Domestic Workers Bill of Rights, offering protections for housekeeping and homecare employees; and The Massachusetts Parental Leave Act – a victory for male employees who are now entitled to take eight-weeks of unpaid leave for the birth or adoption of a child.

The Commission co-convened the 9th Annual Northeast Regional Fair Housing and Civil Rights Conference, attended by more than 500 attendees, who gathered in Springfield to reaffirm their commitment and share best practices to eradicate discrimination in the Commonwealth and nation.

In September, the MCAD marked its 15-year partnership with the City of Boston's Fair Housing & Equity Office and reaffirmed a mutual commitment to continue our joint efforts to address housing discrimination (based on race, color, gender, public assistance, family size, the presence of lead paint, etc.) in the city.

The Work of the MCAD and the People We Serve

With a staff of 70 and a budget of just under \$5 million (roughly half of which is funded through an annual state appropriation and half earned through federal contracts with the EEOC, HUD, and the agency's discrimination-prevention training programs), the MCAD tackles discrimination on a daily basis, utilizing numerous techniques, such as: mediation and conciliation; education and training; the issuance of preliminary determinations at the investigative level; adjudication and issuance of decisions rendered by MCAD Hearing Officers; and final agency decisions of the Full Commission.

The number of new cases of discrimination filed at the MCAD in 2015 was 3,042— resulting in a year-end total of 5,303 cases in the agency’s inventory. The vast majority of claims were employment-related, and alleged adverse actions such as termination, demotion and failure to accommodate.

The MCAD strives to treat all its constituents with dignity, and provides access to all claimants without regard to their economic status, physical mobility, language ability, or other attributes. The MCAD offers ancillary services to ensure equal access to its procedures in a number of ways.

Operational Improvements

In 2015, MCAD’s management team, led by its three Commissioners, introduced a number of significant initiatives focused on strengthening the fabric of the organization and improving internal operations. Progress reports demonstrate that, for the second year in a row, the number of cases closed exceeded those filed.

- The MCAD launched a new agency website with the assistance of the MassIT Department. The new website is more accessible, provides more detailed instruction on MCAD process and procedures, and further explains parties’ rights and responsibilities under the law.
- The agency piloted a project accepting electronic submissions from Respondents in order to improve efficiency in investigations.
- The agency expanded and strengthened its Language Access Plan to ensure that individuals with limited English proficiency receive meaningful access to MCAD’s services with greater ease and support.
- The agency consolidated the Mediation and Conciliation teams into a new Alternative Dispute Resolution (ADR) Unit, to streamline efforts and promote efficiency as well as accountability.
- The agency implemented a new set of written policies as guidance to staff to improve overall operations.

These operational improvements helped staff to focus on reducing the agency’s backlog of aged complaints (cases older than 18 months in investigation) and resulted in the agency exceeding the goals for case closures set out in federal contracts with HUD and the EEOC. In anticipation of additional revenue from federal contracts, the agency worked with Governor Baker’s administration and the Legislature to raise the statutory cap on our retained revenue accounts, which in turn allowed the agency to retain its additional earned income and direct those funds towards reducing the agency’s backlog.

Moving the Needle Toward the Eradication of Discrimination

MCAD Commissioners testified before the Legislature’s Joint Committee on Labor & Workforce Development on several bills which, if passed, would impact the work of the Commission. The bills included a legislative measure to make the filing deadline for education discrimination claims consistent with other discrimination claims. The Commissioners also submitted testimony to the Executive Office of Labor’s Committee on Chronic Unemployment noting that employment discrimination is a major contributing factor to be considered.

The MCAD’s public hearing decisions continue to generate much interest and attention. In 2015, Massachusetts Lawyers Weekly named an MCAD decision regarding associational discrimination as one of the year’s “Most Important Opinions” in employment law. With the aid of Commission Counsel, the agency defended lawsuits challenging the MCAD’s decisions and procedure in the Massachusetts Superior Courts and Appeals Court.


The Road Ahead

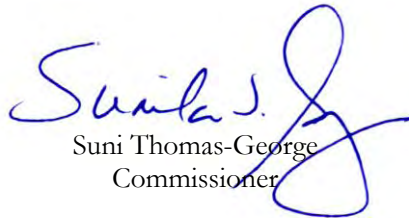
Looking forward, the agency's perennial backlog of older cases continues to be a subject of major focus. Our goal as always is to expedite the handling of investigations without sacrificing the quality of assistance to pro se complainants or the quality of investigative analysis and soundness of jurisprudence.

Recognizing the importance of preventing discrimination in the workplace, public places and in housing, we will seek to expand our training program to offer new workshops and continuing education credits for HR professionals, landlords, managers, attorneys, and more. We are committed to continuing expansion of our Language Access Program, by increasing the number of translated materials for limited English proficient individuals and utilizing technology to serve deaf and hearing-impaired complainants.

Once again, we thank you for making it possible for us to complete another year serving this important constituency. We value your faith in our stewardship of this great mission; and in this coming year, we look forward to commemorating 70 years of anti-discrimination work at the MCAD.

Respectfully submitted,


Jamie R. Williamson
Chairwoman


Suni Thomas-George
Commissioner


Charlotte Golar Richie
Commissioner



Photo: Suni Thomas George, Jamie R. Williamson, Charlotte Golar Richie

MCAD BUDGET FOR FISCAL YEAR 2015

OVERVIEW

July 1, 2014 - June 30, 2015

Direct State Appropriation

Line Item 0940-0100	
State Appropriation (GAA)	\$ 2,818,237
Mid-Year Budget Cut	(\$ 50,446)
Net Appropriation	\$ 2,767,791

Retained Revenues Collected

Line Item 0940-0101	
HUD	\$ 961,291
EEOC	\$ 1,037,250
Trainings	\$ 54,214
Testing	\$ 2,500
Miscellaneous Fees*	\$ 3,110
Attorney's Fees	\$ 47,098
Total Collected	\$ 2,105,463
Mid-Year Budget Cut	(\$ 37,929)
Net Revenue	\$ 2,067,534

Training Program

Line Item 0940-0102	
Train the Trainer Program	\$ 140,000
Mid-Year Budget Cut	(\$ 2,506)
Net Revenue	\$ 137,494

FY15 Net Budget **\$ 4,972,819**

FY15 Expenses

Payroll	\$ 4,401,007
Rent	\$ 81,811
Administrative Costs	\$ 490,001

Total Expenses **\$ 4,972,819**

* Fees collected in accordance with M.G.L. c.66.

MCAD FY16 APPROVED BUDGET

FY16 State Appropriations



MA Legislature

General Operating Account

\$2,898,657

This amount reflects the State Appropriation portion of MCAD funding.

Retained Revenue Accounts



EEOC



HUD



MCAD

Federal Earning Cap*

\$2,518,911

These funds are earned from investigations conducted by the MCAD for the EEOC and HUD.

Training Income Cap*

\$240,000

These funds are earned from external training and other services conducted by MCAD.

MCAD FY16 Budget

State Appropriation

\$2,898,657

+

Combined Earning Potential

\$2,758,911

=

Total

\$5,657,568

* The MCAD's retained revenue accounts are not guaranteed funding. The amount of revenue earned depends upon the number of federally funded investigations completed by the Commission and the income generated from MCAD trainings and fees. The earnings caps on the retained revenue accounts limit the amount that the MCAD can earn.

Note: In November of 2015, the Governor and Legislature enacted a Supplemental Budget increasing the earnings caps on the MCAD's retained revenue accounts.

MCAD **FY17** BUDGET REQUEST

FY17 State Appropriations



MA Legislature

General Operating Account

\$3,515,657

This amount reflects the State Appropriation portion of MCAD funding.

Retained Revenue Accounts



EEOC



HUD



MCAD

Federal Earning Cap*

\$2,518,911

These funds are earned from investigations conducted by the MCAD for the EEOC and HUD.

Training Income Cap*

\$240,000

These funds are earned from external training and other services conducted by MCAD.

MCAD FY17 Request

State Appropriation

\$3,515,657

(\$617,000 Increase)

+

Combined Earning Potential

\$2,758,911

=

Total

\$6,274,568

H.2 Governor's Budget

State Appropriation

\$2,898,657

+

Combined Earning Potential

\$2,758,911

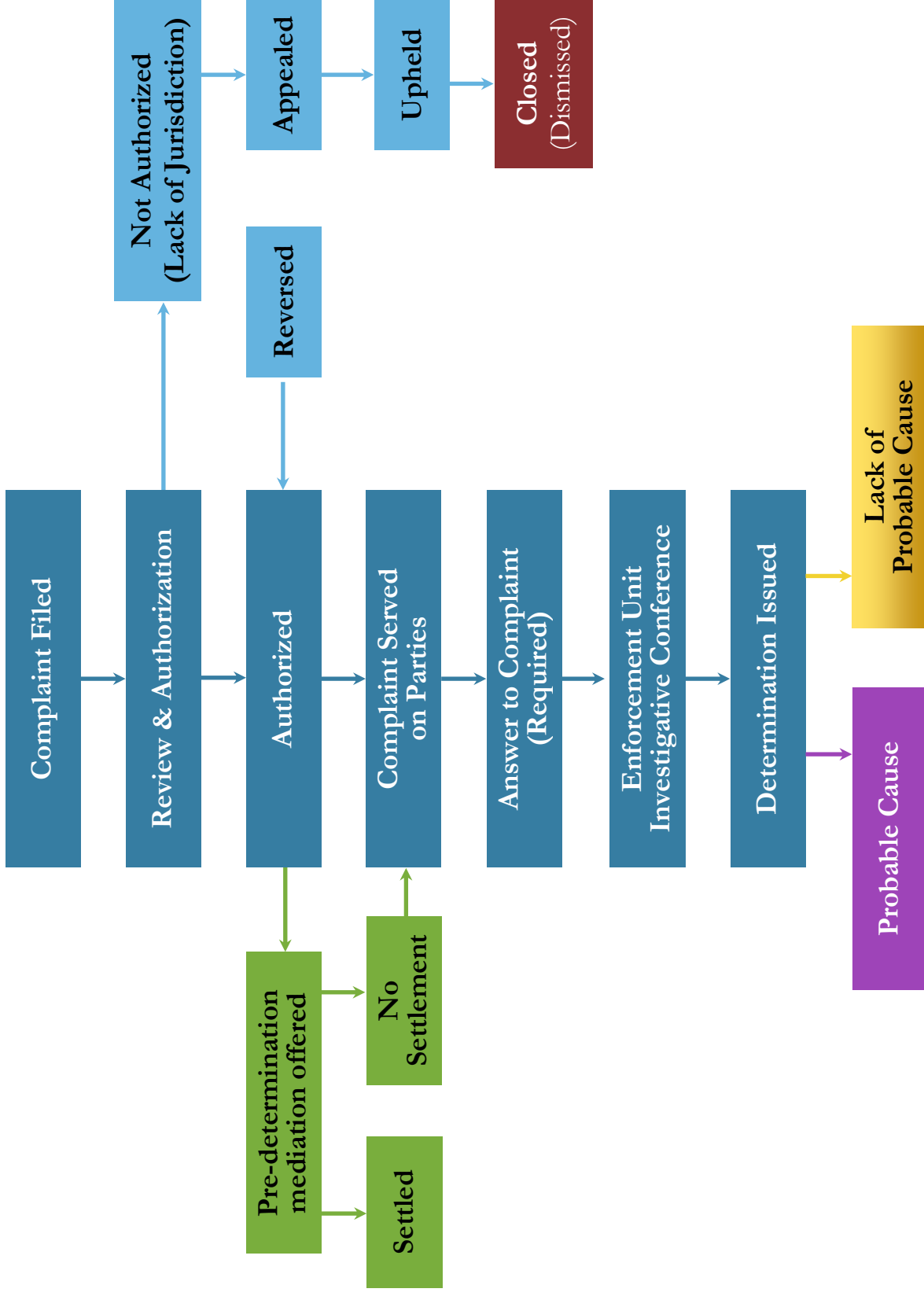
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Total

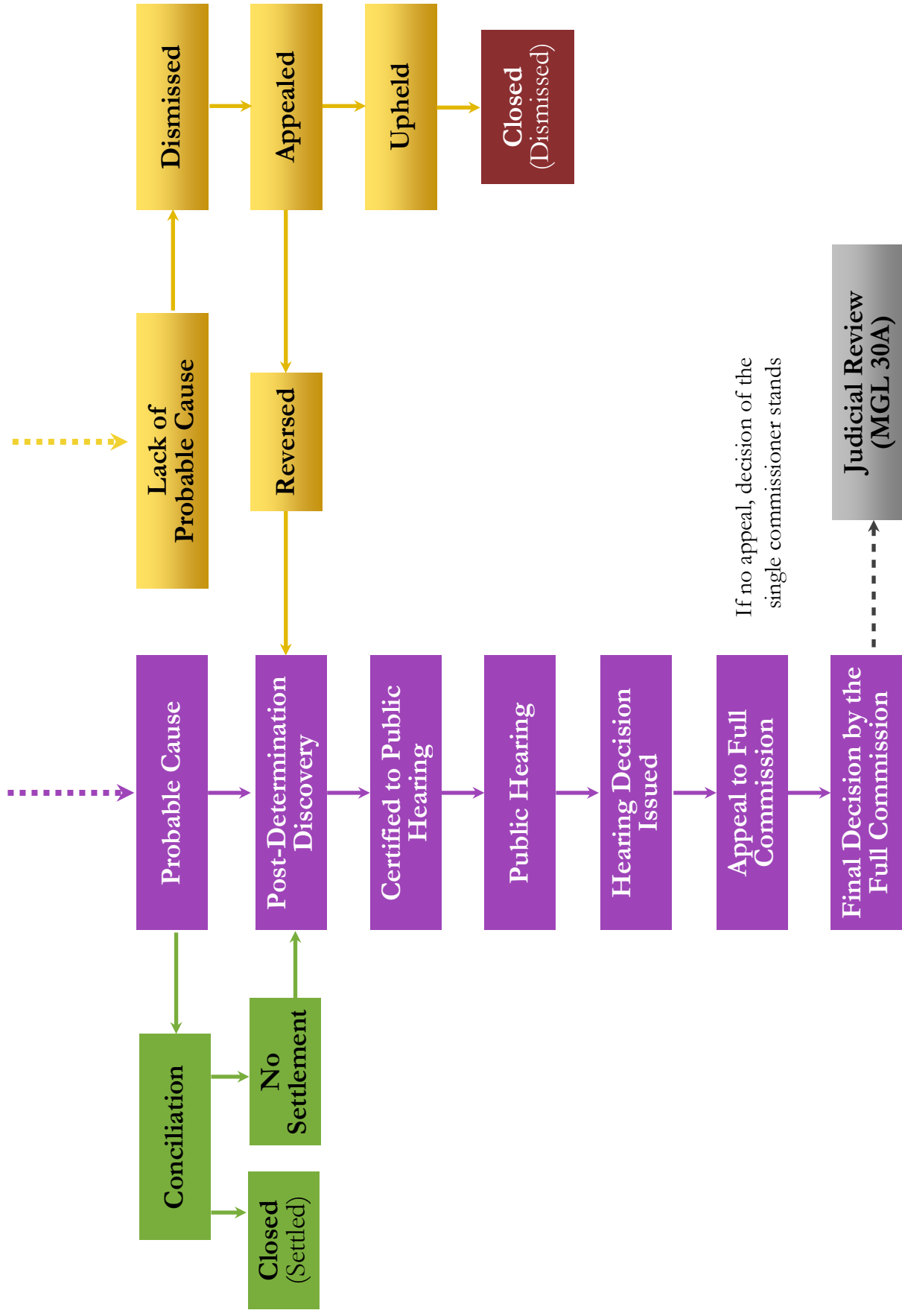
\$5,657,568

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MCAD INVESTIGATIVE CASE PROCESS FLOW CHART



MCAD POST-INVESTIGATIVE CASE PROCESS FLOW CHART



ENFORCEMENT DIVISION

The MCAD Enforcement Division is 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 jurisdiction, and recommends dismissal through a finding of Lack of Jurisdiction where appropriate. Further, the Enforcement Division, with its Alternative Dispute Resolution (ADR) Unit, facilitates settlement discussions and early resolutions of fair housing and fair employment state and federal claims.

In 2015, the Enforcement Division continued to produce strong results, despite labor attrition and significant personnel changes. At the conclusion of the year, this 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, 19 investigators, five attorney advisors, and two ADR attorneys. In 2015, the Enforcement Division began accepting electronic submissions of certain respondents' position statements.

Cases Processed

In 2015, the Enforcement Division received 3,042 new complaint filings and the Division completed 1,956 substantive investigations. By year end, the Division reduced its active inventory of cases to 4,648.

Investigative Conferences held at the MCAD have contributed to a more efficient and effective investigative process. The conferences give parties the opportunity to present their issues in person, and they provide the investigator with a way to obtain access to the parties for questioning. Investigative Conferences are also a means of assessing whether mediation is appropriate for resolving a complaint. These conferences have allowed the MCAD, with its limited resources, to evaluate and, in many cases, to shorten the duration of the investigative process.

Alternative Dispute Resolution (ADR)

The ADR Unit was previously housed in the Administrative and Finance Division. In March 2015, the ADR unit was moved under the Enforcement Division in order to assist in addressing the caseload of each investigator by

offering alternative dispute resolution opportunities at all stages of the investigative process. The ADR unit seeks resolution for parties while pursuing the public interest in reducing discrimination. The ADR Unit was instrumental in settling 533 discrimination complaints, of which 234 complaints were settled prior to an investigative finding being issued.

Enforcement Outreach

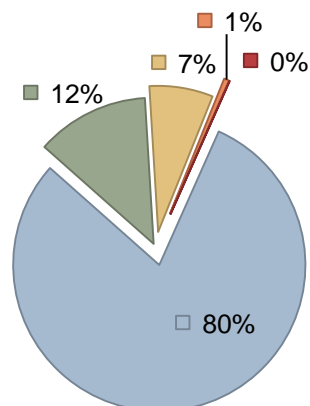
Outreach initiatives are an important means by which the MCAD works to eliminate and prevent discriminatory policies or practices in employment, housing, and public accommodation. During the course of 2015, the Enforcement Division staff conducted and participated in numerous educational outreach and training sessions provided to public and private organizations, colleges and universities, business organizations, law firms, and civic associations throughout the Commonwealth. The Enforcement Division also provides training opportunities for its staff, through civil rights symposiums, Continuing Legal Education classes, and training seminars and programs presented by: local 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. The Commission also provides some Enforcement Advisors and Investigators the opportunity to obtain the training necessary to be certified to conduct mediations and to utilize other alternative dispute resolution strategies.

Language Access

In 2015, the MCAD enhanced its language access initiative by updating and expanding its written Language Access Plan based on the data collected regarding Limited English Proficient who seek MCAD services and support. This expansion included translating the Enforcement Unit's vital documents into six primary languages, and migrating to the Commonwealth's Portal website platform which provides ADA assistive technology support and translation capabilities into forty languages. Additional information can be found online at: www.mass.gov/mcad/about/language-access-plan-gen.html

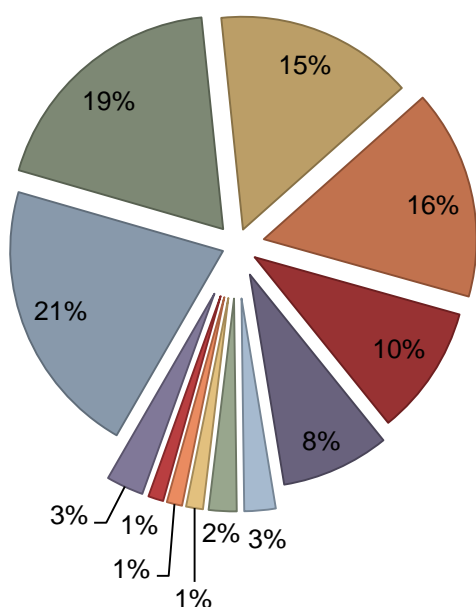
2015 COMPLAINTS - FILED BY JURISDICTION

Number of Complaints Filed by Jurisdiction	
Employment	2,430
Housing	380
Public Accommodation	214
Education	17
Credit	1
Total	3,042



This graph shows the total number of complaints filed in 2015 by jurisdiction. As in years past, the vast majority of new complaints alleged employment discrimination (79.9%), followed by Housing (12.5%), and Public Accommodation at (7.0%).

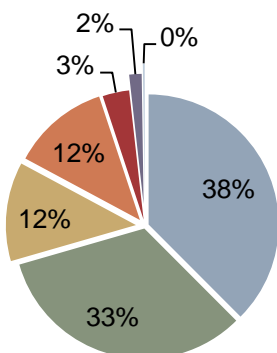
2015 COMPLAINTS - FILED BY PROTECTED CATEGORY



Disability	1121
Race, Color	1003
Retaliation	798
Sex (see below)	845
Age	523
National Origin	436
Sexual Orientation	126
Religion / Creed	112
Arrest Record	68
Children	62
Public Assistance	61
Other*	150

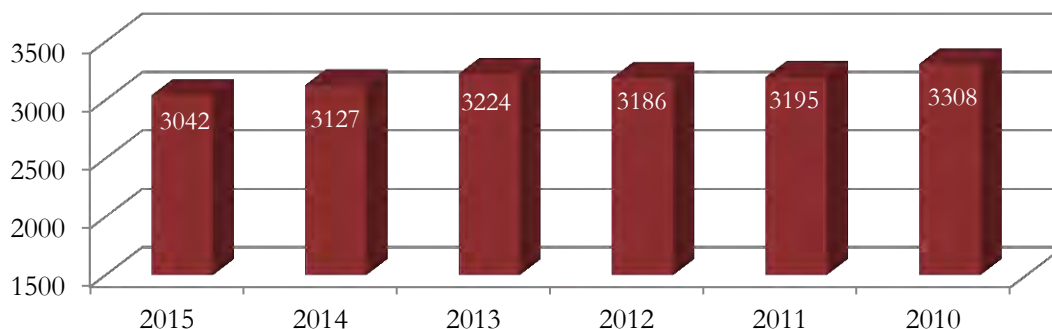
* Familial Status, Lead Paint, Gender Identity, Marital Status, Military Status, Veteran, Genetic Information.

This data shows the total number of cases filed in 2015 broken down by each major protected category. Many cases assert more than one protected category. In 2015, disability and race/color remained the most frequently cited categories of discrimination. The next most common claims were for retaliation and sex discrimination.



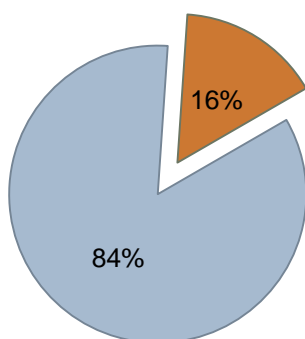
Additional breakdown of Sex Discrimination Claims	
Female	317
Sex discrimination / Sexual Harassment	279
Male	104
Female (Pregnancy/Maternity-related)	102
Sex	28
Sex discrimination, unspecified or general	13
Male (Paternity-related)	2

COMPLAINTS FILED ANNUALLY



This graph represents all employment, housing, education, credit, and public accommodation complaints filed in 2015 and the preceding five years. In 2015, the MCAD received 3,042 new complaints.

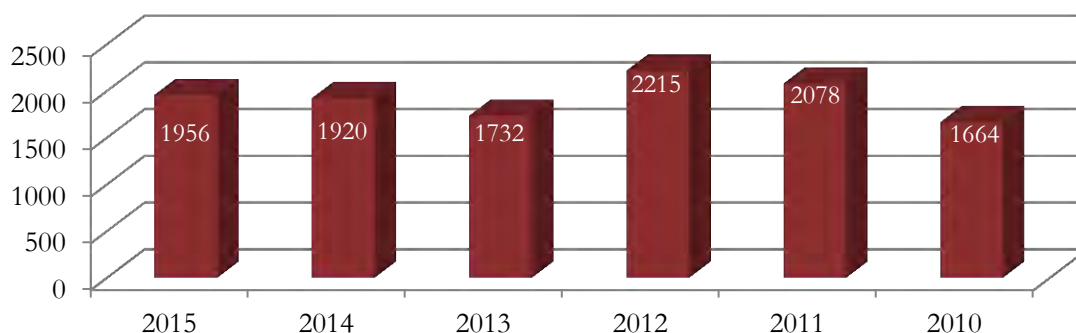
SUBSTANTIVE DETERMINATIONS IN 2015



Substantive Dispositions	
Lack of Probable Cause (LOPC)	1,651
Probable Cause (PC)	305
Total	1,956

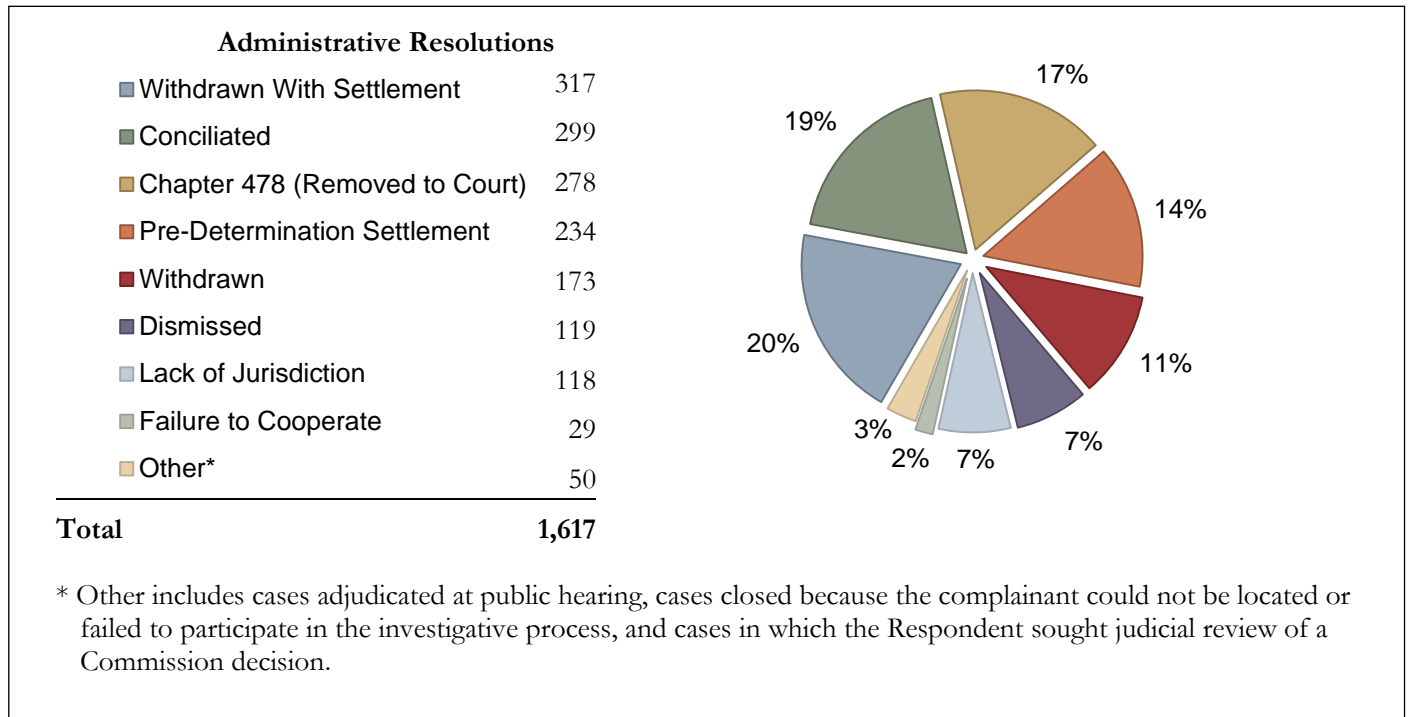
The data shows the number of cases in which substantive determinations — Probable Cause (PC) and Lack of Probable Cause findings (LOPC) — were issued in 2015 by the Enforcement Division. This pie chart compares the percentage of LOPC findings (84%) to PC findings (16%).

SUBSTANTIVE DETERMINATIONS COMPLETED ANNUALLY



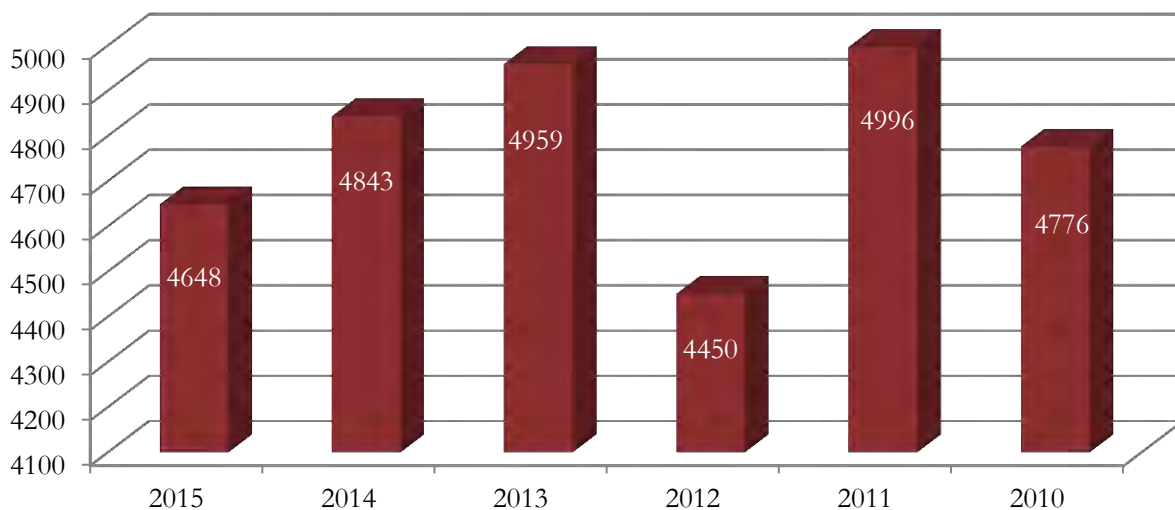
This graph represents the total number of Probable Cause and Lack of Probable Cause determinations issued in 2015 compared to the last five years. 2015 saw a slight increase in productivity over 2014, with 36 more dispositions issued than in the previous year.

ADMINISTRATIVE RESOLUTIONS IN 2015



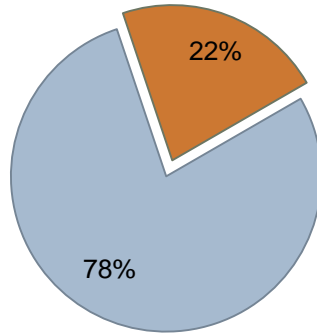
This data shows the total number of cases that were administratively resolved in 2015. The pie chart shows the percentage of cases closed in each category. The total number of administrative resolutions was (1,617). The majority (850 cases) were resolved by mediation or conciliation, a reflection of the MCAD's strong commitment to alternative dispute resolution efforts.

INVENTORY OF ENFORCEMENT CASES ANNUALLY



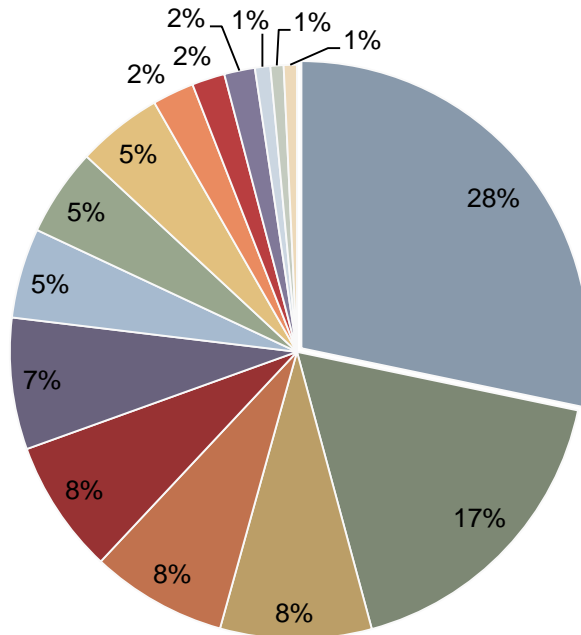
This graph represents the total number of active cases being investigated in the Enforcement Division as of December 31, 2015 and compares the 2015 end of year inventory to the preceding five years. The MCAD reduced its open case inventory by 116 cases over the prior year.

HOUSING INVESTIGATIONS



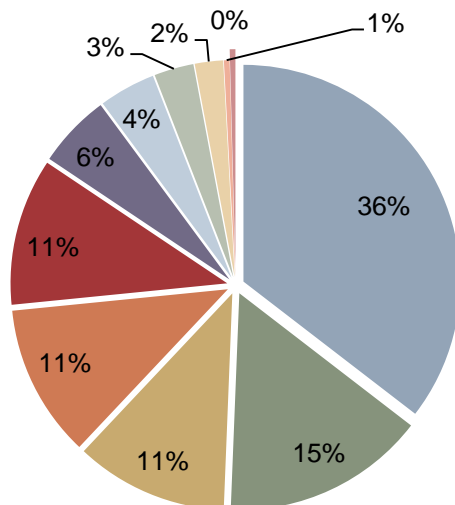
Substantive Housing Investigations	
Lack of Probable Cause (LOPC)	172
Probable Cause (PC)	48
Total	220

HOUSING COMPLAINTS FILED BY PROTECTED CATEGORY



Disability	229
Race, Color	142
National Origin	69
Children	62
Public Assistance	61
Other	60
Familial	41
Sex	40
Lead Paint	39
Age	19
Creed	15
Sexual Orientation	14
Gender Identity	7
Veteran	6
Marital Status	6

HOUSING ADMINISTRATIVE RESOLUTIONS



Pre-Determination Settlement	84
Conciliated	36
Dismissed	27
Withdrawn With Settlement	27
Withdrawn	26
Lack of Jurisdiction	13
Judicial Review	10
Unable to Locate Complainant	7
Failure to Cooperate	5
Chapter 478 (removed to court)	1
Investigation Not Authorized	1
Total	237

EEOC SUBSTANTIAL WEIGHT CASES

EEOC Substantial Weight Cases are cases where original charges of discrimination are filed and investigated by the EEOC. After EEOC issues a filing, a request to dual file with MCAD may be made by the EEOC whereby after the EEOC investigation is completed, the MCAD reviews it for compliance with State law and may grant substantial weight in accordance with the EEOC's Findings.

EEOC Cases Filed	419
EEOC Substantives Completions	35
EEOC Active Inventory	1,088

BREAKDOWN OF EEOC ADMINISTRATIVE RESOLUTIONS:

Withdrawn With Settlement	141
Lack of Probable Cause	35
Withdrawn	5
Chapter 478 (removed to court)	1

BREAKDOWN OF EEOC COMPLAINTS BY PROTECTED CATEGORY

Disability	254
Other	85
Race, Color	69
Sex	68
Age	55
National Origin	45
Creed	13
Sexual Orientation	5
Arrest Record	1

ADMINISTRATION AND FINANCE DIVISION

The Administration and Finance Division (ANF) is comprised of the Office of Human Resources, Fiscal/MIS, Operations, Training, Clerk's Office, Administrative Services and Reception. These functions are overseen by the Chief of Administration and Finance.

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 leave administration, labor and employee relations, handling of ADA requests and accommodations, diversity considerations and opportunities for professional development as well as organizational development.

Administrative Services unit was established in March 2015. This unit consists of the Clerk's Office and the Front Desk/Reception. This unit was created to pool the administrative resources of MCAD and create an efficient and effective administrative support for the departments of MCAD.

This has been an exciting Fiscal year for the MCAD. With the support of the MA Legislature and the Governor, MCAD was able to maintain our state appropriations and raise the retained revenue caps in MCAD's federal and training accounts in a supplemental budget. By raising these caps, MCAD was able to retain more revenue earned from our federal partners, EEOC and HUD, for the adjudication of complaints that fall under the federal protected categories. The caps were raised to \$450,000 cumulatively, which in turn enabled MCAD to hire personnel and address the backlog of cases.

The Administration and Finance Unit completed a top-to-bottom review of agency policies and procedures with the assistance of the senior management team, and assisted in a process evaluation conducted by the State Auditor. The preliminary audit report confirmed earlier internal assessments regarding the need for increased funding and additional data management support.

The **Clerk's Office** was transferred to ANF in order to bring the Administrative staff under one unit and to create a unified unit of administrative support. This

restructuring allowed for a streamlining of administrative support.

Also in 2015, the MCAD launched a new website. The redesigned website greatly expands the accessibility of the site by offering full ADA assistance technology compliance, as well as mobile responsiveness, and translation services into forty languages. The new website now covers all of the departments within the MCAD, and includes a step-by-step guide to the complaint process with instructions. By launching this new site, the MCAD hopes to provide answers to frequently asked questions about how it enforces the Commonwealth's anti-discrimination laws, which will allow our staff to work more efficiently.

The **MCAD Training Unit** provides internal and external discrimination prevention trainings and a robust internship program. At the present, the Training Unit offers the following six external discrimination prevention trainings: 1) *Preventing and Addressing Workplace Discrimination for Managers and Supervisors*; 2) *Preventing and Addressing Workplace Discrimination for Line Staff or Non-Managers*; 3) *Preventing and Addressing Housing Discrimination*; 4) *Preventing and Addressing Public Accommodation Discrimination*; 5) *Conducting Internal Discrimination Complaint Investigations*; and 6) *Responding to Accommodation Requests*

During 2015, the MCAD Training Unit and other MCAD staff conducted over 123 external discrimination prevention training sessions and external presentations attended by 2,724 participants. Our audiences included human resources professionals, attorneys, supervisors and managers, line staff, landlords, property management personnel, and realtors. The training sessions ranged from two hours to four days in length. Fees collected and/or payable for training sessions during 2015 totaled \$105,305, not including the Courses for EEO Professionals (see below).

The MCAD outreach program, "Spreading Education to End Discrimination" or "S.E.E.D." completed 43 presentations in 2015, reaching 981 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 various languages.

The Commission held its sixteenth 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 two EEO practitioner modules, *Responding to Accommodation Requests* and *Conducting Internal Discrimination Complaint Investigations*, comprising two to three days. Fees collected for these Courses this year totaled \$63,800.

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 trainings included developing and facilitating three Language Access Orientation sessions for Boston, Worcester and Springfield

employees, and developing a Language Access Plan module for New Employee and Intern Training.

The Commission also held its annual summer series of brown bag lunch discussions on various topics for Boston interns and employees, including a discussion of the history and implementation of the Domestic Workers Bill of Rights.

The MCAD's internship program continued to flourish, with undergraduate, law student, and attorney volunteers working at the Commission in 2015. Interns completed hundreds of investigative dispositions, conducted intake meetings with complainants, and conducted outreach presentations. The Training Unit oversees the Commission's assisted in the completion of program at all four offices, in collaboration with members of the Enforcement Unit, and a team of intern supervisors across the agency.

As of the close of 2015, the training unit has monitored compliance in a total of 684 cases where the hearing decision or settlement included a training requirement. Of those, 540 cases are no longer active, primarily because the training was completed.

LEGAL DIVISION

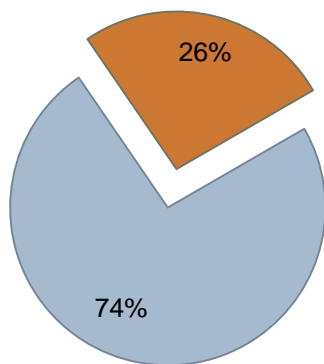
The Legal Division provides legal services to the Commission to achieve the Commission's mission to eradicate discrimination through enforcement of the Commonwealth's anti-discrimination laws. It supports the Commission's objectives through prosecution of administrative proceedings, litigation and appellate 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, and five Commission Counsel. In January of 2015, the Clerk's Office was transferred from the Legal Division to the Administrative and Finance Division. Also in 2015, the Deputy General Counsel continued to act as the Acting Chief of Enforcement.

Commission Counsel in the Legal Division evaluate and prosecute individual complaints in which the Investigating Commissioner has found Probable Cause, prosecute Commission-initiated complaints, and participate in conciliation proceedings. Additionally, Commission Counsel in the Legal

Division 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 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 in considering proposed legislation and regulations. Commission Counsel also hear and consider Lack of Probable Cause (LOPC) appeals and provide recommendations to the Investigating Commissioners regarding their findings. Members of the Legal Division also participate in outreach and training efforts to educate staff and the public. They also develop 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 also works with the Attorney General's Office when appropriate to defend the agency and its enforcement powers in administrative and litigation matters.

COMMISSION COUNSEL CASE ASSIGNMENTS

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 *pro se* complainants, complainants who are not represented by private legal counsel. Of the 305 cases that received a Probable Cause determination in 2015, the Legal Division received 225 of those to prosecute, all of which were filed by *pro se* complainants, an increase of 14 cases over 2014. Commission Counsel prosecuted one Public Hearing during the year. Counsel also continued to handle the existing caseload of 215 additional cases which were pending as of December, 31, 2014.



Commission Counsel	80
Private Legal Counsel	225
Total	305

NOTEWORTHY SETTLEMENTS

Commission Counsel resolved 116 cases through conciliation and negotiation, resulting in compensation of over \$ 1,432,358 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.

EMPLOYMENT

A municipal employee alleged that, because of his race (Hispanic), he was unjustly disciplined and denied a temporary promotion. The municipality worked with the Commission to address each component of the claim, memorializing promotional practices, removing discipline from the employees personnel file, and paying the employee alleged lost wages resulting from the failure to promote him into the temporary position. (Barnstable County)

A teacher at a vocational learning institute alleged that she was denied a reasonable accommodation for her disability, environmental allergies and chemical sensitivities, and was ultimately terminated from her teaching position. The matter settled for \$50,000 and anti-discrimination training. (Essex County)

An employee alleged sexual harassment against a state agency and an individual. Respondent agreed to pay Complainant's private attorneys' fees, provide one-on-one training for the alleged harasser, adopt an internal investigation policy, post notices of employees' right to be free of sexual harassment in the workplace, appoint an additional sexual harassment officer, and provide comprehensive training on sexual harassment for the agency's human resources department and sexual harassment officers. (Middlesex County)

An employee who had a record of disability but was no longer disabled, alleged that her employment was unlawfully terminated based on her record of disability. As part of the settlement, the employer agreed to pay Complainant \$45,000 in claimed back pay and emotional distress damages and to provide Complainant with an agreed upon letter of recommendation. (Middlesex County)

An employee alleged that her employer failed to reasonably accommodate her migraine headaches and other disabilities by terminating her employment for "excessive absenteeism." Respondent agreed to resolve the matter with payment of \$10,000 to Complainant and receipt of training on the fair employment laws of the Commonwealth. (Middlesex County)

An employee alleged that her employer unlawfully terminated her employment, rather than engage in an interactive dialogue to accommodate her disability. The matter was settled for \$40,000 in damages to the Complainant and anti-discrimination training for directors of the company. (Plymouth County)

An employee alleged that his employer unlawfully terminated him based on his disability. As part of the settlement, the employer agreed to pay Complainant \$70,000 for claimed back pay and emotional distress damages and provide disability discrimination training to all of the employer's human resources managers. (Suffolk County)

An employee alleged that she was discriminated against by her employer, a social service agency in Massachusetts, on the basis of disability, race, color, and retaliation, when she was subject to different work standards than white coworkers. Complainant also claimed that her request for an ergonomic chair was not addressed and her request to use sick time for tardiness related to her disability was denied. The matter was settled for \$35,000. (Hampden County)

An employee suffering from diabetes alleged that her employer denied her a reasonable accommodation for her disability and terminated her employment. The employee required intermittent leave to manage her primary condition and other conditions associated with this condition. The employee alleged that rather than engage in a meaningful interactive dialog, her employer unlawfully disciplined her for taking time off and ultimately discharged from her employment. The matter settled for \$25,000 and anti-discrimination training. (Suffolk County)

An employee alleged that he was discriminated against based upon his religion (Rastafarian) when his employer subjected him to comments about the length of his hair and subsequently terminated his employment without cause. Respondent agreed to allow the MCAD to review its grooming policy to ensure compliance with M.G.L. c. 151B. Complainant

was paid \$12,500 for alleged compensatory damages (Suffolk County)

An employee who was hired alleged that on the second day of employment his employer subjected him to impermissible verbal inquiries regarding his criminal record and subsequently terminated for being “too ghetto.” He claimed discrimination based on his race, religious creed and criminal record. Respondent’s job application contained an inappropriate inquiry into the criminal record of applicants. Respondent agreed to send its Massachusetts’ managers and supervisors to a training session on anti-discrimination in employment. Respondent also paid complainant \$30,000 in compensatory damages. (Suffolk County)

HOUSING

In a complaint alleging disability discrimination because Respondent evicted Complainant and his wife from their apartment after a neighbor called emergency services in response to a perceived medical event, Respondent agreed to pay Complainant \$6,000, attend training on the fair housing laws of the Commonwealth, and adopt and disseminate a reasonable accommodation policy. (Essex County)

In a complaint alleging that Respondents, realty company and realtor misrepresented the availability of a dwelling to Complainant because of her race and color, Respondents agreed to pay Complainant \$9,500 and receive training on the fair housing laws of the Commonwealth. (Middlesex County)

PUBLIC ACCOMMODATIONS

Complainant, a hearing impaired individual who was accompanied by a service animal, was allegedly denied access to a hotel because he was accompanied by his service dog. Respondent agreed to adopt and implement a Commission-drafted anti-discrimination policy regarding places of public accommodation and paid Complainant \$1,000. (Barnstable County County)

Complainant, a Transgender individual, filed a complaint of discrimination in a place of public accommodation based on gender alleging that Respondent, a nightclub, discriminated against her when its owner refused her party entrance to an event and challenged their state issued identification as deficient. Respondent agreed to pay Complainant \$1,000 and to make a donation of \$1,000 to a charity in Complainant’s name. Respondent also agreed to implement, a Commission drafted Anti-

Discrimination policy for Places of Public Accommodation, and to post a permanent notice stating its intent not to discriminate against any of its customers. (Essex County)

MASSACHUSETTS APPEALS COURT ACTIVITY

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

Nubar Hagopian and Newbury Guesthouse v. MCAD, et al., Massachusetts Appeals Court No. 2015-P-0685; Suffolk Superior Court; No. SUCV 13-3897. Following the Massachusetts Superior Court (Lauriat, J.) affirmation of the final agency decision finding that Respondents discriminated against Francis Croken and John Tamayo, the Respondents appealed. The Respondents also challenged the Commission’s authority to impose prejudgment interest on awards at the statutory rate of 12%. The Commission’s appellate brief was filed with the Massachusetts Appeals Court in October of 2015.

ISO New England v. MCAD, Massachusetts Appeals Court 2014-P-1060; 88 Mass. App. Ct. 1103 (2015). In a Summary Decision (Rule 1:28) issued on August 26, 2015, a panel of the Massachusetts Appeals Court held that it was an error of law for the Hearing Officer to fail to consider certain pre-settlement incidents as reasons for the Complainant’s termination in this age discrimination in employment case. The panel remanded the matter to the Commission for de novo review and reconsideration of damages in the event that liability is found.

AMICUS ACTIVITY

Sean Pugsley v. Commonwealth of MA Human Resources Division & others, 472 Mass. 367 (2015). The Commission responded to the Supreme Judicial Court’s (SJC) amicus request asking: “Whether, and in what circumstances, gender can constitute a bona fide occupational qualification [BFOQ] for purposes of G.L. c. 151B, § 4(1) in a police department’s hiring.” The Commission’s amicus brief was filed on November 17, 2014, describing prior Commission law enforcement related decisions and explaining that a narrow construction of the BFOQ defense is of significant import to the Commission’s mandate that employment decisions must be based on job qualifications, not on gender. Applying this analysis, the SJC recognized that generally a BFOQ and associated female selective certification list could not be justified solely on the

statistical disparity between the number of female police officers employed by the Boston Police Department and the number of female suspects and victims in Boston. The SJC left it in the first instance to the MCAD to particularize the showing necessary for “engaging in such discriminatory hiring.” On the separate issue of the Plaintiff’s standing to bring this action, the Court remanded the case to the Superior Court for entry of a judgment of dismissal.

OTHER SIGNIFICANT MA COURT DECISIONS

John Deraffele v. MCAD, et al., U.S. District Court of MA, C.A. 3:15-CV-30128-MGM. Respondent in a housing discrimination case alleged that his constitutional rights had been violated by the Commission’s investigation. The Commission’s motion to dismiss all claims against the Commission and its investigator based upon the Eleventh Amendment and the investigator’s qualified immunity was allowed by the District Court on December 4, 2015 (Mastroianni, J.). The Respondent has filed a Notice of Appeal.

Sirva Relocation, LLC and Aetna Life Ins. Co. v. Charlotte Golar Richie, et al., 794 F.3d 185 (1st Cir. 2015). Respondents in a case scheduled for public hearing sought to enjoin the Commission from adjudicating the 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 and that Respondents must plead their ERISA preemption defense in the pending Commission’s civil enforcement proceeding, not in a collateral federal court proceeding. Following Respondents’ appeal, on July 20, 2015, the First Circuit Court of Appeals affirmed the U.S. District Court ruling, recognizing that the federal court must abstain from interfering with the Commission’s civil enforcement proceeding that implicates important state interests.

M.G.L. CHAPTER 30A LITIGATION

Commission Counsel file briefs and argue in support of the substantive administrative decisions of the Hearing Officers and Full Commission. Commission Counsel were assigned three new Chapter 30A petitions in the Massachusetts Superior Courts seeking judicial review of the final decision of the Full Commission.

American Reclamation Corp. and Vincent Iuliano v. MCAD, et al., Worcester Superior Court, No. 1585CV000283. The MCAD filed its response to the Respondents’ complaint on June 1, 2015. The Complainant, through his attorney, filed an earlier, separate action for enforcement of the Full Commission’s Order and has moved the Superior Court to dismiss this G.L. c.30A appeal.

C-Worcester v. MCAD & Tatum/Harris, Worcester Superior Court; No. 1585CV01263. Following the Full Commission decision issued in June of 2015 addressing the Complainants’ disparate impact claims, the Respondent filed this petition for review. Denying the Complainants’ motion to dismiss, the Superior Court (Frison, J.) consolidated this case with separate civil actions seeking review and enforcement on December 21, 2015.

Ibrahim v. MCAD, et al., Suffolk Superior Court, SUCV2014-3648. The Commission was served with this 2014 complaint challenging a Full Commission decision on February 23, 2015. The Commission’s motion to dismiss for failure to timely serve the complaint was allowed on June 5, 2015 (MacLeod, J.).

In addition to the three Chapter 30A court cases assigned in 2015, described above, Commission Counsel were responsible for the defense of eight additional Chapter 30A lawsuits pending in the Massachusetts Superior Courts in 2015. The Commission prevailed in Superior Court in six of the cases, (one of which has been appealed) settled one case on appeal and is awaiting argument on the sole remaining case.

Bellanti v. MCAD and Brook Anido, Essex Superior Court; No. 13-1067. The Superior Court (Kirpalani, J.) upheld the Full Commission’s decision for Complainant in this quid pro quo sexual harassment and constructive discharge case on February 17, 2015.

Brighton Gardens Apts, L.P Lombardi Corp., et al. v. MCAD, Suffolk Superior Court; No.14-02112. Argument on the Respondents’ Motion for Judgment on the Pleadings is pending in this housing discrimination service animal case. MCAD’s counterclaim for enforcement of the Hearing Officer’s decision in favor of the Complainant is outstanding.

Costco Wholesale Corporation v. MCAD, et al., Suffolk Superior Court; No. 11- 03170. The MCAD prevailed on March 5, 2013 in a Chapter 30A

challenge brought by the Respondent in this public accommodation case (MacLeod, J.). Respondent initially appealed, but withdrew its appeal on March 5, 2015. Similarly, Complainant withdrew its appeal from the decision of the Superior Court including a partial denial of attorneys' fees, on April 7, 2015.

Anthony Luster v. MCAD, Worcester Superior Court; No. 12-0861D. Plaintiff's Motion for Judgment on the Pleadings in this G.L. c.30A appeal was denied on August 22, 2013, affirming the MCAD decision (Frison, J.). Plaintiff's Estate filed a Notice of Appeal, but took no additional steps to assemble the record. The Commission's Motion to Dismiss the Appeal for Failure to Prosecute was allowed on June 4, 2015 (Curran, J.), and judgment was entered on June 23, 2015 dismissing the complaint.

MCAD, et al. v. Defazio, Suffolk Superior Court; No. 13-03005-F, Middlesex Superior Court; No. 13-03344. On January 9, 2015 the Massachusetts Superior Court (Pasquale, J.) affirmed the MCAD's Full Commission decision that the Respondent had engaged in housing discrimination and upheld the award of damages to Complainant and imposition of penalties, as supported by substantial evidence and not based on an error of law. Following the Commission's demand for compliance with its decision, the Respondent rendered payment to the Complainant and the Commonwealth, including a civil penalty of \$10,000.

Massasoit Industrial Corp. v. MCAD, et al., Plymouth Superior Court; No. 14-000694. The Superior Court (McGuire, J.) affirmed the decision of the Full Commission in this age discrimination in employment case on September, 2015. The Respondent has filed a Notice of Appeal.

Shriners Hospital v. MCAD, et al., Suffolk Superior Court; No. 14-02839. Respondent appealed a final agency decision finding sexual orientation discrimination in employment based on Respondent's denial/delay in providing certain medical benefits to Complainant's spouse who was of the same gender. The Commission filed an Answer & Counterclaim for Enforcement on December 16, 2014. Shriners subsequently filed an Answer to the MCAD's Counterclaim. The case settled on appeal and a stipulation of dismissal and judgment entered in the case.

United Parcel Service, Inc. v. MCAD and William Anderson, Hampden Superior Court; No. 14-00032.

The Superior Court (Sweeney, J.) affirmed the Full Commission decision holding that UPS had engaged in handicap discrimination against its employee by failing to accommodate his disability, leading to his constructive discharge on January 28, 2015. While an appeal initiated by UPS was pending, the parties resolved the victim-specific award and attorneys' fees. UPS also agreed to conduct training and to withdraw its notice of appeal.

OTHER LITIGATION AND APPEALS HANDLED BY COMMISSION COUNSEL

Commission Counsel defend the agency in the lawsuits which sought to challenge the Commission's preliminary determinations and its procedures, but that are not the subject of Chapter 30A administrative appeals because they do not involve final Agency decisions. Commission Counsel also pursued enforcement matters for the agency. In 2015, Commission Counsel handled ten additional litigation matters pending in the Massachusetts Superior Courts.

Jean Adrien v. MCAD, Middlesex Superior Court No. 1581CV02775.

Rigauert Aime v. MCAD, Suffolk Superior Court, SUCV2015-1180.

Araujo v. MCAD, Suffolk Superior Court; No. SUCV2013-02843E.

LaShena Jones Butler v. MCAD, et al., Suffolk Superior Court, No. SUCV2015-01034.

Rufus Checks v. MCAD, Suffolk Superior Court No. SUCV-2014-02995.

Cristina Estrella v. MCAD, Suffolk Superior Court No. 1584CV00032.

Oak-Hee Kim v. MCAD, et al., Middlesex Superior Court No. 1581CV01103.

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

Terrence Rothman v. MCAD, Suffolk Superior Court; No. SUCV2013-02345E

Anna Wong v. MCAD, et al., Suffolk County Superior Court Civil Action No. 1584CV02370

HEARINGS DIVISION

The Hearings Unit includes two full-time hearing officers and one 4/5th time hearing officer and the three Commissioners. The Hearings Unit also conducts mediations and certification conferences on behalf of the Investigating Commissioner, rules on post-certification discovery matters and other motions, including requests for attorney's fees. The Hearing Officers also participate in internal and external educational seminars and presentations.

In 2015 the Hearings Unit scheduled 76 public hearings. Of the 76 cases scheduled, hearings were held in 24 cases and 26 cases settled prior to the hearing. Two cases were either withdrawn or administratively closed prior to hearing. The remaining 34 cases were continued. The Hearings Unit scheduled 143 pre-hearing conferences. Of that number, 65 pre-hearing conferences were held, and 26 cases settled prior to the conference. Two cases were administratively closed and the remaining 50 were continued. The Hearings Unit issued 29 hearing decisions. One decision was issued by Commissioner Sunila Thomas George. Eight decisions were issued by Hearing Officer Eugenia Guastaferrri, ten by Hearing Officer Betty Waxman and ten by Hearing Officer Judith Kaplan. The Hearing Officers also conducted several mediation sessions resulting in significant settlements.

The vast majority of the Hearing decisions concerned claims of employment discrimination, with disability claims leading the count at ten and six race, color and or national origin claims coming in second. Two decisions were issued in housing matters, both for Complainants. One housing case had 17 Complainants who successfully claimed they were targeted for misleading and discriminatory loan modification services based on their Hispanic national origin. In the employment area 14 decisions were in favor of Complainants and 13 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 Officer Decisions

Employment

MCAD and William Armstrong v. Boston College, 37 MDLR 116 (2015) Disability Discrimination/Retaliation Complainant, a tenured Associate Professor of Chemistry at Boston College, brought a claim of disability discrimination and retaliation against the Respondent, Boston College. The disability claim was dismissed prior to hearing, but Complainant prevailed on his claim of retaliation.

Complainant had sent anonymous email communications to faculty members at other universities in which he described his Chemistry Department colleague as "ruthless, vicious, manipulative, intimidating, narrow-minded" and in other negative terms. At the time, Complainant was suffering from a misdiagnosed and incorrectly-medicated Bipolar II condition. After Complainant's misconduct was discovered, Boston College entered into a written agreement by which Complainant apologized for his behavior, took a one-year paid leave of absence for psychiatric treatment, and returned to campus under agreed-upon conditions aimed at re-integrating him into the Chemistry Department.

The Hearing Officer concluded that the re-integration agreement constituted reasonable accommodations in response to Complainant's psychiatric disability but that the Chemistry Department refused to implement its terms. The Hearing Officer found that when the Department's refusal to implement the accommodations became apparent, Complainant engaged in protected activity consisting of writing letters of protest, attempting to attend faculty meetings, and filing a faculty grievance. She also found that the Chemistry Department thereafter excluded Complainant from all Chemistry Department meetings and social functions, took him off the Chemistry Department's email list and faculty brochure, moved his office and lab space outside of the Chemistry Building, and transferred administrative oversight of his research and grant activities to the Biology Department.

The Hearing Officer determined that the Chemistry Department's actions were retaliation for Complainant's protesting the Department's refusal to abide by the accommodations agreed to. Complainant was awarded back pay in an amount equal to the

difference between his salary and that of the next lowest paid tenured associate professor in the Chemistry Department from 2003 until reinstated into an office and lab in the Chemistry Center and permitted to teach chemistry courses commensurate with his rank of associate professor. Complainant was also awarded \$125,000.00 in emotional distress damages.

MCAD and Marie Lunie Dalexis v. Tufts Medical Center, 37 MDLR 170 (2015) Disability discrimination. Complainant, a nurse employed at Tufts Medical Center, charged the Hospital with discrimination based on her Haitian national origin, race (Black), and disability (interstitial lung disease and rheumatoid arthritis) because the Hospital would not excuse her from night shift work as an accommodation to her disability and permit her to work only day and/or evening shifts.

The Hearing Officer determined that the evidence did not support a case of national origin or race discrimination but determined that the Hospital failed to grant Complainant a reasonable accommodation for her disability. The evidence established that Complainant's prior supervisor had excused her from working overtime as an accommodation to her medical condition; there was a large pool of inpatient nurses at Tufts Medical Center; that some inpatient nurses sought overtime and night-shift work in order to earn extra money and avoid work obligations during the day; that the Hospital relied on "per diems" and "floaters" to cover nursing absences due to vacations and sickness; that five per cent of inpatient nurses did not work any overtime during the period at issue; that Complainant was capable of working evenings as well as days; that emergencies requiring nurses to remain at work past their shifts, seldom, if ever, occurred, but in the event of such an emergency, Complainant would not abandon her patients; that the Hospital maintained day-evening rotating shifts which Complainant could have filled; that overtime was not required by the parties' collective bargaining agreement; that Complainant's doctor did not prohibit her from working overtime or night shift work as the Hospital asserted; and that the Hospital did not make meaningful efforts to assist Complainant in returning to work.

The Hearing Officer concluded that the Hospital did not participate in an effective interactive process after Complainant requested an accommodation and that its failure to do so had the effect of constructively terminating Complainant's employment. The Hearing

Officer awarded Complainant \$85,793 in back pay and \$45,000 in emotional distress damages.

MCAD and Jackie Ravesi v. Naz Fitness Group, 37 MDLR 1 (2015) Transgender discrimination. Complainant charged that Respondent fitness center discriminated against her on the basis of gender (transgender) when it terminated her employment as a fitness instructor. Complainant was originally hired as an individual presenting as a male. During the course of her employment as a trainer, she became a transgender female. Respondent's owner believed that Complainant was a gay male upon hire and told Complainant to "tone down" the wearing of makeup and jewelry.

During the course of her employment, Complainant began to wear female attire outside of work, began to wear female yoga pants, a female sweat-suit, and a female haircut at work, and had hormone therapy and laser hair removal to alter her facial features and body. Complainant attended company meetings wearing female attire and jewelry. According to Respondent, Complainant performed well at work during the first four months but thereafter became less energetic and began to display a lack of enthusiasm at work. The Hearing Officer concluded that the evidence did not support Respondent's assertion that Complainant was "burnt out," and found that she was terminated for being a transgender individual.

Complainant was awarded \$154,850 in lost wages and \$25,000 in emotional distress damages.

MCAD and Derrick Sims v. The Glass Slipper, Nicholas Romano and Michael Bennett, 37 MDLR 43 (2015) Race discrimination Complainant, who is African-American, worked as a doorman/bouncer for The Glass Slipper, a strip club in Boston. Complainant alleged that Respondent's co-owner Romano created a racially hostile work environment by making racially offensive comments and engaging in racially hostile conduct toward African-American employees. Complainant also alleged that he was subjected to disparate treatment in work assignments because of his race and color and that his employment was terminated in retaliation for his complaining to the club manager Bennett about a co-worker's sexual harassment of female dancers.

The Hearing Officer dismissed the retaliation claim as the evidence did not support Complainant's claim that he complained about the co-worker's conduct to Bennett. While discounting some of Complainant's allegations of disparate treatment, the Hearing Officer found that Romano always stationed him to work

outside the club; that Romano told a white bouncer that he did not want the “colored” bouncers to use new walkie-talkies; that Romano limited the number of black dancers on the night shift, and referred to the black dancers as “black bitch” or “niggers.” The Hearing Officer found that Romano’s racist comments and behavior were racially offensive and were sufficiently continuous and pervasive to create a racially hostile work environment.

Respondent alleged that Complainant’s employment was terminated because he failed to appear for a shift. The Hearing Officer found that while Complainant may not have been at his post on the evening in question, there was evidence of a problem generally with bouncers arriving late for their shifts. Three black bouncers were fired all within a relatively short period of time for various reasons, but there was no evidence that any white bouncers had been terminated. The Hearing Officer found that Romano, who made the decision to fire Complainant without consulting club manager, Bennett, would not have fired Complainant for a first-time incident but for his race.

The Hearing Officer awarded Complainant \$25,000 in damages for emotional distress and \$20,000 in damages for lost wages.

MCAD and Deni Goldman v. Town of Seekonk and Michael Carroll, 37 MDLR 129 (2015) Retaliation Complainant, who had significant experience as an animal control officer, charged the Town of Seekonk and its Town Manager with retaliation for failing to interview her for a position as animal control officer for the Town, alleging that the Town Manager, Carroll, rejected her application because she had filed a discrimination complaint against a prior employer.

Years prior to applying for the position at Seekonk, Complainant worked for the town of Randolph as assistant animal control officer, and filed an internal discrimination complaint and an MCAD complaint against the Town and her supervisor. At that time, Michael Carroll was the Executive Secretary for the Town of Randolph. In that capacity, Carroll oversaw Complainant’s department, knew of her dispute with her supervisor, hired an investigator to review the claim, and was apprised of the progress of the matter, which eventually was settled. Complainant subsequently worked as the animal control officer in another town and Carroll left his position at Randolph and eventually became the Town Manager for Seekonk.

When the animal control officer position became vacant in Seekonk, Carroll was in charge of the hiring process and began seeking candidates for the position. Complainant applied for the position and, despite being objectively qualified for the position, and having prior experience, she was not invited to interview for the job. Carroll claimed to recall Complainant’s performance in Randolph was poor, but did not recall her having filed a discrimination complaint. The Hearing Officer found the latter assertion incredulous, and concluded that Complainant’s protected activity of filing an MCAD complaint against the Town of Randolph was the real reason Carroll did not recommend her for an interview in Seekonk. The result was that the hiring committees set up by Carroll did not consider her application.

The Hearing Officer found that while Respondents’ failure to grant Complainant an interview constituted unlawful retaliation, Complainant could not establish that even if her application had been considered, she would have been selected for the position, since the successful candidate was a long-time resident of the Town who also had experience working with animals, was qualified for the job and was known to a member of the hiring committee.

The Hearing Officer found Complainant was not eligible for back pay, but awarded her \$25,000 in damages for emotional distress resulting from the retaliation and assessed a \$5,000 civil penalty against the town.

MCAD and Kathleen Thompson v. Premier Diagnostic Services, Inc., 37 MDLR 185 (2015) Disability discrimination Complainant, who was employed as a sonographer, alleged that Respondent unlawfully failed to accommodate her disability and terminated her employment because she suffered from carpal tunnel syndrome. Initially Respondent granted Complainant a three-week leave of absence for treatment of her condition; however, when Complainant advised Respondent that she might need to extend her leave and would provide further medical information as soon as it became available, Respondent summarily terminated her employment.

The Hearing Officer found that Respondent failed to engage in an interactive dialogue with Complainant about the medical need to extend her leave, because Respondent believed that Complainant was faking an injury in order to take vacation time that had previously been denied to her. The Hearing Officer concluded that while Complainant initially may have

intended to take a vacation, at the time of her leave she was suffering from a disabling condition that was documented and that ultimately required her to cease working for medical reasons during the time she had anticipated taking vacation. Complainant did not take leave for vacation and her deteriorating condition was communicated to Respondent's managers and borne out by medical reports and the need for subsequent surgeries. The Hearing Officer also determined that Respondent voiced concerns that Complainant would apply for Respondent's self-funded short-term disability benefits and that this was a primary motive for her termination. The Hearing Officer concluded that Respondent unreasonably refused to extend Complainant's medical leave for a brief period of time as a reasonable accommodation and that her termination after three weeks of medical leave was unlawful.

Complainant was awarded \$10,000 in damages for emotional distress. The Hearing Officer determined Complainant was not entitled to damage for lost wages, as she ultimately was deemed to be disabled from work and received workers' compensation benefits.

MCAD and Robert Laing v. J.C. Cannistraro, LLC, 37 MDLR 85 (2015) Disability discrimination. Complainant was terminated from his position as plumber by Respondent after injuring his back while on the job. At the time of his termination, Complainant was undergoing physical therapy for his injuries. Complainant's therapy was delayed and took longer than expected due to delays in securing approval from a worker's compensation carrier. He was out of work for approximately three months when the worker's compensation insurer prematurely terminated his compensation benefits and informed his employer that he was cleared to return to work on light duty without communicating with Complainant's orthopedic physician or his physical therapist. Respondent relied on information from the compensation carrier to terminate Complainant's employment, despite his protestations that he had not completed his physical therapy and was not yet cleared to return to work. Respondent did not communicate with Complainant's medical providers prior to terminating his employment. The Hearing Officer concluded that the lack of dialogue and communication about Complainant's condition, his medical progress, and when he might be able to return to work constituted a failure to engage in an interactive dialogue that would likely have resulted in an extension of Complainant's medical leave in lieu of

his termination. Since ultimately, Complainant was not cleared to return to work until a year after his injury, the Hearing Officer found that the obligation to continue to employ Complainant might have ended at some point if there was no clear prognosis for his return to work. However at the time of his termination, Complainant anticipated completing physical therapy within a short time and having a prognosis for his return to work. Complainant was not awarded lost wages since he ultimately was unable to work as a plumber for one year and it was unclear that Respondent would have had employment for him at that time. (In addition to his three months of workers' compensation benefits, Complainant received a lump sum worker's compensation payment of \$58,250 in settlement of his back pay claims) Complainant was terminated under a cloud of suspicion for alleged lying about his condition and ability to work, after he had been observed by the insurer's investigator engaging in some yard work. Complainant was awarded \$50,000 in damages for emotional distress resulting from this unlawful termination under circumstances that impugned his integrity, character and his work ethic.

MCAD and Joel Nixon v. Tony's Barber Shop, 37 MDLR 192 (2015) Disability discrimination. After the Respondent did not appear for the Hearing and was defaulted, the Hearing Officer found in favor of Complainant, Nixon who is legally blind on his claim that he was terminated from his job as a barber after his employer was made aware of his disability. Complainant is certified as legally blind because he has no peripheral vision, but he is trained and certified as a barber and had been working successfully for a number of years in his profession for another employer. He chose to leave his job and go to work for Respondent because the business was in his home town and closer to his residence. Complainant cannot drive and relied on his wife to transport him to and from work. He was performing his job adequately at Respondent. When Respondent discovered that Complainant was legally blind after two minor mishaps where he tripped in the shop, but was not injured (once because Respondent left a ladder in the middle of the corridor). Respondent disparaged his disability with epithets and ordered him to leave and not return to work. Complainant sought to obtain alternative employment as a barber but given that his search area was limited, and many shops in the area were one-person shops, he was unable to find employment for several years. He was awarded \$75,000 for lost wages and \$25,000 for

emotional distress, after offering compelling testimony about the adverse emotional effects to himself and his young family.

MCAD and Claude DeFay v. Boston Police Department, 38 MDLR 1 (2015) – Race discrimination. The Hearing Officer issued a decision in favor of Complainant on his claim of disparate treatment based on race. The Hearing Officer determined that the Boston Police Department’s decision to dismiss Complainant DeFay, who is African American, from the Boston Police Academy for his alleged attempt to cheat on a written exam was disparate treatment based on race. Complaint denied that he had attempted to cheat, when he did not follow instructions about where to take a bathroom break while taking the exam and spoke to another recruit who had already completed the exam. While the Hearing Officer found DeFay’s account of his conduct to be confounding, she nonetheless determined that the Department was liable for discriminatory discipline.

The Hearing Officer’s conclusion regarding disparate treatment was based on evidence of several incidents where white recruit officers received less harsh discipline, or no discipline, for similar or more serious infractions that violated Department rules. She concluded that the Department failed to provide racially neutral reasons for white officers receiving more lenient consideration with regard to discipline for incidents such as brawling in public, drunkenly accosting a Boston Police officer in public, and running a red light while speeding. She concluded that the Department had no explanation for why “integrity violations” by black recruits, some which were relatively minor, were considered more serious than other Class I disciplinary offenses outlined in the Academy Training Manual.

The Department was ordered to “cease and desist from the disparate treatment of recruits based on race in the imposition of penalties for Training Academy violations,” to re-instate Complainant, DeFay, to the next Recruit Training Academy with credit for having completed the academic portion of the course, to pay DeFay \$40,000 in damages for emotional distress he suffered and to pay him back pay if he successfully completes all Academy training requirements.

Housing

MCAD and Garcia, et al. v. Zak, 37 MDLR 55 (2015) National Origin discrimination The Hearing Officer ruled in favor of a group of 17 Latino homeowners finding they were the victims of

discrimination in housing and awarded them compensatory and punitive damages. The Hearing Officer found that the Complainants, all Latino homeowners, were specifically targeted by Respondent Attorney David Zak in regard to predatory, substandard mortgage loan modification services in violation of G.L.c. 151B, after the housing bubble burst and left them at risk of losing their homes. Complainants established that Zak deliberately targeted and misled Spanish- and Portuguese-speaking clients with unrealistic and often false guarantees about securing dramatic loan modifications, charged them inflated and duplicative fees, failed to obtain promised mortgage modifications, failed to adequately translate documents, misrepresented the status of clients’ cases, refused to provide appropriate refunds, and engaged in threats, intimidation, and demeaning conduct. The evidence showed that Zak opened an office in Revere because he believed its Latino community would be “easy targets” and gullible. Zak used radio and written ads in Spanish and Portuguese to advertise to Latino homeowners having difficulty making mortgage payments, falsely claiming to have saved hundreds of Latinos from foreclosure, promising to cut their mortgage payments in half, and boasting that he had a “secret formula” and “magic numbers” unknown to others for obtaining loan modifications. In addition to compensating Complainants for their losses, the Commission imposed a \$10,000 penalty on Zak for his egregious unlawful conduct and ordered him to cease and desist from the unlawful conduct.

Significant Full Commission Decisions

Eric Grzych and MCAD v. American Reclamation Corp., et al., 37 MDLR 19 (2015). This Full Commission decision concerns associational employment discrimination. The complainant was subjected to pervasive harassment at work by Respondent’s President based upon his relationship with and engagement to a black, Jamaican woman. The Hearing Officer found for the complainant on his claim of hostile work environment based on race and color, but found for the Respondent on the retaliation charge, finding that Complainant was terminated for poor performance, not in retaliation for his internal threats to file a harassment complaint. The Hearing Officer awarded Complainant \$50,000 in emotional distress damages, and assessed a civil penalty against Respondent in the amount of \$10,000.

Rejecting Respondents’ argument that Complainant lacked standing because he was not a member of the “protected class” at issue, the Full Commission

affirmed the Hearing Officer's decision. The Full Commission noted that the Supreme Judicial Court in Flagg v. Alimed, Inc., 466 Mass. 23 (2013) recognized the Commission's long-standing precedent that a Complainant has standing to bring a claim under G.L. c.151B, s.4(1) by virtue of that individual's association with a member of a class of persons protected by the statute. The Full Commission affirmed the damage award and the civil penalty and awarded Complainant \$8,550 in attorneys' fees.

Donnalyn Sullivan and MCAD v. Middlesex Sheriff's Office, 37 MDLR 101 (2015). The Full Commission affirmed the Hearing Officer's decision in this asthma-related disability case, but remanded the decision with respect to the order of reinstatement. The Complainant was a Correctional Officer who had an asthma-related disability. She was employed from 1990 through January of 2007, and diagnosed with asthma in 1991. Following her diagnosis and several hospitalizations, she generally controlled her asthma with medication and avoiding extreme cold weather. The Hearing Officer found that Complainant could perform all work-related activities when her asthma was under control, including outdoor work. In October of 2006, her supervisor assigned Complainant to an outdoor post ("the Trap") where she was required to monitor vehicles from an inadequately heated wooden shack. During the fall of 2006 she sought a transfer to an indoor post, to which Respondent provided noncommittal responses. In December of 2006, her asthma became severely aggravated, and she unsuccessfully requested reassignment indoors on days of "extreme" cold as an accommodation. In January of 2007, Complainant's asthma became unstable and she took sick leave. When she returned to work, she submitted medical documentation to Respondent stating that her asthma had become unstable due to the outdoor assignment. The Respondent persisted in refusing to discuss a reasonable accommodation and continued to assign her to the Trap. After Complainant submitted a second doctor's note regarding her asthma, rather than assign her to an indoor post, the Respondent ordered Complainant home on sick leave and to attend a fitness-for-duty evaluation. The evaluator concluded that while Complainant was unable to work outside as a Correctional Officer during cold or damp conditions, she was "capable of performing all job duties of a correctional officer." Rather than seek clarification as to whether Complainant could work outside for short intervals during cold weather,

Respondent determined that Complainant was incapable of working as a Correctional Officer. After receiving Complainant's MCAD charge alleging disability discrimination, Respondent filed an involuntary ordinary disability retirement application on Complainant's behalf. The application was approved by the Public Employees Retirement Administration Commission on January 25, 2008.

The Hearing Officer found that the Middlesex Sheriff's Office denied Complainant a reasonable accommodation for her asthma-related disability, and engaged in acts of retaliation after Complainant sought a reasonable accommodation and filed a complaint with the Commission. The Hearing Officer awarded back pay, emotional distress damages of \$75,000, reinstatement provided that Complainant "satisfies lawful and relevant eligibility criteria," restoration of seniority and benefits, a civil penalty of \$10,000 and ordered training.

The Full Commission affirmed the Hearing Officer decision with respect to liability, the back pay and emotional distress damages awards, the civil penalty and training. The Full Commission, however, recognized that the remedy of reinstatement conditioned upon uncertain eligibility criteria could well be insufficient to make Complainant whole, particularly where front pay was not awarded due to the conditional reinstatement order. Accordingly, the Full Commission remanded the decision to the Hearing Officer to reconsider the reinstatement order and denial of front pay damages. The Full Commission deferred ruling on the Complainant's attorney fee petition seeking \$651,693 until after the Hearing Officer's decision on remand.

Andrew Harris, Spencer Tatum and MCAD v. City of Worcester Police Department, 37 MDLR 111 (2015). This Full Commission decision ("Remand II") involves a claim of race discrimination based upon the disparate impact resulting from the practice of the City of Worcester Police Department of promoting police officers to Sergeant in strict order, based only upon the officer's rank on the Civil Service eligibility list. The Full Commission decision followed a remand from the Worcester Superior Court in 2013 directing the Full Commission to review a decision of a Commission Hearing Officer addressing the disparate impact claim that was issued on April 26, 2002. Notably, this was the second remand to the Full Commission from the Superior Court concerning the charges. The first remand was addressed by the Full Commission in a decision issued on November 9, 2011 ("Remand I") which held that the City's practice

of promoting from the Civil Service list in strict order and its failure to promote two African American police officers to Sergeant was the result of discrimination based upon disparate treatment.

In Remand II, The Full Commission upheld the Hearing Officer's legal determination that the Complainants had set forth a prima facie case of disparate impact. However, the Full Commission reversed the Hearing Officer's legal conclusion that the City's practice of promotion strictly by order of rank on the civil service eligibility list was compelled by business necessity. As a result, Respondent failed to rebut the Complainant's evidence of a prima facie case of race discrimination. The Full Commission recognized that promotion by strict rank order is not always mandated by Civil Service rules, and that a police department may bypass candidates at the top of the list, so long as the appointing authority adheres to specific requirements. For example, Personnel Administration Rule ("PAR") 10 promulgated by the Commonwealth's Human Resources Division permits police departments to make a requisition to fill positions based on race, color, national origin or sex under certain circumstances. Accordingly, the Full Commission determined that the City of Worcester had not rebutted the prima facie case. Further, the Full Commission recognized that the practice of promotion based upon strict rank order was a pretext for discrimination. The City of Worcester had actual notice that its policy of strict rank order promotions had a disparate impact on minority officers as evidenced by a prior EEO Agreement which required the City to take affirmative action to remediate the racial disparities, including making promotions outside of strict rank order, yet the City failed to seek any alternatives to promotion by strict rank order. The Full Commission determined that the City of Worcester violated G.L. c.151B's proscription against disparate impact discrimination.

Timothy Barnes and MCAD v. Sleek MedSpa, LLC. et. al., 37 MDLR 161 (2015). This Full Commission decision involved a male employee of Sleek MedSpa (a business specializing in waxing and other spa treatments) who was terminated after internally complaining to the regional manager about sexually-charged comments and behavior of employees at the salon. The behavior cited included lewd comments employee aestheticians made referring to clients' genitals and private parts, as well as a general manager baring her breasts to a web-camera installed at the workplace. Complainant sought advice of counsel and complained to the area

manager about the inappropriate behavior. He was terminated the day after he made his complaint to the regional manager.

The Full Commission affirmed the Hearing Officer's finding of liability against Respondent for subjecting Complainant to a sexually hostile work environment and retaliation. The Complainant was awarded \$150,000 in damages for emotional distress and \$41,645 in damages for lost wages. In addition, the Hearing Officer assessed a civil penalty of \$50,000 against Respondent Andrew Rudnick, individually and as owner and CEO of the Sleek MedSpa chain. Andrew Rudnick and companies owned and operated by him had twice previously been adjudicated to have committed discriminatory practices. In addition, the Full Commission awarded attorney fees to be paid to the Commonwealth in the amount of \$18,187 for the work of Commission Counsel in successfully prosecuting the case at Public Hearing.

Marc Kogut and MCAD v. The Coca-Cola Co., 37 MDLR 180 (2015). The Complainant in this disability discrimination case was a temporary employee working as a Machine Operator at the Respondent's production plant in Northampton, Massachusetts. After seven months of successful contract employment, his supervisor recommended that Complainant apply for a permanent position. Complainant applied and was offered the job, conditioned upon his passing a post-offer physical examination. At the physical, he disclosed that he was blind in his left eye. Respondent, without discussing the job duties or requirements with Complainant's supervisor or the production manager, determined that he should be fired from his temporary position and the job offer of a permanent position was revoked. This determination was based upon senior management's determination that Complainant could not safely drive a forklift. Senior management did not determine whether or not Complainant's position actually required forklift driving, nor did they discuss whether any accommodation could be made to address Complainant's visual impairment. In short, the Respondent failed to conduct an individualized assessment of the Complainant's ability to safely perform the essential functions of the job, or to consider the imminence of the risk and severity of any potential harm that would result. The Full Commission affirmed the Hearing Commissioner's decision, finding Respondent liable for employment discrimination and awarding Complainant \$45,000 in back pay, \$75,000 for emotional distress, and \$79,000 in attorneys' fees. It also upheld a training order.

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* Indicates 10 years at the Commission or more.

† Indicates the employee left the Commission in 2015.

◇ Indicates Contractors

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GLOSSARY OF TERMS

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.

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.

Americans with Disabilities Act (ADA): The Americans with Disabilities Act is a law that was enacted by the U.S. Congress in 1990. The ADA is a wide-ranging civil rights law that is intended to protect against discrimination based on disability.

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.”

Disposition: The official document issued stating the determination by the Investigating Commissioner as Probable Cause or Lack of Probable Cause.

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.

Jurisdiction: the official power to make legal decisions and judgments.

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.

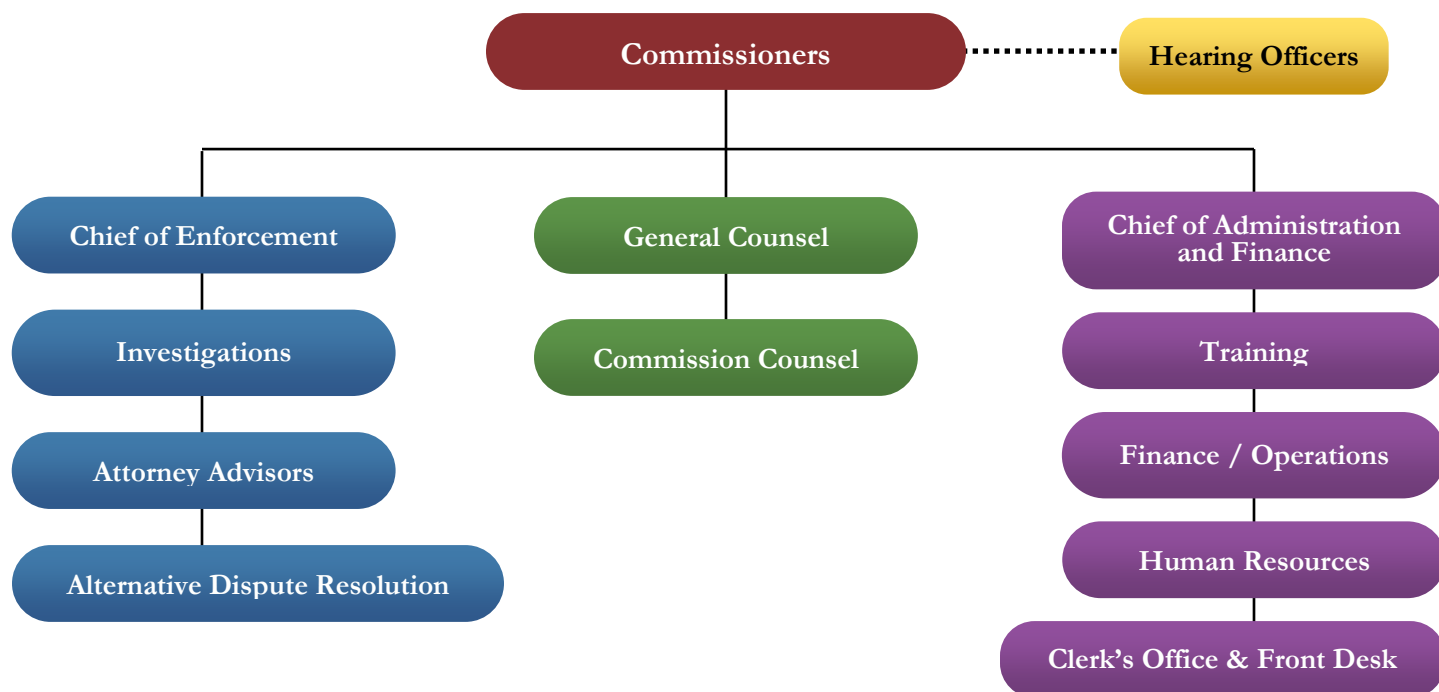
Probable Cause: A determination of the Investigating Commissioner that there is sufficient evidence upon which a fact-finder could form a reasonable belief that it is more probable than not that the Respondent committed an unlawful practice.

Protected Category: a class or characteristic of a person which cannot be targeted for discrimination. Protected categories differ based on the venue of discrimination. Common protected categories include race, gender, ethnicity, age, national origin, sexual orientation, disability, and more.

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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