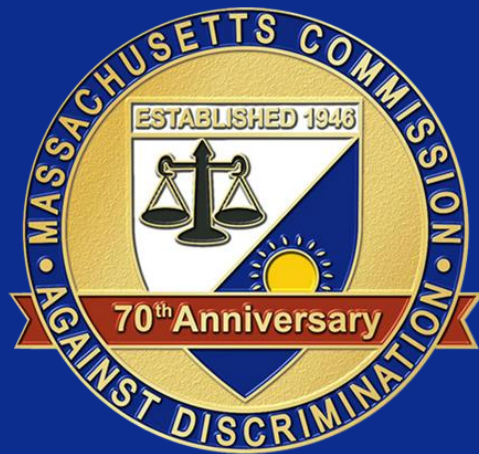


ANNUAL REPORT

2016



MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION

CHAIRWOMAN
JAMIE R. WILLIAMSON

COMMISSIONERS
SUNILA THOMAS GEORGE
CHARLOTTE GOLAR RICHIE

TABLE OF CONTENTS

| | |
|---|-----------|
| LETTER FROM THE COMMISSIONERS | 2 |
| COMMEMORATING MCAD'S 70TH ANNIVERSARY | 4 |
| MCAD BUDGETS FOR FY16 & FY17 | 5 |
| MCAD FLOWCHART | 6 |
| ENFORCEMENT DIVISION | 8 |
| ENFORCEMENT DIVISION REPORT | 10 |
| HOUSING INVESTIGATIONS | 13 |
| EEOC SUBSTANTIAL WEIGHT CASES | 14 |
| ADMINISTRATION & FINANCE DIVISION | 15 |
| LEGAL DIVISION | 17 |
| NOTEWORTHY SETTLEMENTS | 18 |
| HEARINGS DIVISION | 24 |
| SIGNIFICANT HEARING DECISIONS | 24 |
| SIGNIFICANT FULL COMMISSION DECISIONS | 30 |
| 2016 MCAD STAFF | 33 |
| 2016 MCAD ADVISORY BOARD | 34 |
| 2016 MCAD INTERNS | 34 |
| GLOSSARY OF TERMS | 35 |
| MCAD ORGANIZATIONAL STRUCTURE | 37 |

LETTER FROM THE COMMISSIONERS

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

In accordance with state law and on the occasion of the 70th anniversary of the Massachusetts Commission Against Discrimination (MCAD), we are pleased to present the 2016 Annual Report. This report contains budget information, statistics and highlights of the key initiatives and achievements of the year. We thank our Commonwealth partners for their approval of the agency's annual appropriation and the ability to leverage these funds to secure federal support, their strong backing of the MCAD's mission, and their wisdom in expanding the MCAD's jurisdiction, affording the People of the Commonwealth greater protections. We thank our federal partners – the U.S. Department of Housing and Urban Development (HUD) and the US Equal Employment Opportunity Commission (EEOC) for recognizing the MCAD as an agency that has succeeded in setting the bar high for other civil rights agencies across the country. The MCAD continues to carry out its mandate to protect the people of the Commonwealth from discriminatory practices, and to promote fairness and equality in the process.

2016: A Banner Year for the MCAD

The year 2016 was a landmark year for the MCAD, one that proved to be both rewarding and challenging, and in the end, very successful due to our level of productivity. In addition to a record-breaking year with completed investigations, the MCAD's jurisdiction was expanded; we launched a robust Language Access Plan; implemented numerous operational improvements; we completed our EEOC contract in nine months; and we commemorated a milestone anniversary.

In 2016, we closed¹ over 3,800 cases, almost 800 more than were closed in 2015. Furthermore, 2016 began with 1,795 cases older than 18 months awaiting an investigative finding, referred to as the investigative "backlog." By year end, that number was reduced to just 960 cases. The entire staff made enormous efforts in this regard, which paid off profoundly, putting the elimination of the backlog in sight.

The following noteworthy gains were also achieved in 2016:

MCAD's Federal and Training Earnings cap was raised in the Commonwealth's budget. In addition to its budget appropriation, the MCAD received legislative support during the FY'16 budget process to raise the agency's federal and training earnings cap, so that the Commission could retain the funds through its training programs, and through its Federal Workshare Agreements with HUD and EEOC.

MCAD completed more investigations. MCAD views the necessity for timely and thorough determinations as a priority, recognizing that people's lives, livelihoods and businesses depend on it. The Commission continued to make investigating and processing cases a top priority. These included the implementation of new technology (updated website and acquiring an UbiDuo2 system that allows those hard of hearing to access the Commission), the new policy of accepting some documents via electronic submission, and by providing increased assistance to parties with limited English proficiency. In the end, the MCAD completed more substantive investigations than in previous years. In 2015, the Commission issued 1,956 Probable Cause and Lack of Probable Cause determinations, whereas in 2016, we issued a total of 2,572.

MCAD was recognized by its Federal partners. In its audit evaluation report, HUD wrote, "MCAD has met all nine performance standards" and HUD recommended MCAD's re-certification as a Fair Housing Assistance Program. Then, in November, the EEOC acknowledged this Commission's "excellent record as a Fair Employment Practices Agency in the thoroughness of its investigations and reliability in carrying out its contractual responsibilities," and expressed gratitude for its longstanding partnership with the MCAD, which furthers "our collective mission to eradicate unlawful employment discrimination." In 2016, the Commission more than met its contractual obligations; and as a result of this outstanding performance, with increased investigative completions, the EEOC authorized payment for an additional 600 investigations, which resulted in a significant increase in federal funding for the agency.

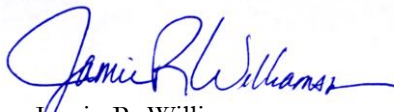
¹ Closed cases include findings of Lack of Probable Cause, Lack of Jurisdiction, and administrative closures.

MCAD's legal team prevailed. The Commission's legal team successfully defended the MCAD in litigation in Massachusetts Superior Court and the Appeals Court. Legal team victories included *Hagopian, et al. v. MCAD, et al.*, where the Appeals Court reaffirmed the Commission's authority to impose prejudgment interest on damage awards, and *Bellanti, et al v. MCAD, et al.*, upholding the Commission's decision that Complainant was subjected to *quid pro quo* sexual harassment. The legal team also prosecuted an additional 169 MCAD cases in which probable cause determinations had been issued in 2016.

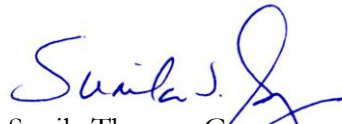
In Conclusion

The work of the MCAD is far from finished and the mission to eradicate discrimination in the Commonwealth has yet to be realized. As with past commissioners, including former Chairwoman Geraldine Putnam, whom we sadly lost in 2016, we have dedicated ourselves to the mission of the MCAD and we hope that our efforts in 2016 will carry forward into the years ahead and set an example for the rest of the country, as much is at stake for the people who rely on this agency for relief. We thank those who came before us and the current MCAD Staff for making the following pages possible.

Sincerely,



Jamie R. Williamson
Chairwoman



Sunila Thomas-George
Commissioner



Charlotte Golar Richie
Commissioner

COMMEMORATING MCAD'S 70TH ANNIVERSARY

The Commission worked to raise public awareness about the agency's mission via events commemorating the historic anniversary and work of the Commission. The year began with a panel discussion open to the public, comprising the current Commissioners and five former Commissioners, providing five decades of perspective on the challenges this agency faced, and the work that remains to be done. Then, in April, the Commission co-convoked the 10th anniversary Fair Housing and Civil Rights Conference in Springfield, Massachusetts. On May 23rd, 70 years to the day that the Acts were signed by Governor Tobin establishing the MCAD — House Speaker, Robert DeLeo, presented this agency with a Legislative Citation to commemorate the milestone anniversary. To cap the year, the NAACP Boston Branch presented the MCAD with the Ruth Batson Leadership Award – who herself served as an MCAD Commissioner from 1963 – 1966 – to recognize the MCAD on its 70th anniversary, and for sharing and advancing “Ms. Batson’s passion for justice and equality, and follow in her footsteps to eliminate discrimination.”



Commissioners: M. Duffy, D. Schwarz, C. Walker, S. George, J. Williamson, C. Richie, J. Edmonds, A. Rodriguez reunite to discuss the progress of the MCAD over five decades of leadership.

Perspectives: MCAD at 70 - Commissioners Panel

Over 550 convene in Springfield to share best practices and celebrate the historic strides of Ernest Green and the Little Rock Nine who bravely desegregated Arkansas public schools.



10th Anniversary Fair Housing & Civil Rights Conference



NAACP Freedom Fund Dinner

The Commissioners accept the Ruth Batson Leadership Award from the NAACP Boston Branch on behalf of the MCAD.



70th Anniversary Commemoration

Speaker DeLeo presents the MCAD Commissioners with a legislative citation recognizing the milestone anniversary.

MCAD BUDGET FOR FY16

July 1, 2015 - June 30, 2016

REVENUE

Direct State Appropriation

State Appropriation Total (Line Item 0940-0100).....\$ 2,898,657

Retained Revenue Collected

HUD.....\$ 898,932

EEOC.....\$ 1,476,800

Audit / Copying Fees.....\$ 2,640

Attorney's Fees.....\$ 146,523

Retained Revenue Total (Line Item 0940-0101).....\$ 2,524,895

Training Program

Training Program Total (Line Item 0940-0102).....\$ 144,755

Total FY16 Revenue **\$ 5,568,307**

EXPENSES

Payroll.....(\$ 4,696,268)

Rent.....(\$ 112,401)

Administrative Overhead.....(\$ 747,413)

Total FY16 Expenses **(\$ 5,556,082)**

Reversion to General Fund² **(\$ 12,225)**

MCAD FY17 BUDGET

July 1, 2016 – June 30, 2017

State Appropriation (Line Item 0940-0100).....\$ 3,048,657

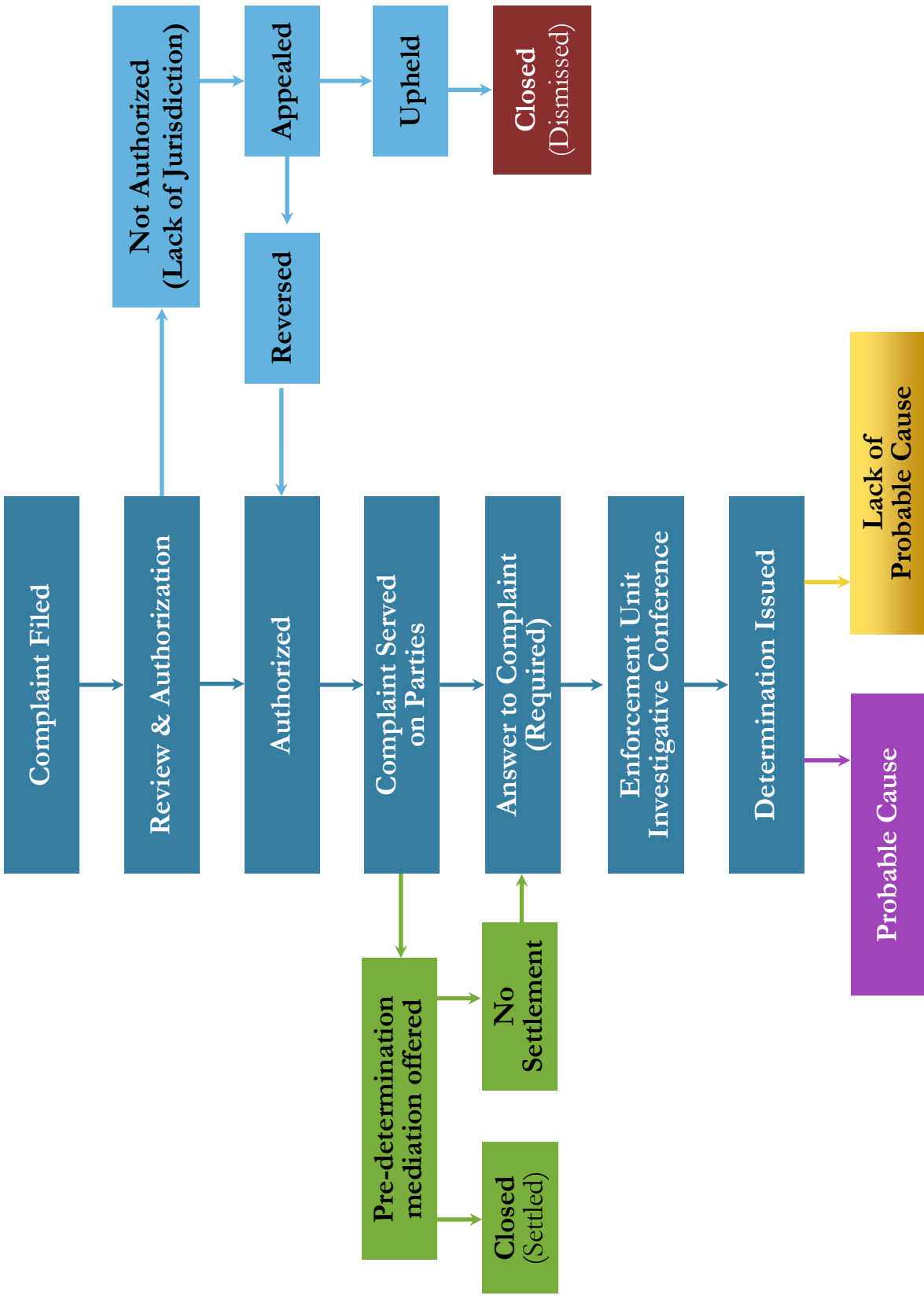
Retained Revenue (Line Item 0940-0101).....\$ 2,518,910

Training Program (Line Item 0940-0102).....\$ 240,000

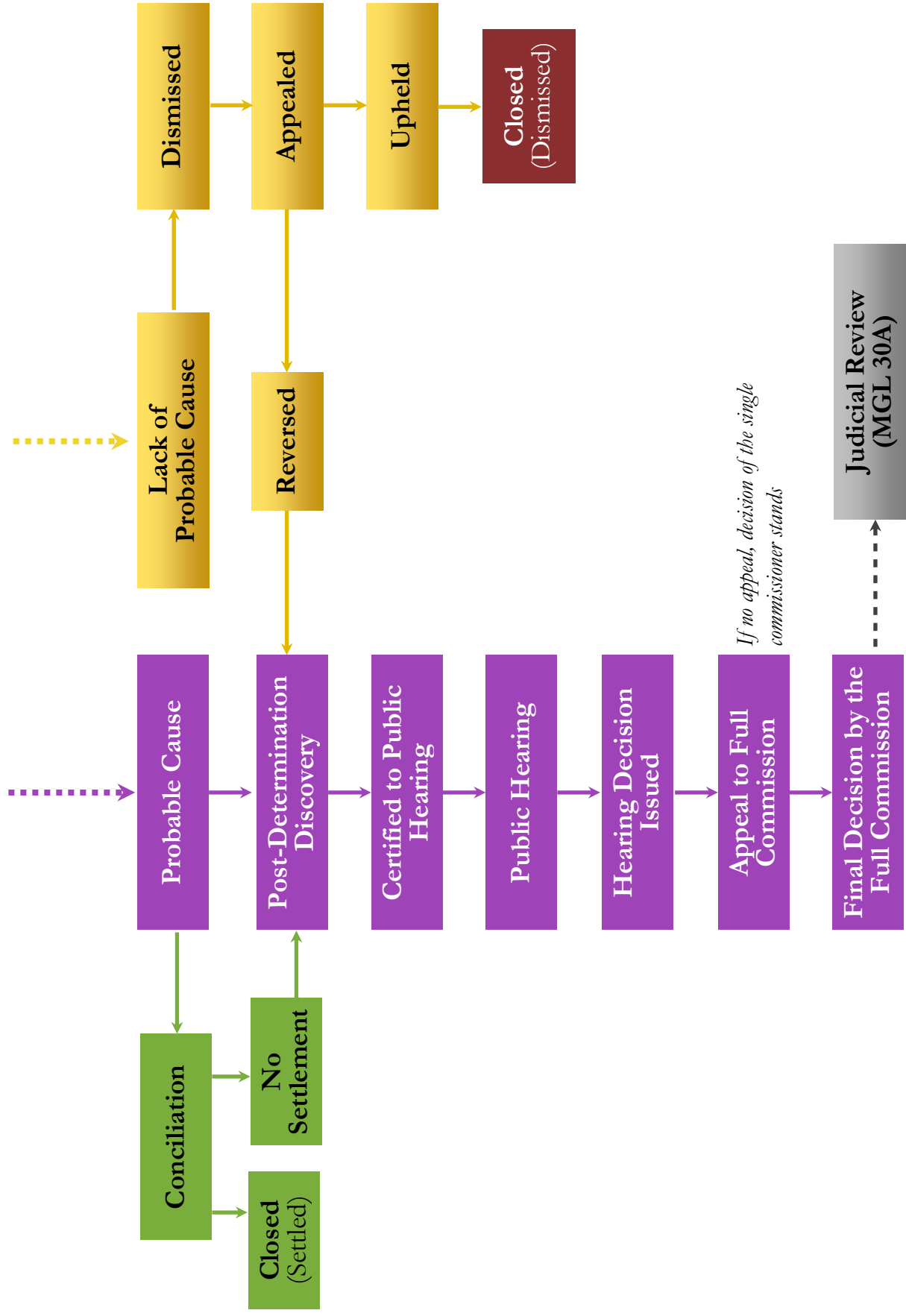
Total FY17 Budget.....\$ 5,807,567

² Funds earned in excess of the statutory cap are reverted back to the General Fund as well as unspent funds.

MCAD INVESTIGATIVE CASE PROCESS FLOW CHART



MCAD POST-INVESTIGATIVE CASE PROCESS FLOW CHART



ENFORCEMENT DIVISION

The MCAD Enforcement Division is comprised of the Acting Chief of Enforcement, six supervisors, twenty-five investigators, six pre-determination attorney advisors, and one alternative dispute resolutions (ADR) attorney. The Division is divided into six units: four main units, one housing and testing unit, and an ADR unit. The Division is primarily responsible for receiving and investigating discrimination complaints and making recommendations of Probable Cause or Lack of Probable Cause to the Investigating Commissioners. The Division also reviews complaints to determine whether the MCAD has jurisdiction, and recommending dismissal through a finding of Lack of Jurisdiction where appropriate. Additionally, the Division, via the ADR Unit, facilitates settlement discussions and early resolutions of fair housing and fair employment state and federal claims.

The Division had a stellar year in 2016, which was aided by an increase in its staff. At the end of 2016, investigators were able to reduce its inventory of cases older than 18 months awaiting an investigative finding, also known as the investigative “backlog,” by nearly 50%. Furthermore, the Division was able to complete its annual contract with the U.S. Equal Opportunity Commission (EEOC) of 2,035 investigations in nine months. The EEOC, impressed with the productivity of the MCAD staff, contracted for an additional 600 investigations to be completed in its fiscal year, which the Commission successfully completed before the end of the annual federal contract period.

Cases Processed

In 2016, the Enforcement Division received 3,082 new complaint filings. At year end, the Division had 3,866 complaints under investigation, which is down 782 cases from the previous year. The Division completed substantive investigations in, or otherwise resolved or closed, 2,446 cases, which is significantly up from the previous year. Of the investigations completed in 2016, 316 were issued Probable Cause findings. By contrast, 305 investigations received Probable Cause findings in the prior year.

It should be noted that Investigative Conferences held at the MCAD have contributed to a more efficient and effective investigative process. The conferences gave parties the opportunity to present

issues directly to the Commission and provided the investigator with a more direct way to obtain information from the parties. They were also a means of assessing whether mediation would be appropriate for 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.

Special Investigations Project

In 2016, the Special Investigations Project was created to address the agency’s investigative backlog. Toward this end, the Commission recruited former interns and investigators for the role of Special Investigators. These Special Investigators completed over 200 investigations, many of which were pending matters from 2012 and 2013.

ADR Unit

The Commission recognized the value of using different approaches toward resolving cases and made reorganizing its alternative dispute resolution strategies a major focus point in 2016. For instance, experienced investigators were given the opportunity to obtain certification in mediation and ADR with the goal that they would be able to assist the Unit with resolving early disputes/investigations before a causal determination is issued. This effort for investigators to assist with the early resolution of disputes was particularly effective for fair housing claims filed at the Commission.

In general, the ADR Unit was instrumental in settling 355 complaints prior to an Investigative Disposition being issued.

Notable Mediation Cases

Case 1: The Complainant is a Section 8 recipient. She applied for an advertised apartment. When the Complainant inquired about Section 8, the Respondent articulated a philosophical aversion to participation in government programs. Therefore, the Complainant was not given the opportunity to apply.

At mediation, the Respondent agreed to take Fair Housing training, to give the Complainant half a month’s rent, and advertise that it is an Equal Opportunity landlord.

Case 2: The Complainant was a seasonal warehouse worker. A coworker began to sexually harass her, including, among other activities, texting nude pictures of himself. The behavior was reported to management, who investigated. The coworker issued an apology and a promise to stop. Nevertheless, a few more incidents occurred within a matter of months. Finally, the coworker was arrested at work. The Respondent paid the Complainant \$75,000.

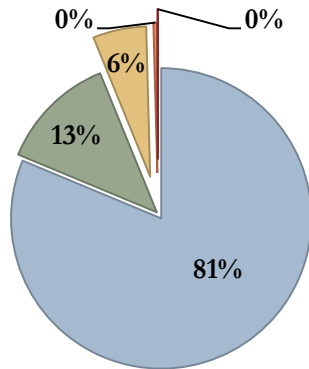
Enforcement Outreach

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 2016, 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 provided training opportunities for its staff, facilitating attendance at civil rights symposiums, continuing legal education programs, and training seminars presented by law schools, MCLE, 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.

ENFORCEMENT DIVISION REPORT

COMPLAINTS FILED BY JURISDICTION IN 2016

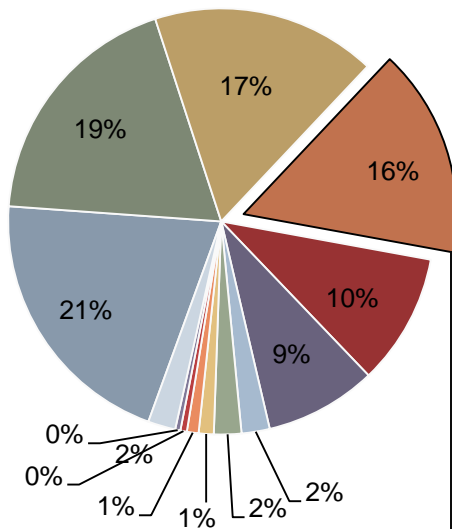
This graph shows the total number of complaints filed in 2016 by jurisdiction. The pie chart compares the percentage of cases filed in each jurisdictional category against the total. As in years past, the vast majority of new complaints alleged discrimination in their place of employment (81%), followed by Housing (13%), and Public Accommodation (6%).



| | |
|----------------------|--------------|
| Employment | 2,505 |
| Housing | 387 |
| Public Accommodation | 177 |
| Education | 12 |
| Credit | 1 |
| Total | 3,082 |

COMPLAINTS FILED BY PROTECTED CATEGORY IN 2016

This data shows the total number of cases filed in 2016 broken down by each major protected category. Many of the cases filed assert more than one protected category. The pie chart shows the percentage of new complaints filed in 2016 alleging discrimination in each protected category. In 2016, Disability and Race/Color remained the most frequently cited categories of discrimination. The next most common protected categories alleged were discrimination based on Retaliation and Sex.

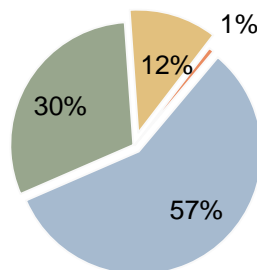


| | |
|---------------------|-------|
| Disability | 1,137 |
| Race/Color | 1,041 |
| Retaliation | 942 |
| Sex | 875 |
| Age | 551 |
| National Origin | 469 |
| Sexual Orientation | 118 |
| Religion / Creed | 115 |
| Public Assistance | 63 |
| Children / Familial | 49 |
| Arrest Record | 27 |
| Gender Identity | 22 |
| Other* | 115 |

* Lead Paint, Marital Status, Military Status, Veteran, Genetics

Sex Discrimination Breakdown

| | |
|---------------------|-----|
| Sex Discrimination | 502 |
| Sexual Harassment | 266 |
| Pregnancy/Maternity | 101 |
| Parental Leave | 6 |

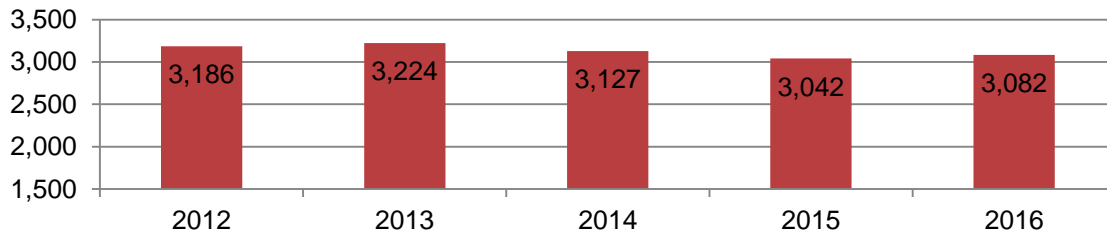


Closer Look: Sex Discrimination

Examining the breakdown of claims of sex discrimination shows 30% of filings are in regards to sexual harassment, 12% relate to pregnancy / maternity leave, an additional 6% relate to Parental Leave, leaving 57% filed under the general category of sex discrimination.

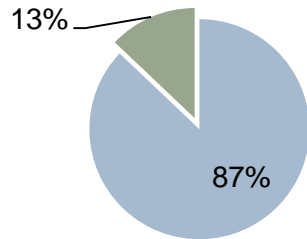
NEW COMPLAINTS FILED ANNUALLY

This graph represents all employment, housing, education, credit, and public accommodation complaints filed in 2016 and the preceding six years. In 2016, the MCAD received 3,082 new complaints.



SUBSTANTIVE DETERMINATIONS IN 2016

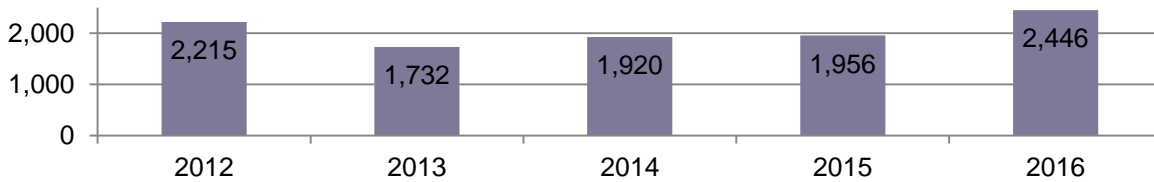
This data shows the total number of investigations that received substantive determinations in 2016. The majority of cases received a Lack of Probable Cause (LOPC) finding, while 316 cases received a Probable Cause (PC) finding.



| Substantive Determinations | |
|-------------------------------|--------------|
| Lack of Probable Cause (LOPC) | 2,130 |
| Probable Cause (PC) | 316 |
| Total | 2,446 |

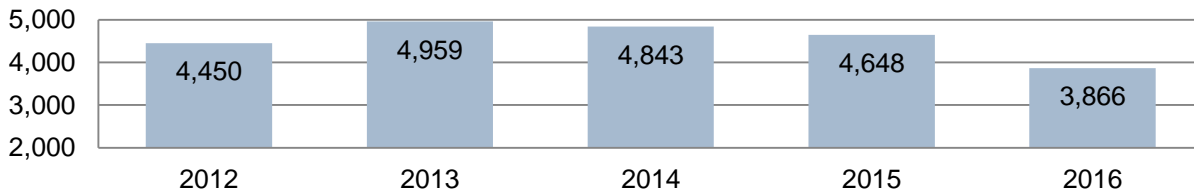
SUBSTANTIVE DETERMINATIONS COMPLETED ANNUALLY

This graph represents the total number of PC and LOPC determinations issued in 2016 compared to the last six years. 2016 saw a significant increase in productivity over 2015, with 490 more dispositions issued than the previous year.



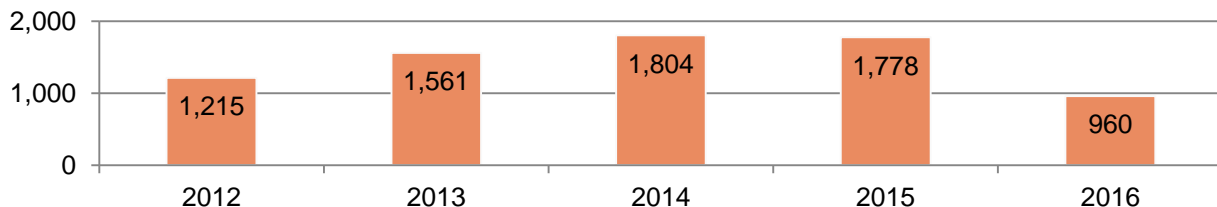
ANNUAL INVENTORY OF ENFORCEMENT CASES

This graph represents the total number of active cases that continue to be investigated in the Enforcement Division as of December 31, 2016 and compares the 2016 end of year inventory to the preceding four years. The MCAD reduced its inventory of investigations awaiting a finding by 782 cases over the prior year.



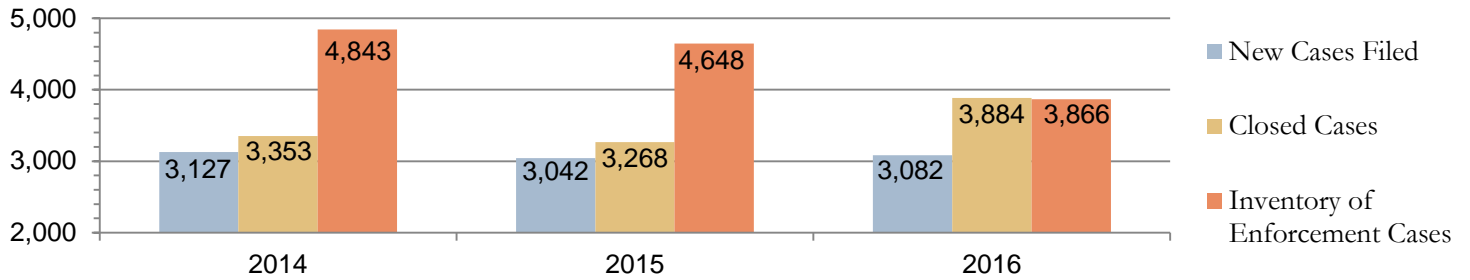
YEAR-END INVENTORY OF INVESTIGATIVE BACKLOG

This graph represents the total number of investigative “backlog” cases (cases older than 18 months without an investigative finding) as of December 31, 2016 and compares the 2016 end of year inventory to the preceding four years. The MCAD reduced its backlog inventory by 818 cases over the prior year.



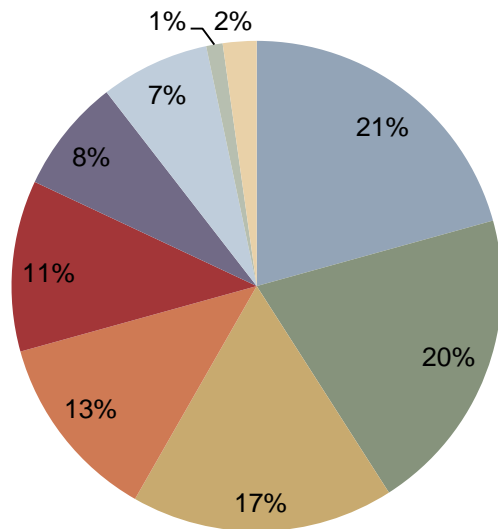
CASES CLOSED COMPARED TO INVENTORY

This graph shows the number of new cases filed at MCAD compared to the total number of closed investigations and the remaining case inventory for the year. In 2016, the MCAD received 3,082 new cases and closed 3,884 cases, reducing its year-end inventory by 782 cases.



ADMINISTRATIVE RESOLUTIONS IN 2016

This data shows the total number of cases that were administratively resolved in 2016. The pie chart shows the percentage of cases closed in each category. The total number of administrative resolutions was 1,754. The majority (877 cases) were resolved by mediation or conciliation, a reflection of the MCAD's strong commitment to alternative dispute resolution efforts.

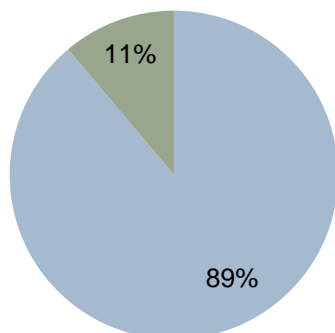


| Administrative Resolutions | |
|--------------------------------|--------------|
| Chapter 478 (Removed to Court) | 363 |
| Pre-Determination Settlement | 355 |
| Withdrawn With Settlement | 304 |
| Conciliated | 218 |
| Withdrawn | 198 |
| Dismissed | 132 |
| Lack of Jurisdiction | 126 |
| Failure to Cooperate | 19 |
| Other* | 39 |
| Total | 1,754 |

* Includes cases adjudicated at public hearing, cases closed because the complainant could not be located or failed to participate in the investigative process, and cases in which a party sought judicial review of a Commission decision or entered bankruptcy proceedings.

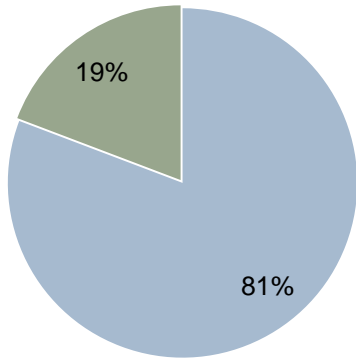
ALL ACTIVE CASES

This data shows the total number of cases that are active at the Commission by year end in 2016. Enforcement had 3,863 cases under active investigation, and the agency had 485 active cases that are being prosecuted and adjudicated.



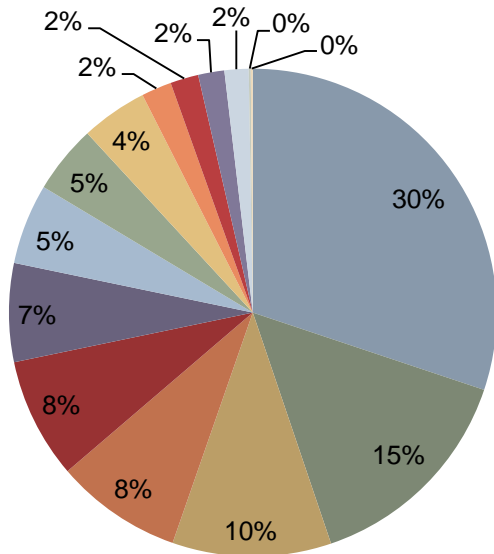
| All Active Cases | |
|----------------------------|--------------|
| Investigation | 3,863 |
| Prosecution / Adjudication | 485 |
| Total | 4,351 |

HOUSING INVESTIGATIONS



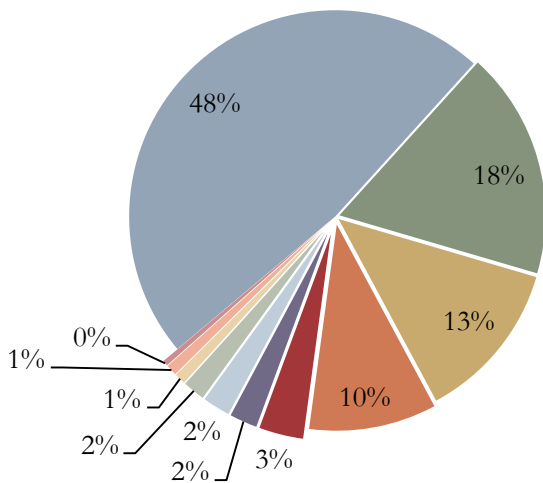
| Housing Substantive Determinations | |
|------------------------------------|------------|
| Lack of Probable Cause (LOPC) | 168 |
| Probable Cause | 40 |
| Total | 208 |

HOUSING COMPLAINTS BY PROTECTED CATEGORY



| Complaints Filed by Protected Category | |
|--|-----|
| Disability | 226 |
| Race/ Color | 110 |
| Retaliation / Other | 79 |
| Public Assistance | 63 |
| National Origin | 60 |
| Children | 49 |
| Sex | 40 |
| Familial Status | 34 |
| Lead Paint | 33 |
| Religion / Creed | 15 |
| Sexual Orientation | 14 |
| Marital Status | 13 |
| Age | 12 |
| Gender Identity | 1 |
| Veteran | 1 |

HOUSING ADMINISTRATIVE RESOLUTIONS



| Administrative Resolutions | |
|--------------------------------|------------|
| Pre-Determination Settlement | 110 |
| Dismissed | 41 |
| Withdrawn | 29 |
| Conciliated | 23 |
| Withdrawn With Settlement | 8 |
| Chapter 478 (Removed to Court) | 5 |
| Judicial Review | 5 |
| Lack of Jurisdiction | 4 |
| Failure to Cooperate | 2 |
| Investigation Not Authorized | 2 |
| Unable to Locate Complainant | 1 |
| Total | 230 |

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 Substantive 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/Budget, MIS, 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. These services include 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 consists of the Clerk's Office and 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. The Electronic Position Statement submission initiative, which was piloted in the Springfield Office in August 2015, was expanded to all offices. Parties are now able to submit their position statements electronically, reducing the amount of time and labor necessary to process these cases. Electronic position statements are now being indexed and then "dragged and dropped" into the Case Management System (CMS) for faster access to investigators. This year the Springfield Office received 261 position statements electronically and the Worcester office received 138 position statements electronically. Collectively both offices received 110 through mail. The Boston Office has received 725 position statements electronically and 671 by mail. MCAD is now moving to formalize electronic submissions for all supporting documentation.

Personnel. This year has been an exciting year for personnel. Based on the Commission's successful efforts to raise its budgetary caps, the MCAD was able to hire a total of 15 staff members, 11 of whom were new hires. Additionally, the MCAD hired Special Investigators through a contract to work exclusively on reducing the investigative backlog. This hiring effort produced immediate results.

As a result of an audit by the State Auditor's Office in 2015, The Administration and Finance Unit completed a top-to-bottom review and update of

agency policies and procedures with the assistance of the senior management team. In March of 2016, MCAD implemented Self Service Time and Attendance (SSTA). SSTA now allows staff to enter their own time and attendance online, and manager/supervisors can approve time also online. This eliminates the time and resources used in a paper process.

The MCAD Training Unit

The MCAD Training Unit provides internal and external discrimination prevention trainings, conducts outreach, and administers the MCAD's robust Internship Program.

At 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 2016, the MCAD Training Unit conducted over 73 external discrimination prevention training sessions attended by over 1,378 participants. Participant audiences included human resources professionals, attorneys, supervisors and managers, line staff, landlords, property management personnel, corporate officers, government/ agency personnel, administrators of higher education, and realtors. The training sessions ranged from two hours to four days in length.

Fees collected and/or payable for training sessions during 2016 totaled \$152,045, including the 2016 Spring Courses for EEO Professionals.

The MCAD completed over 15 outreach presentations in 2016, reaching an estimated 250 individuals in a variety of settings. Spring, summer, and fall interns and fellows established statewide contacts at organizations that serve Limited English Proficient and other populations.

The Commission held its 17th annual MCAD-Certified Courses for EEO Professionals this year, including four half-day prerequisite sessions, two

Train-the-Trainer modules each comprising two to three days, and two Equal Employment Opportunity (EEO) practitioner modules, Responding to Accommodation Requests and Conducting Internal Discrimination Complaint Investigations, comprising two to three days. Fees collected for these Courses in 2016 totaled \$65,250 (included above).

The Training Unit designed, facilitated and/or administered numerous internal training sessions for the Commission's staff this year, including four three-day introductory training sessions for new interns and employees held in January, February, June, and September, supplemented with four half-days trainings on Fair Housing, and seven trainings on Language Access. Other internal trainings included five UbiDuo2 demos and three UbiDuo2 webinar trainings in support of the MCAD's Language Access initiatives.

In the summer of 2016, the Training Unit more than doubled its educational and practice-based offerings to staff and interns, which included skills-based workshops on public speaking, professional networking, and four new series: Art Breakers,

MCAD After Hours, Colloquium, and Language Roundtables.

The Commission also held its annual summer series of brown bag lunch discussions on various topics for interns and employees, including a best practices presentation on Language and Communication Access by Commissioner Heidi Reed of the Massachusetts Commission for the Deaf and Hard of Hearing (MCDHH). A total of 20 events for staff and interns were offered during the summer of 2016.

The MCAD's internship program continued to flourish, with undergraduate, law student, graduate student and attorney volunteers working at the Commission in 2016. Interns worked on hundreds of investigations, conducted intake meetings with complainants, and supported the Language Access Program and various initiatives committees.

As of the close of 2016, the training unit has monitored compliance in a total of 729 cases where the hearing decision or settlement included a training requirement. Of those, 591 cases are no longer active, primarily because the training was completed.

LEGAL DIVISION

The Legal Division provides legal representation and advice to the Commission. Its mission is to help achieve the MCAD's founding purpose 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 Superior and appellate 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 six Commission Counsel. In 2016 the Deputy General Counsel continued to act as the Acting Chief of Enforcement.

The Legal Division has many responsibilities at the agency. Commission Counsel in the Legal Division prosecute complaints in which the Investigating Commissioner has found Probable Cause, prosecute Commission-initiated complaints, and participate in conciliation proceedings. 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 Massachusetts appellate courts pursuant to G.L. c. 30A. The Legal Division also defends challenges to the Commission's investigations, jurisdiction and procedure and pursues

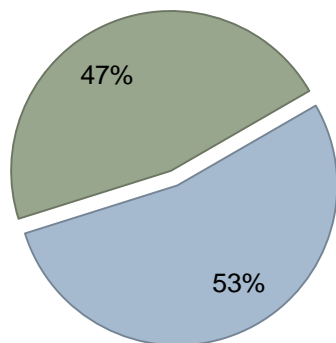
enforcement actions to obtain compliance with the Commission's final orders. The Division provides legal support for the Commissioners concerning implementation of new legislation and development of proposed regulations. It also reviews proposed legislation that may affect the agency or its mission.

In 2016, the Legal Division developed guidelines to address the statutory codification of gender identity as a protected class in places of accommodation. It also developed guidelines and policies to implement the administrative requirements of the new Public Records Law. In addition, it provided advice and notices to the Commission concerning changes to the law, such as the addition of veterans as a protected class in the employment anti-discrimination law.

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 develop friend of court (amicus) briefs on important issues arising under the anti-discrimination laws pending 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 ACTIVITY IN 2016/MCAD CASE ASSIGNMENTS

After a finding of Probable Cause by the Investigating Commissioner, the General Counsel assigns Commission Counsel to prosecute the cases. The Commission Counsel 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 316 cases with a Probable Cause determination in 2016, the Legal Division was assigned to prosecute 169 filed by pro se complainants. This was a decline from the number of cases assigned in 2015, when 225 were assigned. In 2016, Commission Counsel remained assigned to prosecute the caseload of 184 cases which existed as of December 31, 2015.



| Commission Counsel New Case Assignments | |
|--|------------|
| Commission Counsel | 169 |
| Private Legal Counsel | 147 |
| Total | 316 |

NOTEWORTHY SETTLEMENTS

In 2016, Commission Counsel resolved a total of 75 discrimination cases through conciliation and negotiation, recovering \$1,615,021 in victim specific relief, affirmative relief in the form of anti-discrimination training and policy reviews. The following is a description of some of the representative matters which were resolved by settlement this year, classified by the type of alleged discrimination.

Employment Cases

An employee alleged that her employer unlawfully terminated her based on her age. Respondent agreed to pay Complainant \$130,000, in addition to conducting office-wide anti-discrimination training. (Essex County)

An employee alleged that two supervisors subjected him to discriminatory harassment based on race/color when they targeted him with offensive racial slurs. Complainant also claimed to have been paid less than similarly situated colleagues outside his protected class. Complainant left the company when management refused to address his concerns. The matter settled for \$21,000. The Company agreed to obtain anti-discrimination training for all employees and to adopt and implement a Commission-reviewed employee manual. (Hampden County)

An employee alleged discrimination based on disability when Respondent refused to engage in an interactive dialogue regarding Complainant's ability to return to work with physical restrictions and, when the restrictions were lifted, Respondent informed Complainant that there were no open positions available. Respondent initiated bankruptcy proceedings following the Probable Cause determination. The Bankruptcy Court ultimately approved a settlement agreement between the parties and the matter settled for \$6,500. (Hamden County)

This matter was initiated by an employee with severe hearing loss, who alleged that her employer unlawfully terminated her based on her disability. The Respondent paid the Complainant \$20,000 in emotional distress damages and conducted training on issues in the workplace relative to the persons with hearing losses. (Middlesex County)

An employee alleged that she was terminated by a large restaurant chain due to her pregnancy and use of

parental leave. The employer paid the Complainant \$25,000 and agreed to post the MCAD Parental Leave Fact Sheet in its Massachusetts restaurants. (Middlesex County)

This case involved a Complainant who alleged that her employer failed to accommodate her religion. The employer agreed to pay \$50,000 to the Complainant to resolve the matter. (Middlesex County)

In a complaint alleging that Respondent failed to accommodate Complainant's visual disability by providing appropriate, accessible software allowing Complainant to do her job, Respondent agreed to pay Complainant \$57,500, to receive fair employment training, and to adopt a reasonable accommodation policy subject to Commission review. (Middlesex County)

In a complaint alleging sex discrimination against a female officer by a police department, Respondent agreed to pay Complainant \$68,000, and to provide fair employment training for all police department managers and staff. (Plymouth County)

An individual employed by a fast food restaurant alleged that she was subjected to disparate treatment and terminated from employment because of her gender/gender identity. A transitioning female, the employee claimed that her manager singled her out to perform impossible job tasks and chastised her in front of employees and customers. The matter settled for \$8,000. (Suffolk County)

An early education teacher alleged that her employment was terminated because of her race/color, Black. While the employer contended that the teacher was terminated for inappropriate use of social media, evidence proffered during the investigation indicated that a similarly situated Caucasian co-worker, who engaged in the same conduct, was not terminated. The matter settled for \$9,500. (Suffolk County)

Harassment based on age and gender stereotype resulted in a probable cause finding against a security firm. The employee alleged that the harassment, which began in the command position, empowered those in the lower ranks to perpetuate the hostile environment. Despite complaints to other high ranking officials, no remedial action was allegedly taken. The matter settled for \$15,000. (Suffolk County)

A municipal employee alleged that the Town and members of the Board of Selectmen discriminated against her on the basis of disability and retaliation. In the 1990s, Complainant filed an employment discrimination complaint at the MCAD against the Town which was resolved by settlement. In 2011, a majority of the Board of Selectmen voted to terminate her employment. Certain Selectmen stated on public websites and discussed in public forums their view that Complainant should be terminated because of her alleged disabilities and because she brought a complaint against the municipality. The matter settled for \$75,000. Two individual Respondents; all members of the Board of Selectmen, and the Town Administrator were required to obtain anti-discrimination training. The Respondent also agreed that the MCAD would review its Personnel Policy to ensure compliance with M.G.L. c.151B. (Worcester County)

Housing Cases

In a complaint alleging denial of a reasonable accommodation (a chair lift) to residents of a condominium, Respondent agreed to installation of the requested accommodation, to receive fair housing training, and to adoption and MCAD review of a reasonable accommodation policy for the condominium. (Barnstable County)

A Complainant alleged that Respondents engaged in disability discrimination because of the failure to timely install hand railings on the staircase within Complainant's apartment, which resulted in Complainant sustaining physical harm. Respondents agreed to pay Complainant \$24,000 and to provide its Reasonable Accommodations Coordinator with MCAD-approved fair housing training. (Berkshire County)

Complainant alleged disability discrimination due to Respondent's intention to charge for use of an existing dog pen for Complainant's assistance animal and to subject Complainant to a greater rent increase than other tenants outside Complainant's protected class. Respondent agreed to write an apology letter to Complainant, to provide Complainant with a housing reference letter for prospective landlords, and to submit its reasonable accommodations policy to the Commission for review to ensure compliance with the law. (Berkshire County)

This housing discrimination complaint alleged that Complainant tenant was told to leave her apartment because she was adopting a child under the age of six

and the apartment was not de-lead. Respondent agreed to pay Complainant \$5,425, to receive fair housing training, to have a licensed inspector test the unit for lead paint and provide the report to the Commission, to de-lead the unit, if necessary, at the end of its current tenancy or if a child under age six comes to reside in the unit before the end of the tenancy, and to provide written proof of de-leading to the Commission. (Middlesex County)

Public Accommodation Cases

A complaint of discrimination in a place of public accommodation based upon physical disabilities. Complainant was allegedly denied access to a bus and instructed to take a later bus because she needed to use the chair lift and the bus was running late. Respondent agreed to implement a Commission-drafted anti-discrimination in places of public accommodation policy, train its employees on anti-discrimination in places of public accommodation, and paid to Complainant \$5,000. (Plymouth County)

Complainant, an individual with vision impairments, was allegedly denied access to a grocery store because she was accompanied by her service dog. As terms of settlement, Respondent agreed to issue an apology to the Complainant for the manner in which she was treated, implement a Commission-drafted anti-discrimination in places of public accommodation policy, train its employees on anti-discrimination in places of public accommodation, and paid to Complainant \$2,500. (Suffolk County)

Complainant, an African American female, filed a complaint of discrimination in a place of public accommodation alleging that Respondent, a retail coffee shop, discriminated against her based upon her race. Complainant was paid of \$2,000 and was issued a written apology for the manner in which she was treated. (Suffolk County)

Public Hearings Prosecuted by Commission Counsel

Commission Counsel prosecute cases at the Commission's Public Hearings on behalf of the Investigating Commissioner and to provide assistance to the Complainant. In 2016, three Public Hearings were held which were prosecuted by Commission Counsel. A Public Hearing regarding a sex discrimination claim was held in May, 2016, with a decision expected in 2017. A Public Hearing

regarding a disability discrimination claim was held in September, 2016; post-hearing briefs will be submitted in early 2017. The favorable decision in the other case prosecuted at Public Hearing in 2016 is described below.

MCAD, et al, v. X-treme Silkscreen & Design and Ronald Caliri, MCAD Docket No. 12-NEM-00055

The Public Hearing in this matter involving a claim of disability discrimination was held in April of 2016. Complainant was a long term employee who developed morbid obesity, diabetes, hypertension and sleep apnea. He was terminated shortly after he requested a six week medical leave to undergo gastric bypass surgery. Following Public Hearing, the MCAD Hearing Officer held that X-treme Silkscreen & Design and its owner, Ronald Caliri, were liable for disability discrimination. The Commission awarded Complainant \$10,000 in emotional distress damages, and ordered Respondents to pay Commission counsel attorney's fees in the amount of \$18,864.70.

Mass. Superior Court Activity

Commission Counsel defend the Commission's procedures and decisions in the Massachusetts courts. These cases include G.L. 30A administrative appeals and challenges to the Commission's investigative authority. During 2016, Commission Counsel were assigned six new Superior Court cases to defend. The following report describes some of the activity in cases against the Commission being defended in the Massachusetts Superior Courts.

Adrien v. MCAD, Middlesex County Superior Court No. 15-CV-2775-H

The Commission issued a Lack of Probable Cause (LOPC) determination in this matter. Complainant appealed the LOPC in a preliminary hearing before the MCAD. The MCAD affirmed the LOPC and the Complainant sought relief in Superior Court. The Complainant argued that he was entitled to relief pursuant to G.L. c. 30A, a writ of certiorari and declaratory judgment. The MCAD filed a motion to dismiss, and in response, Complainant's counsel acknowledged that there was no cause of action pursuant to G.L. c. 30A but continued to seek relief pursuant to certiorari and declaratory judgment. The lower court (Curran, J.) granted the MCAD's motion to dismiss on May 25, 2016. The lower court recognized that there was no standing to proceed with

certiorari and that Complainant was not entitled to declaratory relief because he had not established a justiciable controversy. Complainant appealed and the matter is pending before the Massachusetts Appeals Court.

American Reclamation Corp. and Vincent Iuliano v. MCAD & another, Worcester Superior Court WOCV 2015-0283-C

In this G.L. c. 30A appeal of the Commission's decision in favor of Complainant and the MCAD on an employment discrimination claim based upon associational discrimination, the Respondents sought to present additional evidence concerning Complainant's bankruptcy. The Court (Frison, J.) ordered that the MCAD receive additional evidence concerning the bankruptcy and make supplementary findings. The Respondent and Complainant provided additional information to the MCAD Hearing Officer, and the matter remains under consideration.

Brighton Gardens, LLP et al. v. MCAD & another, Suffolk County Superior Court No. 2014-2112H

Respondents filed a G.L. c. 30A appeal of the Commission's decision in favor of Complainant on a claim alleging discrimination in housing on the basis of disability (denial of a service animal). A hearing on Motions for Judgment on the Pleadings was held on March 10, 2016. Following argument, the case was settled. Respondents paid a \$5,000 civil penalty to the Commonwealth, adopted reasonable accommodation policy, and provided additional relief to the Complainant. Judgment dismissing the case entered on April 15, 2016.

Joy Dalrymple v. MCAD, Worcester County Superior Court No. 1685CV01621

The Commission issued a Lack of Probable Cause (LOPC) determination in this matter. Complainant appealed the LOPC in a preliminary hearing before the MCAD. The MCAD affirmed the LOPC and the Complainant sought relief in Superior Court. The Complainant argued that she was entitled to relief pursuant to G.L. c. 30A. After receiving information from Commission Counsel regarding the inapplicability of G.L. c. 30A to a preliminary hearing, Plaintiff's counsel voluntarily withdrew the court case without the need for motion practice.

Curtis Jackson v. MCAD & another, Suffolk County Superior Court No. 1684CV01623

Complainant filed a MCAD complaint against his former employer, a state agency, alleging discrimination on the basis of race, color, and retaliation. After investigation, the complaint was dismissed with a finding of Lack of Probable Cause (LOPC). After appeal, the Investigating Commissioner affirmed the finding of LOPC. Complainant then filed a complaint in Superior Court against both his employer and the MCAD. MCAD filed a Motion to Dismiss the complaint on the grounds that Complainant had no statutory right to appeal the Commission's LOPC determination. The Superior Court (Lauriat, J.) dismissed Complainant's complaint against the MCAD for the reasons set forth in the Commission's Motion to Dismiss on November 3, 2016. The Superior Court dismissed Complainant's complaint against his former employer on December 30, 2016.

Kagan Development KDC Corp, et al. v. MCAD, Suffolk County Superior Court No. 1684CV03309

In this action the Plaintiffs, Respondents in an MCAD discrimination complaint, sought, among other requested relief, to enjoin MCAD from investigating Complainant's discrimination claim on the grounds of lack of jurisdiction, or, in the alternative, to limit MCAD's investigation of the claim to the jurisdictional issue only until such jurisdiction was resolved. After hearing on Plaintiffs' motion for injunctive relief and MCAD's Motion to Dismiss, the Court (Wilkins, J.) entered judgment in favor of the Commission dismissing the case for lack of jurisdiction due to failure to exhaust administrative remedies on December 21, 2016.

J. Whitfield Larrabee v. MCAD, Suffolk County Superior Court No. 1584CV02725

In this action alleging breach of contract and violation of the Massachusetts Public Records Act, G.L. c. 66, §10, Plaintiff sought damages, a preliminary and permanent injunction, a writ of mandamus, and other legal and equitable relief. An Answer to the Complaint was filed on November 30, 2015. The parties' Motion, Cross Motion, and Opposition to Cross Motion for Summary Judgment were filed on August 17, 2016. Oral argument is expected to be scheduled in 2017. The matter is being handled by the Attorney General's Office with the assistance of the Legal Division.

Arthur Pace v. MCAD, Commissioners Individually & another, Franklin County Superior Court No. 1678CV00093

The Commission issued a Lack of Probable Cause (LOPC) Investigative Disposition in this matter. Complainant appealed the LOPC in a preliminary hearing before the MCAD. The MCAD affirmed the LOPC and the Complainant sought relief in Superior Court. The Complainant argued that he was entitled to relief pursuant to G.L. c. 30A, and also claimed that relief was available under the aegis of equitable tolling. The MCAD filed a motion to dismiss. The lower court (Agostini, J.) granted the MCAD's motion to dismiss on December 9, 2016, rejecting the claim of equitable tolling and recognizing that a Complainant may withdraw his MCAD to file a case in Superior Court pursuant to G.L. c.151B§9 prior to an Investigative Disposition.

AE Sales, Inc. and Ernest Prete v. MCAD, et al., Middlesex County Superior Court No. 1681CV01432

In the underlying MCAD administrative proceeding, Plaintiffs (Respondents) were found liable for sexual harassment and retaliation. They were ordered to pay Complainants' emotional distress damages, lost wages, attorney's fees and costs and were ordered to pay to the Commonwealth a \$10,000 civil penalty for the knowing, willful and egregious discriminatory actions committed by Plaintiffs/Respondents. They were also ordered to cease and desist from engaging in the types of unlawful conduct that were adjudged to constitute sexual harassment and the creation of a sexually hostile working environment. Plaintiffs/Respondents appealed to Superior Court pursuant to G.L. c. 30A. The matter resolved on appeal, and the Respondent paid the civil penalty of \$10,000 to the Commonwealth on July 20, 2016.

C-Worcester v. MCAD & Tatum/Harris, Worcester Superior Court; No. 1585CV01263.

Following the Full Commission decision of June of 2015 addressing the Complainants' disparate impact claims, the Respondent filed this G.L. c. 30A petition for review. This matter was subsequently consolidated with two other cases, seeking judicial review of the Full Commission decision addressing Complainants' claims of disparate treatment (1185CV02497, 1185CM02500). Following a flurry of motions, including a Motion to Stay the Full Commission Order, Motion to Submit Additional Evidence, Motion to Retain Jurisdiction, and a Motion to

Correct Order, the parties each filed Motions for Judgment on the Pleadings. This matter is scheduled for argument in early 2017.

MA Appeals Court Activity

Adrien v. MCAD, Appeals Court No. 2016-P-1127

Complainant appealed from the Superior Court's dismissal of his complaint which sought a writ of certiorari and declaratory relief to review the MCAD's decision to affirm a lack of probable cause finding. The MCAD's appellee brief was filed on December 12, 2016.

Bellanti, et al. v. MCAD & another, 2016 Mass. App. Unpub. LEXIS 977 (unpublished disposition)

The Massachusetts Appeals Court affirmed the Superior Court's decision upholding the MCAD's determination that Complainant was subjected to quid pro quo sexual harassment while employed by Illumina Media LLC on October 12, 2016. The Appeals Court also recognized that the failure of appellants to provide a transcript of the administrative proceedings in their Superior Court G.L. c.30A appeal was fatal to their substantial evidence challenge. On December 26, 2016, Bellanti filed a "Motion of Consideration of the Courts Granting and Additional Enlargement of Time to File Brief," which the Appeals Court apparently viewed as a request to seek Further Appellate Review, which remains pending.

Hagopian v. MCAD & another, 89 Mass. App. Ct. 1127 (2016) (unpublished disposition)

The Massachusetts Appeals Court affirmed the MCAD's authority to impose 12% prejudgment interest on damages awarded for employment discrimination. The employer attacked the interest rate on constitutional grounds, arguing that given current market conditions, the rate was excessive and unconstitutional. The Court held that the imposition of interest at 12% per annum continues to be rationally related to the Commonwealth's goals of eradicating discrimination in the workplace and providing the damaged party with a return on the money he/she might otherwise have received were it not for the employer's wrongdoing. Following the Massachusetts Appeals Court decision, the Respondent paid the civil penalty of \$10,000 assessed by the MCAD to the Commonwealth.

Massasoit Industrial Corp. v. MCAD & another, Appeals Court No. 2016-P-0459

In the underlying MCAD action, Massasoit was found liable for a discriminatory termination from employment based upon the age and disability of the complainant, Mr. Glynn. Massasoit appealed the Full Commission decision to the Superior Court, pursuant to G.L. c. 30A. The Superior Court affirmed the MCAD final decision and order in September of 2015. Massasoit then appealed to the Massachusetts Appeals Court. Briefs were filed in 2016 and oral argument was held before an Appeals Court panel on December 7, 2016.

MA Supreme Judicial Court – Amicus Brief

The Massachusetts Supreme Judicial Court invites amicus (friend of court) briefs from the Massachusetts Commission Against Discrimination and other interested entities concerning Massachusetts anti-discrimination law. In response to such inquiries, the Legal Division considers the issue, and when appropriate, prepares and files amicus briefs to provide the Commission's opinion regarding the issue.

Sean Gannon v. City of Boston, Supreme Judicial Court No. 12136

The Commission submitted an amicus brief on November 21, 2016 in response to a request from the Supreme Judicial Court on the following question: In a handicap discrimination case in which an employer acknowledges reliance on an employee's physical impairments for its employment decision, for purposes of G. L. c. 151B, § 4 (16): (1) what are the parties' respective burdens of proof and production with regard to the determination whether the employee is a "qualified handicapped person" who has been subjected to an adverse employment action because of his or her handicap; and (2) whether the burden-shifting framework established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), applies to a claim of handicap discrimination in such a case. The amicus brief explained that where it is undisputed that the employee's physical impairments caused its employment decision it has used the following analysis derived from *Pushkin v. Regents of the Univ. of Colorado*, 658 F.2d 1385 (10th Cir. 1981): (1) The Complainant must prove that he was an otherwise

qualified handicapped person apart from his handicap and was rejected under circumstances that give rise to the inference that his rejection was based solely upon his handicap; (2) Once the Complainant establishes his prima facie case, the Respondent must then show either that the Complainant was not an otherwise qualified handicapped person or that his rejection was for reasons other than his handicap; (3) Then, the Complainant must satisfy the burden of proving, with rebuttal evidence, that the Respondent's reasons for rejecting him are based upon misconceptions or unfounded factual conclusions and that the reasons articulated for the rejection encompass unjustified consideration of the handicap itself.

MA Federal Court Activity

The Massachusetts Attorney General's Office provides representation to the MCAD when the agency and/or its Commissioners are sued in the U.S. District Court, with the assistance of the Commission's Legal Division. The following are descriptions of some of the cases handled in the federal courts in 2016.

John DeRaffele v. MCAD, et al., U.S. Court of Appeals for the First Circuit, No. 16-1024

The Plaintiff/Respondent appealed the U. S. District Court's December 2015 dismissal of his complaint (Mastroianni, J.) The Plaintiff claimed that his constitutional rights had been violated by the investigation of a housing discrimination charge. The U.S. District Court determined that the claims against the MCAD investigator were barred by the doctrines of absolute and qualified immunity; the claims against the MCAD were dismissed on the basis of Eleventh Amendment immunity. The U.S. District Court further determined that the *Younger* abstention doctrine required the federal court to abstain from hearing the matter. The First Circuit Court of Appeal affirmed the decision and entered judgment in favor of the MCAD and its investigator in the underlying Commission case on October 11, 2016.

Horizon Christian Fellowship, et. al, v. Jamie Williamson, et al., U.S. District Court of MA, No. 1:16-cv-12034-PBS

Plaintiffs brought a civil rights action against the Commissioners and the Massachusetts Attorney General, alleging that application of Massachusetts public accommodations law to churches violated the First and Fourteenth Amendments to the U.S. Constitution. The Plaintiffs sought injunctive and declaratory relief. Following revisions of certain publications concerning application of the public accommodations law and service of a memorandum of law in opposition to the Plaintiffs' motion for preliminary injunction, Plaintiffs voluntarily dismissed the case on December 12, 2016.

HEARINGS DIVISION

The Hearings Unit includes two full-time hearing officers, one 4/5th time hearing officer and the three Commissioners. The Hearing Officers conduct administrative hearings and render written decisions with relief for prevailing Complainants, which may include monetary damages for lost wages and benefits, future pay and damages for emotional distress. Hearing Officer decisions frequently include orders for affirmative relief such as training and in appropriate circumstances, the assessment of civil penalties. The Hearings Unit also conducts mediations and certification conferences on behalf of the Investigating Commissioner, makes rulings on post-certification discovery matters, motions, and petitions for attorney's fees. The Hearing Officers also participate in internal and external educational seminars, presentations and agency initiatives.

In 2016 the Hearings Unit scheduled 67 public hearings. Of the 67 cases scheduled, hearings were held in 26 cases and 19 cases settled prior to the hearing. Four others were otherwise dismissed or closed. 18 cases were continued. The Hearings Unit scheduled 75 pre-hearing conferences. Of that number, 34 pre-hearing conferences were held, and 16 cases settled prior to the conference. Two cases were withdrawn and 25 were continued. The Hearings Unit issued 27 hearing decisions. One decision was issued by Commissioner Sunila Thomas George. Eight decisions were issued by Senior Hearing Officer Eugenia Guastaferrri, nine each by

Hearing Officers Judith Kaplan and Betty Waxman. The Hearing Officers also conducted numerous 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 seven. There were four race/color claims, four retaliation claims, five sex or sexual harassment claims, two national origin claims, two age claims and one religion claim. Of the 25 employment decisions, 13 were in favor of Complainants and 12 were in favor of respondents.

One decision was issued in a housing matter and one decision in a public accommodations matter, both of which resulted in rulings for Respondents.

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

Significant Hearing Officer Decisions

MCAD and Gary Cooper v. Raytheon Co., 38 MDLR 28 (2016) (Disability)

This is a case of disability discrimination filed by a Complainant who suffered a traumatic brain injury. Complainant was a life-long employee of Raytheon, who during the course of his employment, suffered a non-work related traumatic brain injury. As a result of his injury, he has residual problems such as short-term memory deficits, depression and anxiety and a style of learning that relies on repetition, a quiet environment, and memory aids.

After a period of recuperation, Complainant returned to work, was placed in the test engineering department and was promoted to a technical support engineer. Complainant performed in this position for the next eight years and he received positive ratings in his yearly evaluations. In 2008, the new head of the test engineering division was instructed by her managers to comply with the yearly rating system based on a bell curve, requiring a certain percentage of employees in each job category to receive a rating of "needs improvement." Complainant received a "needs improvement" rating. He was then placed on a PIP that required him to perform many tasks that were never before required of him, was moved from the 2nd shift to the busier 1st shift, and assigned to a different area. The hearing officer found that despite the requests of Complainant and his sister, also a career Raytheon employee, to extend Complainant's PIP or to suspend the PIP and assign him quarterly tasks, Respondent refused to do so. Complainant failed his PIP. He was given 30 days to find another job at Raytheon. He found a much lower paying position. As a result of being placed on a PIP, Complainant's anxiety and depression greatly increased and he had suicidal thoughts.

Complainant was awarded \$94,424 for lost wages and \$100,000 in damages for emotional distress. Respondent was ordered to conduct training of its human resources managers in its Massachusetts facilities in the area of disability discrimination and reasonable accommodation.

MCAD and Christopher Picco v. Town of Reading and David Stamatis, 38 MDLR 42 (2016) (Sexual Orientation)

This is a claim of sexual orientation discrimination filed by a police officer on the Reading Police Force, against Respondents Town of Reading and Lt. David Stamatis, alleging that Stamatis discriminated against Complainant based on perceived sexual orientation. Lt. Stamatis repeatedly called Complainant “**** homo” and “gay boy” and on one occasion slapped Complainant in his groin area. Complainant, who is neither gay nor perceived to be gay by co-workers, was nonetheless found to be a victim of pervasive sexual harassment that constituted a hostile work environment.

Complainant was awarded \$7,000 in damages for emotional distress. Complainant argued for a higher amount based, in part, on a claim that the sexual harassment impacted his health and caused him to miss work, but Complainant’s sick time usage prior to and after the episodes of sexual harassment did not support his claim.

MCAD, Chase, and Eason v. Crescent Yacht Club et al., 38 MDLR 97 (2016) (Sexual Harassment)

This is a claim of sexual harassment and retaliation brought by two female employees of a yacht club – an assistant bar manager and a door person – alleging they were subjected to sexual comments and unwanted physical contact on the job. The Hearing Officer found that the assistant bar manager was subjected to a hostile work environment that was objectively and subjectively offensive and humiliating even though she, at times, participated in sexual banter at the Club. The Hearing Officer also found that complainant’s good natured, bawdy banter was found to be distinguishable from the offensive and demeaning actions of a board member who pressed his body against her and said he wanted to “**** her tits.” Evidence that the assistant bar manager was sincerely offended consisted of her reporting the incident to the Club’s Commodore and attempting to hold the board member accountable for his conduct. The Hearing Officer found that the door person was also subjected to a sexually hostile work environment when the same board member reached inside her shirt and put money under her bra strap and another club member squeezed her buttocks.

In regard to the claims of retaliation, the assistant bar manager was terminated for causing “too much

controversy” which was found to be a veiled reference to her charge of sexual harassment and thus supports a retaliation claim. The door person’s retaliation claim did not succeed, however, because she was not terminated after protesting her sexually-hostile treatment. Although she was thereafter treated in an unfriendly manner by some club members, the Hearing Officer found that this deterioration in her working conditions did not satisfy the requirements of adverse action since she remained employed, her schedule was not altered, and her pay was not reduced.

MCAD and Stephen Savage v. Mass. Rehab Commission, 38 MDLR 105 (2016) (Disability)

This is a case of disability discrimination filed by a male in his mid-50’s who suffers from various mental health issues including ADD. Complainant has a BA and a Master’s degree in vocational rehabilitation. He was hired by MRC as a Vocational Disability Examiner (VDE), a job which involves gathering and reviewing medical evidence to determine an applicant’s eligibility for Social Security Disability Benefits. The process is fully automated and involves using a complex computer software program for which at least three months of specialized training is required.

Complainant self-identified as disabled to the Respondent on his application for employment and afterwards. He discussed his impairments with the trainers and the ADA coordinator. He underwent several months of training with other new VDE’s and had great difficulty keeping up with the fast pace of the training and the complexity of the computer system. Although Respondent claimed that it granted Complainant a reasonable accommodation by offering him individual tutoring, this was not a productive accommodation. The Hearing Officer concluded that Respondent failed to engage in any meaningful dialogue with Complainant to determine what accommodations would better assist him in learning the computer system and that the ADA coordinator was not helpful. The Hearing Officer also found that Complainant was bullied and treated insensitively by the lead trainer who threatened to fire him on two occasions and belittled and berated him for his errors. The lead trainer’s actions exacerbated his anxiety and stress which worsened his ADD and ability to function.

The Hearing Officer concluded that Respondent failed to provide reasonable accommodations to Complainant, and terminated him because of his disabilities. The Hearing Officer also found that the lead trainer bullied Complainant and thereby created a hostile work environment based on his disabilities. Finally, the Hearing Officer concluded that the ADA coordinator did not perform a proper investigation of the claims.

Complainant was awarded approximately \$113,000 for back pay and \$100,000 for emotional distress. Respondent was ordered to provide additional training to its ADA coordinators and trainers in granting reasonable accommodations and in conducting investigations of disability discrimination claims.

MCAD and Cecilia Carta v. Wingate Health Care, Inc. 38 MDLR 117 (2016) (Disability)

This case of disability discrimination was filed by a female nurse who worked as a Clinical Liaison/Admissions Coordinator, identifying and recruiting appropriate referrals for Respondent's nursing home facilities. Complainant suffered an injury while performing an on-the-job errand that resulted in a shoulder injury exacerbated by a pulmonary embolism. Complainant applied for and took FMLA leave for a period of three months while she was in treatment with physical therapy. She returned to work on a part-time schedule, 3 days per week, 4 hours per day. Respondent asserted that it extended the part-time schedule to Complainant as a courtesy that was not intended to be indefinite and did not characterize it as a reasonable accommodation. Complainant asserted that she had no problem completing all patient referrals assigned to her and was never informed that working part-time was a problem or that Respondent was losing referrals due to her limited schedule. There was testimony that admissions to nursing homes are crucial and that there was pressure from Respondent's management to increase business. However, Respondent could point to no decrease in referrals or admissions resulting from Complainant's part-time schedule. Complainant testified that she maintained her good relationships with the hospital she was assigned to.

In May of 2011, after Complainant had worked a part-time schedule for approximately 6 months, she submitted two doctors notes stating she needed to continue a schedule of 4 hours per day 4 days per

week. The doctors' notes did not state if and when Complainant could return to a full-time schedule. Respondent asserted that the doctors' notes contained more rigid lifting restrictions and that Complainant was regressing. Respondent asserted that Complainant could no longer perform the essential functions of the job. Days later, Complainant was informed that her employment would be terminated because Respondent needed the position to be filled on a full-time basis, that it was a critical position, and that Respondent was losing money. Nevertheless, Respondent did not fill the full time Clinical Liaison position until July of 2012.

The Hearing Officer determined that Complainant successfully performed her duties on a part time basis, that Respondent had been providing a reasonable accommodation to Complainant and that Respondent failed to demonstrate that continuing to accommodate Complainant's injury would have been a reasonable accommodation. Respondent's reasons for the termination-- that it was losing referrals and business and it was necessary for the position to be full time-- were a pretext for disability discrimination, since Complainant's position was not filled until more than a year after her termination.

Complainant was awarded \$25,000 in damages for emotional distress and Respondent was ordered to conduct training. Complainant had more than recouped her lost wages through a lump sum settlement of a worker's compensation claim and a third-party negligence law suit.

MCAD and Ahyx Tinker v. Securitas Services USA, Inc. and Najeeb Hussain, 38 MDLR 158 (2016) (Gender & Gender Identity)

Complainant, a transgender male who began working for Respondents as a gay female and who underwent gender reassignment surgery while working for Respondents, brought a claim that his immediate supervisor subjected him to harassment based on his gender when he identified as female and later based on his status as a transgender male. Complainant alleged that his supervisor's conduct created a hostile work environment by berating him and subjecting him to offensive and sexist comments about women and lesbians when he identified as female. Once he notified his employer that he was transgender and would undergo gender reassignment surgery, his supervisor repeatedly and intentionally declined to refer to him as male and called him by his prior name "Becky." His supervisor also made extremely

derogatory and offensive references to his gender reassignment surgery and his sexual identity, including that “he would never be a real man,” was “unclean,” and “going to hell.” Complainant felt physically threatened by his supervisor on one occasion. The Hearing Officer credited testimony that Complainant had made verbal complaints about his supervisor’s inappropriate gender based comments and his refusal to refer to Complainant him as a male. Respondent Securitas did not discipline the supervisor for his actions.

The Complainant was awarded \$50,000 for the emotional distress he suffered as a result of his supervisor’s harassment. The Company was ordered to conduct training of its human resources personnel, managers and supervisors on issues related to gender and transgender discrimination in the workplace.

MCAD and Brenda Patterson v. Abold USA, Inc., 38 MDLR 168 (2016) (Race)

This case concerns an African American woman who was laid off from her job as a data processor as part of a corporate re-organization. Complainant had worked for Respondent and its predecessor corporation for 40 years. She alleged that she was denied alternative positions and ultimately laid off because of her race while similarly situated white employees were placed in other jobs that she could have performed.

As a preliminary matter, the Hearing Officer rejected Respondent’s assertion that the Complainant’s claims should be dismissed as untimely. The Hearing Officer found that the complaint was timely because the July 2011 notice of job elimination did not constitute unequivocal notice of termination, since Respondent held out the possibility of other employment within the company and encouraged Complainant to apply for other positions as late as December 2011. Thus, Complainant had a reasonable expectation of employment with Respondent up to end of December 2011 and beyond as others not in her protected class were offered jobs. The Hearing Officer concluded that the statutory filing period did not start to run until Complainant discovered that Respondent had hired a white male who was less experienced into a position for which she was well qualified. That event was the last in a series of layoffs, hirings, transfers and job alterations, ostensibly part of the re-organization, that all support the allegation

that white employees were granted more favorable treatment than Complainant.

As to the merits, when Respondent implemented a re-organization, Complainant’s duties were transferred out of state and filled by two white employees. At the same time, a processing position became available locally but was filled by a white woman, despite Complainant’s 40 years of experience as a processor.

Complainant also was advised not to apply for newly-created analyst positions about which she inquired because she lacked the requisite computer skills. However, when Respondent eliminated the computer skills requirement from an open analyst position, Complainant was not told that the position had become available and it was filled by a white employee who was advised to apply for it. Respondent did not respond to Complainant’s application for a merchandizing position, and finally, when the same processor position again became vacant in February 2012, Complainant was not contacted about the position and it was filled by less experienced white male employee who also had been laid off in 2011.

Respondent’s articulated reasons for its various assignments of positions to white employees are as follows: that her position was eliminated and she chose not to move out of state; that the white employee later selected for a processor position in New England had a superior assessment score; and that Complainant did not apply for the analyst and processor positions that became available subsequent to her lay-off.

The Hearing Officer found that Respondent’s articulated reasons were a pretext for unlawful discrimination. She found that the New England processor job filled by a white female was substantially similar to the job performed by Complainant who should have been considered because her 40 years of experience as a processor qualified her to perform the job. In addition, Respondent placed among the “pool of people considered for the position” an employee who was not a processor. Complainant established that Respondent deliberately withheld the information regarding the altered job requirements of the analyst position which precluded Complainant from applying for the position. Respondent also steered the white woman to the position.

The Hearing Officer found that despite Respondent’s assertion that reorganization process was legitimate

and not biased, the evidence was that Respondent exercised significant discretion in selecting employees for lay-off, preserving positions for favored employees, and re-fashioning assignments in a manner that benefited white employees, while discouraging Complainant from applying for a number of available positions. Complainant was not recalled from lay-off while a laid-off white male was hired into a processor position for which she was qualified. The Hearing Officer found that given Complainant's decades of experience in her job and her knowledge of any number of positions in her department, the reasons asserted by Respondent for the failure to consider her for several available positions were a pretext for discrimination.

The Hearing Officer found that while there was scant evidence that Respondent's agents acted with blatant or conscious bias based on Complainant's race, there was evidence of disparate treatment. The fact that the decision-makers may have acted with unconscious bias neither altered the fact of its existence nor excused it. The Hearing Officer concluded that Respondent's refusal to consider Complainant for available positions, affirmatively discouraging her from making applications, and failing to transfer her to a number of positions for which she was qualified, were motivated by unlawful considerations of her race and color in violation of G.L. c. 151B.

Complainant was awarded back pay of \$156,847 from January 2012 to the time of the public hearing and front pay from the time of the public hearing up until her 66th birthday in the amount of \$117,764.06. The Hearing Officer found that Complainant's emotional distress could be attributed to Respondent's unlawful termination of her employment and failure to reassign her to positions for which she was qualified and found that she was entitled to emotional distress damages of \$75,000.

MCAD and Gutierrez and Dupuis v. Gabriel Care, LLC, 38 MDLR 179 (2016) (National Origin/Retaliation)

This case involved the claims of two registered nurses who were fired by an adult foster care nursing agency. Although the hearing officer rejected claims by the first nurse (Gutierrez) that she was subjected to discrimination based on her Puerto Rican national origin and subjected to retaliation for complaining about discrimination, the Hearing Officer upheld a claim of retaliation by the second nurse (Dupuis) who attempted to stand up for her co-worker. The hearing officer did not credit allegations that Gutierrez was

told not to speak Spanish to clients, that she was accused of stealing office supplies, and that she was terminated for complaining about discrimination. Instead, the facts supported Respondent's legitimate non-discriminatory reasons for the termination, i.e. that Gutierrez was terminated for taking steps to open a competing adult foster care agency using her employer's client list. In regard to Dupuis, however, the Hearing Officer found that she was terminated for standing up for her co-worker by saying that would be a witness for Gutierrez were she to file a discrimination claim. Because the assertion by Dupuis was made in good faith and based on a reasonable belief that unlawful discrimination had occurred, her actions are entitled to protection even though Gutierrez did not prevail.

MCAD and Festus Adelabu v. Teradyne, Inc. et al., 39 MDLR , (2016) (Race)

This was a case of racial discrimination brought by a high-level engineer at Respondent Teradyne, alleging that he was subjected to adverse terms and conditions of employment and was demoted and subsequently constructively discharged in retaliation for complaining about race discrimination. The Hearing Officer found that Complainant was treated adversely by the Manager of Hardware Engineering who sided with a white peer of Complainant's in many discussions and meetings surrounding disputes that arose in a major team project. She concluded that his treatment was more likely than not based on his race, given that a white peer who raised similar issues was treated more favorably, and was not denigrated for raising strong opinions or acting impolitic with regards to Complainant. The Hearing Officer concluded that assertions that Complainant was not acting for the good of the team and that he did not demonstrate proper deference were overblown and perhaps colored by his race, and may have resulted from unconscious bias. However, the Hearing Officer went on to conclude that Complainant's immediate manager made every effort to assist Complainant and remedy a difficult and uncomfortable situation, including proposing his transfer to a high level engineering position, when he voiced that he was considering leaving the company. The Hearing Officer concluded that Respondent's transfer of Complainant from a junior manager position to a senior level engineering position which paid comparably, offered a similar level of important work, and significant prestige, was not a demotion. She also concluded that the transfer was not motivated by an

intent to retaliate, but rather to retain Complainant's considerable talent in a position that better suited his needs and abetted his distaste for the company's "meeting culture." Finally, the Hearing Officer concluded that Complainant left his job voluntarily after deciding to start his own business and not as a result of the company diminishing his role and giving him insignificant work. The claim against Complainant's immediate supervisor was dismissed. However, the Respondents were ordered to pay the Complainant \$75,000 in damages for emotional distress resulting from the adverse treatment he was subjected to based on his race.

The following hearing decisions were included in Massachusetts Lawyer's Weekly's most significant cases from 2016.

MCAD and Claude Defay v. Boston Police Department, 38 MDLR 1 (2016) (Issued on December 28, 2015)

This was a case alleging race discrimination against the Boston Police Department for dismissal of a recruit. The Hearing Officer determined that the Boston Police Department's decision to dismiss Claude 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. DeFay denied that he had attempted to cheat, when he deliberately defied 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 did not credit DeFay's explanation for his conduct, she nonetheless determined that the Department was liable for discriminatory discipline based on disparate treatment.

The Hearing Officer's conclusion regarding disparate treatment was based on evidence of several incidents where white recruit officers who had committed similar or much more serious infractions in violation of Department rules received less harsh discipline, or no discipline. 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 disciplinary offenses by white officers.

The Department was ordered 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.

MCAD and Richard Lammlin v. Seder Foods, 38 MDLR 14 (2016) (Age/Race)

This case involved the claim of a 64 year old white salesman, alleging that he was discriminated against by a food distributor based on his age and his race when he was terminated from his employment. The evidence showed that Respondent sought out younger Latino salesmen to earn back sales from the loss of the Respondent's biggest customer. There was testimony that given severe financial pressures Respondent determined that it was best to return to its core business of servicing urban Latino stores. Respondent believed that this would be best accomplished by hiring bi-lingual Latino sales staff because Latino store owners had a greater comfort level speaking Spanish with Latino sales representatives who understood their culture and could connect with them. Complainant was replaced by a bi-lingual Latino man in his 40's. There was direct evidence that Respondent was also looking for someone who was younger than Complainant. The Hearing Officer found that Respondent made its personnel decisions based on considerations of age and ethnicity. She noted that while Respondent's actions may have been motivated in part by concerns about declining sales and loss of revenue, that impermissible considerations of Complainant's age and ethnicity were the primary motivations for the termination and that these motives were unlawful. Complainant received damages for lost wages in the amount of \$11,000 and an award of \$5000 for emotional distress.

SIGNIFICANT FULL COMMISSION DECISIONS

The Full Commission addresses appeals from final decisions of the Hearing Officers and Hearing Commissioners. In 2016, it issued six Full Commission decisions. It also dismissed four Full Commission appeals. The following provides summaries of the Full Commission decisions, including *MCAD, et al. v. The R.O.S.E. Fund*, which was identified by the publication *Massachusetts Lawyers Weekly* as one of the most important civil rights opinions of 2016.

MCAD and Danielle M. Mills and April L. Ronan v. A.E. Sales, Inc. and Ernest Prete, 38 MDLR 87 (2016)

The Full Commission affirmed the decision of the Hearing Officer in these sexual harassment and retaliation employment discrimination cases which were consolidated for hearing. The Complainants and other witnesses testified about a pervasive pattern of sexual harassment in the workplace which sold and serviced automobiles. The evidence included testimony that the owner instructed an employee to choose her work clothes from a Frederick's of Hollywood catalogue he dropped on her desk, leered and made numerous comments about female employees' breasts, invited one employee to come into his office to get a raise if she saw him "raise," engaged in unwanted touching, and required an employee to display a sign over her desk stating "I (heart) oral sex." The Full Commission determined that there was sufficient evidence to affirm the Hearing Officer's liability determinations. The Hearing Officer's awards of lost wages of \$29,962.50 and emotional distress damages of \$40,000 to Complainant Ronan and lost wages of \$5,307.68 and emotional distress damages of \$25,000 to Complainant Mills were affirmed. The Full Commission also affirmed the assessment of a civil penalty in the amount of \$10,000, and awarded attorneys' fees and costs in the amount of \$29,962.50 to Complainant Ronan and \$41,835.23 to Complainant Mills.

MCAD and Rebecca Hammond v. Carol O'Leary Residential Cleaning Specialists & Carol O'Leary, 38 MDLR 94 (2016)

The Full Commission affirmed the Hearing Officer's decision holding Respondents liable for discrimination on the basis of gender and pregnancy, affirming the award to Complainant of \$6,500 for lost

wages and \$10,000 for emotional distress. The Full Commission determined there was substantial evidence to support the Hearing Officer's findings that the Respondents had mixed motives for terminating Complainant's employment, one legitimate -- concerns about Complainant missing work and having unreliable transportation --and one illegitimate -- Complainant's pregnancy. Ultimately, the Hearing Officer determined that Respondents terminated Complainant's employment based on impermissible considerations of her pregnancy. This finding was supported by evidence that revealed that Complainant's absences were excused prior to the disclosure of her pregnancy and that other employees were not disciplined for their tardiness or absenteeism. The Full Commission awarded Complainant attorneys' fees and costs in the amount of \$18,774.56.

MCAD and Mary Jane McSweeney v. The Trial Court of Massachusetts, 38 MDLR 63 (2016)

The Full Commission affirmed the Hearing Officer's decision holding the Trial Court liable for gender discrimination and determined there was substantial evidence to support the following findings. The Trial Court selected an external male candidate instead of the female Complainant for the position of Operations and Maintenance Supervisor of the Plymouth Courthouse, despite the hiring panel's unanimous choice that she be promoted to the position. The Complainant was a seventeen-year employee of the Trial Court and the only female candidate for the position. The Hearing Officer concluded that Respondent's articulated reasons for failing to promote Complainant were pre-textual. The Hearing Officer concluded that unconscious discriminatory gender bias was an important ingredient in Respondent's hiring decision as evidenced by the disparate treatment of male comparators. The Hearing Officer awarded damages of back pay in the amount of \$30,058.29, front pay in the amount of \$126,469 and emotional distress damages in the amount of \$50,000. The Full Commission discounted the award of front pay damages to present value, reducing the front pay award to \$97,886.28, and otherwise affirmed the awards. The Full Commission also awarded Complainant \$58,157.55 in attorneys' fees and costs.

MCAD and Mary Catherine Roughneen v. Bennington Floors, Inc., et al., 38 MDLR 48 (2016)

The Full Commission affirmed the Hearing Officer's decision concluding that Complainant was the victim of both quid pro quo and hostile environment sexual harassment. The Hearing Officer's holding that Respondents were not liable for discriminatory/retaliatory termination was also upheld. The Complainant was a General Manager of a custom kitchen showroom. Respondent John Webby was a construction supervisor who oversaw Complainant. The Full Commission found that there was substantial evidence to support findings that Respondent, John Webby had propositioned Complainant and made unwelcome sexually suggestive comments to her, and after she complained, ceased communicating with her and began to undermine her management of her subordinates. Complainant testified when she thereafter attempted to "bury the hatchet," Webby resumed his sexually-offensive conduct, including grabbing her buttocks when she hugged him as a gesture of reconciliation. Complainant testified that Webby's behavior was of great distress to her and that she attempted to avoid him in the workplace. However, Complainant was later terminated by Laurie Dickey, principal and co-owner, for reasons determined to be legitimate and non-discriminatory. The Hearing Officer awarded Complainant \$50,000 in emotional distress damages, ordered sexual harassment training, and assessed a civil penalty in the amount of \$10,000 against the individual Respondents Laurie Dickey and John Webby. The Full Commission affirmed these damage awards.

MCAD and Carol Poliwczak v. Mitch's Marina, et al., 38 MDLR 148 (2016)

In this public accommodation case, the Full Commission affirmed the decision of the Hearing Officer, in part, concluding that Respondents discriminated on the basis of handicap and retaliation in a place of public accommodation. The Complainant and her husband had rented a camp site and boat slip from Mitch's Marina for twenty-four years prior to the summer of 2004. Complainant suffered a stroke in 2003, which left her with certain physical limitations, including difficulty walking and lack of stability, especially on stairs or uneven surfaces. In the summer of 2004, Melvin Broussard informed Complainant's husband that they could no longer park their vehicle in a parking spot which was

easily accessible to their campsite, which the Complainant had used for the past twenty-four years. The Poliwczaks were not permitted to use the parking spot for the remainder of the camping season. In 2005, when Complainant did not receive her annual campground renewal information from Respondents, she was informed by Melvin Broussard that he and his brothers had taken a vote and decided not to extend a renewal contract. Following this refusal, the Policzaks sold their camper in 2005, which the Hearing Officer determined exacted a lasting lifestyle change, causing Complainant significant emotional distress. The Respondents represented in their Position Statement that Mervil and Melvin Broussard were the operators of Mitch's Marina. All three brothers, Michael, Mervil and Melvin Broussard, signed the Position Statement which was entered into evidence at the Public Hearing, without objection. The Hearing Officer awarded Complainant \$15,000 for emotional distress damages, imposed a civil penalty of \$5,000 and ordered that Respondents offer a renewal contract to the Complainant and her husband. The Hearing Officer also allowed Complainant's Motion to Amend the Complainant to include Mervil, Melvin and Michael Broussard as Respondents. The Full Commission affirmed the liability and damage findings, but determined that based on the administrative record, only Mervil and Melvin should have been added as individual Respondents. The Full Commission determined that there was sufficient evidence to find that Mervil and Melvin Broussard were acting as a de facto general partnership doing business as Mitch's Marina, and that the addition of these two brothers was a correction of misnomer.

MCAD and Kevin Doran v. The R.O.S.E. Fund, 38 MDLR 187 (2016)

The Full Commission affirmed a Hearing Officer's decision dismissing a complaint of sex and sexual orientation discrimination in this public accommodations case. The Respondent, Regaining One's Self-Esteem (R.O.S.E.) Fund is a non-profit corporation formed for charitable and education purposes to assist female survivors of sexual assault, molestation, eating disorders or abuse. The R.O.S.E. Fund ran a referral program for female victims of domestic violence to obtain access to medical and dental reconstructive procedures for a substantially reduced fee. Complainant was a male survivor of domestic violence who did not obtain facial

reconstruction surgery. The Hearing Officer held that this charitable organization established for the purpose of assisting female survivors of domestic violence was not a place of public accommodation, accordingly the denial of facial reconstruction services to Complainant did not support a claim of discrimination under G.L. c. 272 §92A. The Full Commission found no error in this determination. The Full Commission also rejected Complainant's claim under G.L. c.151B §4(14), holding that this

statutory description of an unlawful practice in furnishing services applies only to credit-related services, and that the Respondent's Referral Program did not fall under the purview of the statute. Finally, the Full Commission recognized that requiring The R.O.S.E. Fund to offer its charitable services equally to all despite its particular mission, could be a violation of the expressive rights of the charitable organization, protected by the U.S. Constitution's First Amendment.

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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 to remove to 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 is the agency of the United States government that enforces the federal employment discrimination laws.

HUD: 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 charged.

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.

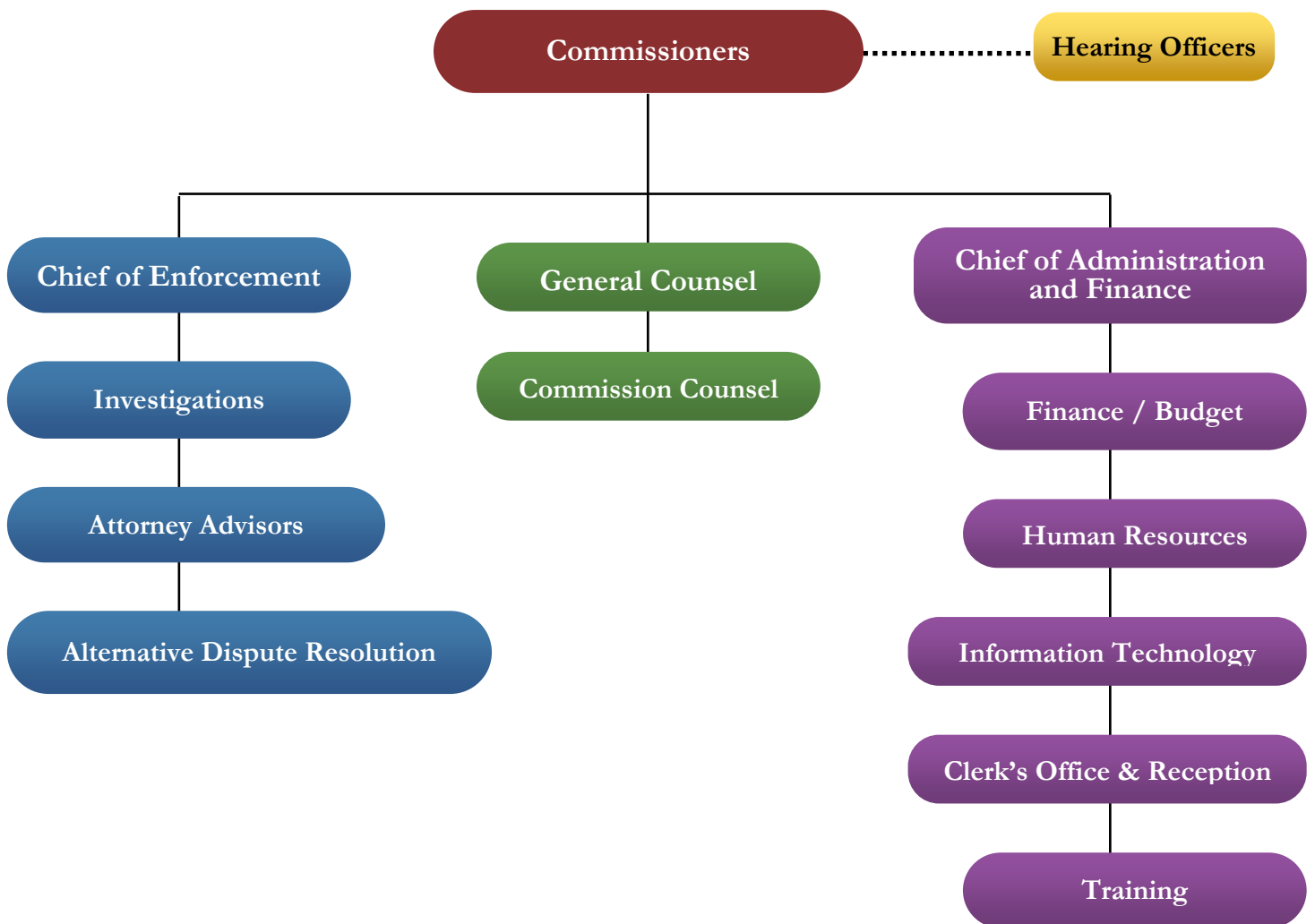
Probable Cause: A determination of the Investigating Commissioner that there is sufficient evidence upon which a fact-finder could form a reasonable belief that it is more probable than not that the Respondent committed an unlawful practice.

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, gender-identity, ethnicity, age, national origin, sexual orientation, and disability.

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.

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.”

MCAD ORGANIZATIONAL STRUCTURE



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AGAINST DISCRIMINATION (MCAD)**

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