

M



ENFORCEMENT

C



INVESTIGATION

A



ADJUDICATION

D



TRAINING



ANNUAL REPORT

FISCAL YEAR
2019

About the MCAD

The Massachusetts Commission Against Discrimination (MCAD) is the independent state agency that enforces the anti-discrimination laws of the Commonwealth through training, mediation, investigation, prosecution and adjudication.

The people of Massachusetts, its workers, and visitors may file a Discrimination Complaint if they believe they were treated differently or unfairly in Massachusetts based on their identity as a member of a protected class (e.g., race, disability, age, national origin, gender, sexual orientation, or veteran's status).

The MCAD has four offices, Boston, New Bedford, Springfield, and Worcester, where one can meet with an intake specialist for a free consultation and file a Complaint. In most cases, there is a 300-day statute of limitations on filing a Complaint at the MCAD from the last discriminatory act. Complaints filed at the MCAD will be investigated by an MCAD staff member to determine if the treatment alleged constitutes unlawful discrimination. The MCAD conducts its investigation as a neutral entity.

The MCAD also offers training and outreach to address and prevent discrimination. The Commission also conducts policy reviews, provide draft model policies online, and issues guidance on Acts that affect the work of the Commission.

Main Contact Numbers

Boston Headquarters Reception

Front Desk Reception	mcad@mass.gov	617-994-6000
----------------------	---------------	--------------

Office of the Commissioners & Press Office

H Harrison, Assistant to Commissioners	h.harrison@mass.gov	617-994-6147
--	---------------------	--------------

Investigations Division

Heather Hall, Chief of Investigations	heather.hall@mass.gov	617-994-6012
---------------------------------------	-----------------------	--------------

Legal Division

Connie McGrane, General Counsel	connie.mcgrane@mass.gov	617-994-6020
---------------------------------	-------------------------	--------------

Training Unit

Jeremy Scheiner, Director of Training	training.assistant@mass.gov	617-994-6072
---------------------------------------	-----------------------------	--------------

Clerk's Office

Myrna Solod, Clerk of the Commission	myrna.solod@mass.gov	617-994-6034
--------------------------------------	----------------------	--------------

Public Records Requests

Theresa Lepore, Records Access Officer	cadrao@mass.gov	617-994-6124
--	-----------------	--------------

Operations and Finance Division

Michael Memmolo, Chief of Operations	michael.memmolo@mass.gov	617-994-6124
--------------------------------------	--------------------------	--------------

Alternative Dispute Resolution Unit

Michael Zeytoonian, Director of ADR	michael.zeytoonian@mass.gov	617-994-6055
-------------------------------------	-----------------------------	--------------

Table of Contents

i	About the MCAD Main Contact Numbers
ii	Table of Contents
1	Letter from the Commissioners
3	Operations & Finance Report
4	FY19 & FY20 Budget
5	MCAD Process Flow Chart
7	Investigations Division Report
11	Legal Division Report
20	Hearing Division Report
26	Significant Full Commission Decisions
29	Glossary of Terms
30	Staff List
31	Advisory Board List Intern List

Commissioners

Sunila Thomas George
Chairwoman

Monserate Quiñones

Neldy Jean-Francois

MCAD Locations

Boston **MCAD**
1 Ashburton Pl. Ste. 601
Boston, MA 02108
P: 617.994.6000
F: 617.994.6024

New Bedford **MCAD**
128 Union St. Ste. 206
New Bedford, MA 02740
P: 774.510.5801
F: 774.510.5802

Springfield **MCAD**
436 Dwight St. Rm. 220
Springfield, MA 01103
P: 413.739.2145
F: 413.784.1056

Worcester **MCAD**
484 Main St. Rm. 320
Worcester, MA 01608
P: 508.453.9630
F: 508.755.3861

TTY 617.994.6196

www.mass.gov/mcad

Letter from the Commissioners

Dear Governor Baker, Lieutenant Governor Polito, Speaker DeLeo, Senate President Spilka and Members of the General Court: In accordance with Chapter 151B, §3 (10) of the Massachusetts General Laws, we hereby submit the Fiscal Year 2019 (FY19) Annual Report of the Massachusetts Commission Against Discrimination (MCAD).

We are pleased to present the first fiscal year publication, which encompasses all areas of the agency's progress towards eradicating discrimination between July 1, 2018 and June 30, 2019. The FY19 achievements detailed in this report incorporate areas of Administration and Finance, outcomes on Investigations, Training results, Mediation services, Conciliations, Public Hearings and other initiatives. These achievements were obtained, in part as a result of increases provided in the FY19 budget. The MCAD budget growth represents nearly \$2 million dollars in additional state funding compared to FY18, which is the largest state funding increase the agency has received during the last several decades. Additionally, in FY19, the MCAD earned the most federal revenue to date through its workshare agreements with its federal partners, the U.S. Department of Housing and Urban Development (HUD) and the U.S. Equal Employment Opportunity Commission (EEOC). The Commission also earned revenue through its robust training and educational programs.

The funds received in FY19 allowed the MCAD to fortify the agency across every department, as well as invest in additional tools to accomplish the agency's mission. The MCAD was able to hire new investigators to help triage sexual harassment cases and expand its training unit staff. The Commission saw significant internal interest in its new opportunities, and promoted 11 employees to new positions. Additional reinforcements included backfilling and hiring attorney advisors, a new Director for the Alternative Dispute Resolution Unit, and, for the first time in more than two decades, a Director of IT, to provide IT support and to implement cost-saving measures across all of the MCAD regional offices.

In March 2019, the Commission welcomed its newest Commissioner, Neldy Jean-Francois. Commissioner Jean-Francois has returned to the Commission—where she started as an intern and later worked as a Compliance Officer in the Investigations division—after serving as the First Deputy Commissioner and Chief of Staff of the Department of Professional Licensure (DPL). Previously she served as Deputy Commissioner of the Office of Public Safety and Inspections (OPSI), where she provided oversight to DPL's operations, policies and licensing functions. Commissioner Jean-Francois' knowledge of the inner-workings of this agency and her impressive career in state government add invaluable skills to the MCAD.

In a major milestone for the agency, the MCAD released proposed changes to its Rules of Procedure (804 CMR 1.00), the first major overhaul in 20 years. The overarching goal of the revision process was to develop clearer procedural regulations that accurately reflect the agency's practices and procedures. The public hearings will take place across the Commonwealth in Springfield, Boston, Bedford, West Barnstable and Worcester in October.

In an effort to increase public knowledge of the work of the agency and the vital services we provide, the MCAD launched its first Public Awareness Campaign on public transportation across the Commonwealth. The campaign (pictured right) appeared throughout the MBTA, Worcester Regional Transit Authority and Pioneer Valley Transit Authority, highlighting the agency's mission, services, and efforts to curtail discrimination in Massachusetts. The ads ran on subway platforms, bus and train cars, and billboards.

The Commissioners remain dedicated to improving the delivery of the agency's services. To that end, this administration has resolved to address the backlog of cases awaiting an investigative finding as well as prioritize issuing Final Decisions of the Full Commission. Currently, our inventory of aging investigation cases is below 300 cases (285), the lowest it has been in decades. Our hope is to reduce the time necessary to conduct an investigation to an average of 12-months (down from 18) and, barring unforeseen circumstances, we are confident that this goal is within reach.

It is worthy to note that we consider our greatest resource being our workforce. The successes and achievements outlined in this report would not be possible without the dedicated Senior Managers and staff of this agency who, with scarce resources, complied with our expanding legislative mandate, for a truly remarkable year.

We extend a special thanks to Governor Baker, Lt. Governor Polito, members of the Legislature, the Executive Branch, the MCAD Advisory Board and our federal partners who have steadfastly championed and supported the Commission's imperative role in civil rights and combatting discrimination throughout the Commonwealth.

Respectfully submitted,

The Commissioners of the MCAD

Sunila Thomas George
Chairwoman

Monserate Quiñones

Neldy Jean-Francois



Operations and Finance Report

The Operations and Finance Division is comprised of the Office of Human Resources, Fiscal/Budget, Information Technology (IT), and Operations. These functions are overseen by the Chief of Operations and Finance (COF).

Fiscal/Budget

The Unit is tasked with all the financial and budgetary functions of the Commission. The Division prepares and submits the Commission's annual budget request to the Commonwealth's Administration and Finance Secretary and the House and Senate Ways and Means committees; monitors fiscal year spending to ensure spending meets planned levels; makes requisite recommendations for spending deviations; oversees all of the Commission's purchasing, including all procurement and contract management; and manages accounts payable, accounts receivable, and revenue activities.

Office of Human Resources

The Unit 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 all Americans with Disabilities Act (ADA) accommodation requests, and processing and approving all Family and Medical Leave Act requests. In collaboration with the Commission's Training Unit, the Division is also responsible for the recruitment efforts of MCAD positions. The COF, as the designated Diversity Officer, oversees all diversity considerations and professional development opportunities. Additionally, the Division recommends and implements agency-wide personnel policies and procedures.

Information Technology

The Unit oversees all of the Commission's IT and telephony functions including desktop and application support for all of the Commission's offices. The Division also procures and supports all of the Commission's hardware and software.

Operations

The Unit manages the operations of the Commission's four office locations, and oversees lease management for the Commission's New Bedford, Springfield, and Worcester offices. The Division is responsible for day-to-day operations of all locations including, but not limited to, maintenance, security, ID access, and asset inventory.

Funding/Personnel

In FY19, the Governor and Legislature continued their overwhelming support for the MCAD and its mission. In FY19 the Commission was funded at historic levels by way of increases to the agency's state appropriation and the increase of its retained revenue caps. FY19 funding was reinvested in the furtherance of the agency's mission to eradicate discrimination by directing funds to ensure the agency continues to reduce its backlog, decrease the time of its investigations and to meet the continued demand for anti-discrimination training. To this end, the agency heavily invested in its most important resource: its staff. The Commission was able to increase staffing for its most critical positions by hiring and backfilling Investigator positions, increasing staffing in the Attorney Advisor and Commission Counsel units, and hiring a Director of IT Operations.

Finally, in FY19, the agency expanded its highly successful Alternative Dispute Resolution (ADR) unit. In FY19 the agency was able recruit an ADR Director, who has standardized our mediation and conciliation processes, procedures, and reporting tools.

MCAD Budget for FY19

July 1, 2018 – June 30, 2019

Direct State Appropriation

(Line Item 0940-0100)

State Appropriation Total	\$ 3,800,000
CBA Reserve	\$ 44,282

Retained Revenue Collected

(Line Item 0940-0101)

HUD	\$ 1,001,619
EEOC	\$ 2,409,582
CBA Reserve	\$ 39,766
Audit/Copying fees	\$ 1,452
Attorneys' Fees	\$ 0
Retained Revenue Total	\$ 3,452,419

Training Program

(Line Item 0940-0102)

Training Program Total	\$ 327,350
------------------------------	------------

Total FY18 Appropriated Funds & Collected Retained Revenue

\$ 7,624,051

Expenses

Payroll	(\$ 6,096,996)
Rent	(\$ 132,645)
Administrative Overhead	(\$ 924,466)

Total FY18 Expenses	(\$ 7,154,107)
Reversion to General Fund¹	(\$ 319,944)
Requested PAC to FY20	(\$ 150,000)

MCAD Budget for FY20

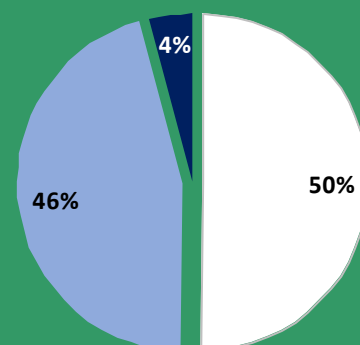
July 1, 2019 – June 30, 2020

State Appropriation (Line Item 0940-0100)	\$ 4,047,794
Retained Revenue (Line Item 0940-0101)	\$ 3,620,000
Training Program (Line Item 0940-0102)	\$ 410,000

Total FY19 Budget²	\$ 8,077,794
--	---------------------

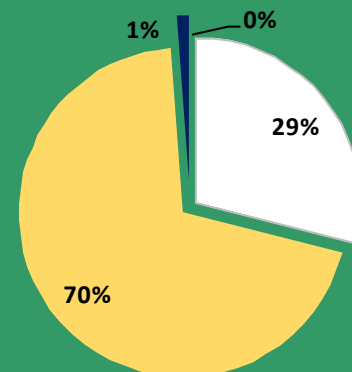
1. Funds earned in excess of the retained revenue caps as well as unspent funds are reverted back to the General Fund. This reversion occurred due to delays in hiring, which are not expected to reoccur in FY20.
2. FY20 Budget includes all funds and retained revenue allocated in the FY19 Final Budget and all supplemental appropriations.

FY19 Funding & Revenue



State Appropriation	\$3,800,000
Retained Revenue	\$3,452,419
Training	\$327,350
Total	\$7,624,051

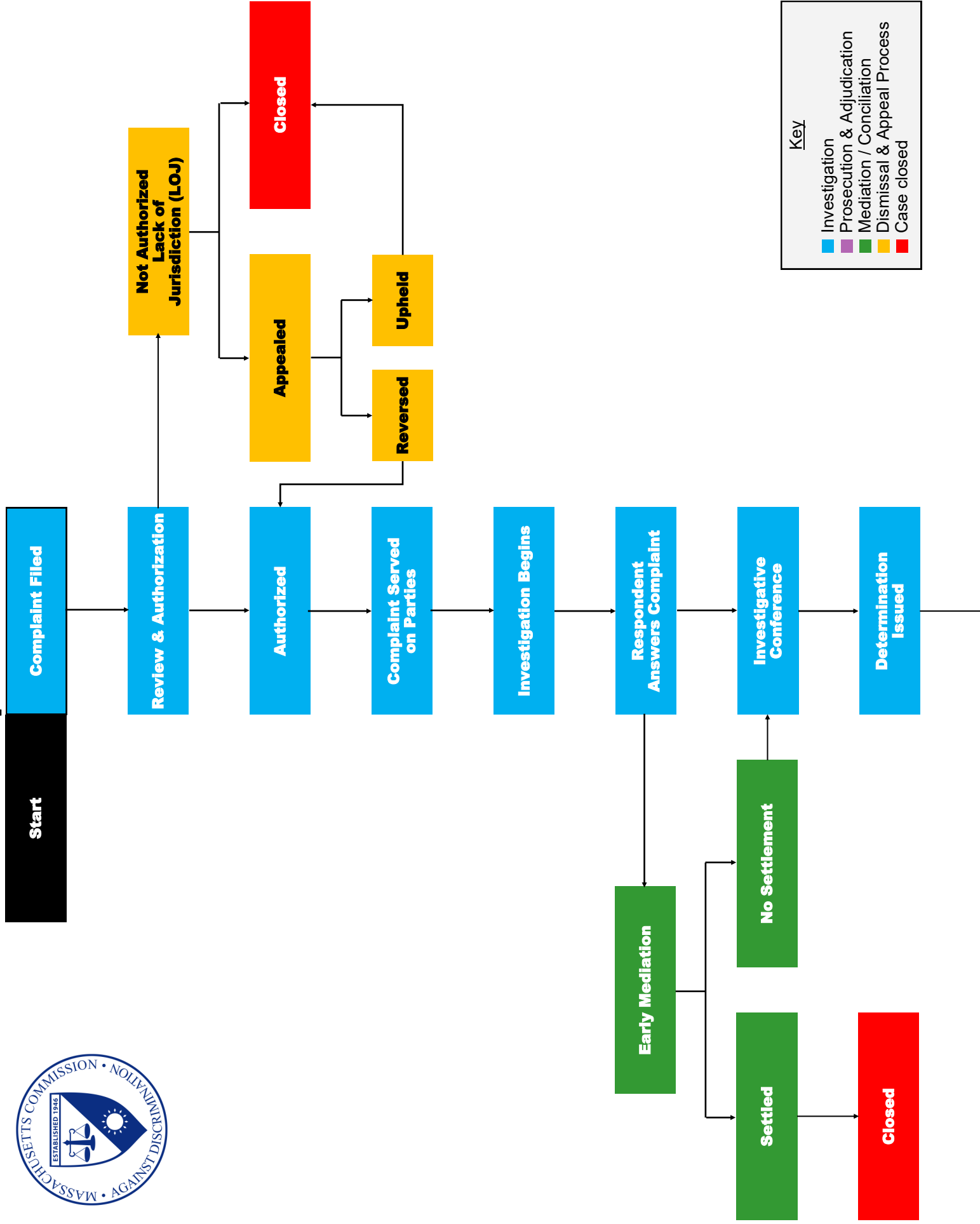
Retained Revenue Sources



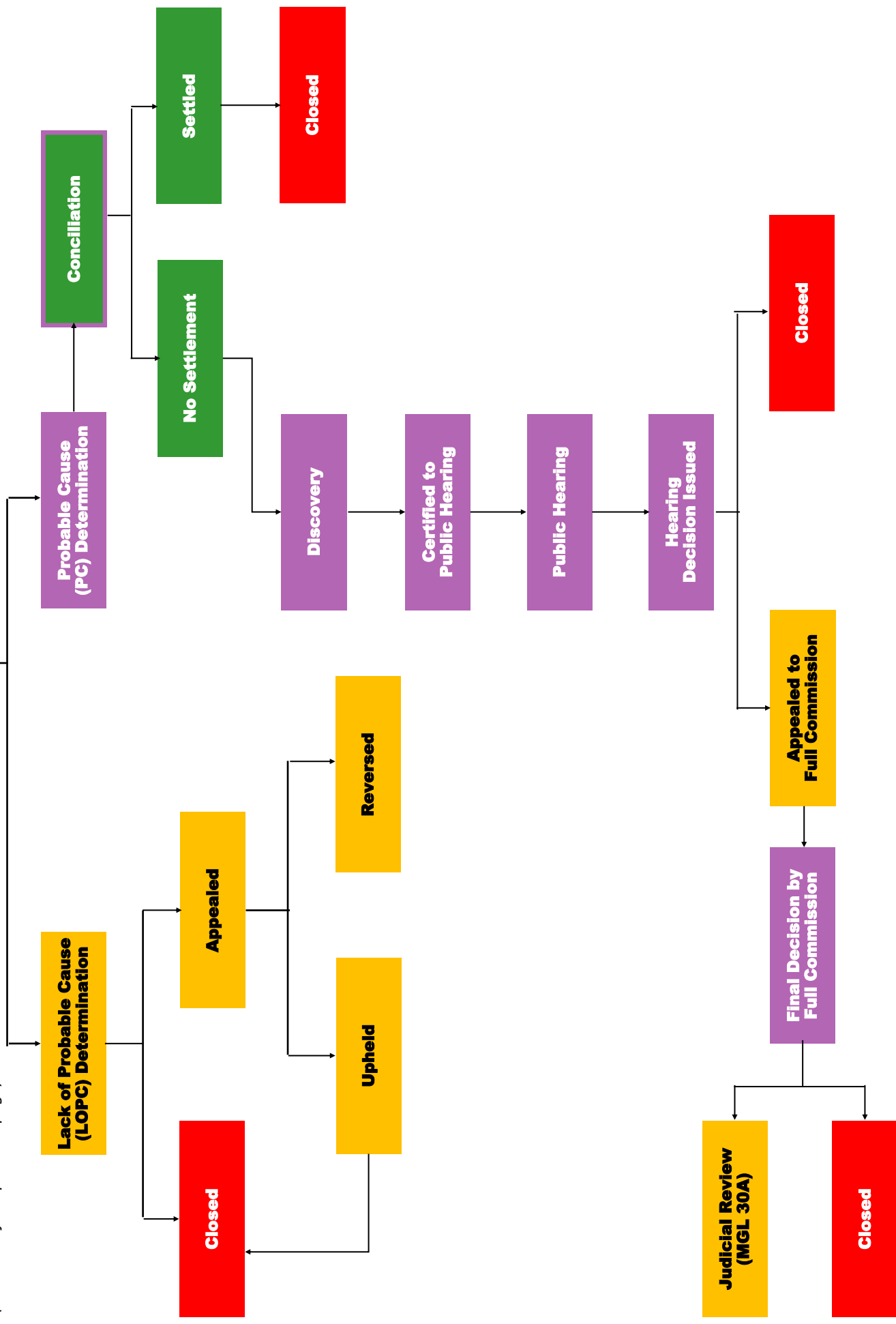
HUD	\$1,001,619
EEOC	\$2,409,582
CBA Reserve	\$39,766
Fees	\$1,452
Total	\$3,452,419



MCAD Complaint Process Flowchart



(Continued from previous page)



FY19 At a Glance



6,000

Information Calls



5,000

Consultations



3,364

New Complaints



589

Public Records
Requests



279

Trainings



624

Mediations &
Conciliations



41

Public Speaking
Engagements

Website Traffic

Top 10 MCAD webpages
(average visitors per annum)

MCAD Homepage	63,716
Parental Leave in MA	48,110
File a Complaint	15,026
Hearing Decisions	10,970
Guide to the MCAD Complaint Process	10,296
Overview of Types of Discrimination	10,128
Sexual Harassment	9,582
Publications	8,058
Guidance on Pregnant Workers Fairness Act	8,328
Statutes & Regulations	4,844

Training and Outreach Unit

The MCAD Training, Education, and Community Outreach Unit provides internal and external discrimination prevention trainings, oversees recruitment and onboarding of all new agency staff and interns, and coordinates the Commission's legislative affairs program. In FY19, the unit hired two more team members to grow from two to four full-time staff.

The Education, Training, and Community Outreach Unit conducted and attended approximately 337 external discrimination prevention training sessions, community events, and career fairs across the state impacting roughly 9,500 participants. The Training Unit offers anti-discrimination training in the workplace, housing, sexual harassment, disability and religious accommodations, and conducting internal investigations. The MCAD was honored to provide anti-discrimination training to the Massachusetts House of Representatives and their staff, and the Boston City Council.

Additionally, the Commission held its 19th annual Courses for Equal Employment Opportunity Professionals, including, for the first time ever, a Western Massachusetts cohort. These multi-day courses include Train the Trainer, Responding to Accommodation Requests, and Conducting Internal Discrimination Complaint Investigations.

Beyond training work, the Education, Training, and Community Outreach Unit supported the recruitment and hire of over 20 staff members and 30 interns at the Commission. The unit's work includes recruitment strategy design, managing interview and selection processes for all vacancies, creating on-boarding plans for all new staff, and running new employee/intern training.

Finally, in FY19 the Unit began managing the Commission's legislative affairs program. This program includes tracking all legislation that impact the MCAD's jurisdiction, coordinating and attending meetings with legislators and interest groups about pending legislation, attending public hearings, and coordinating written and oral testimony.

Investigations Division Report

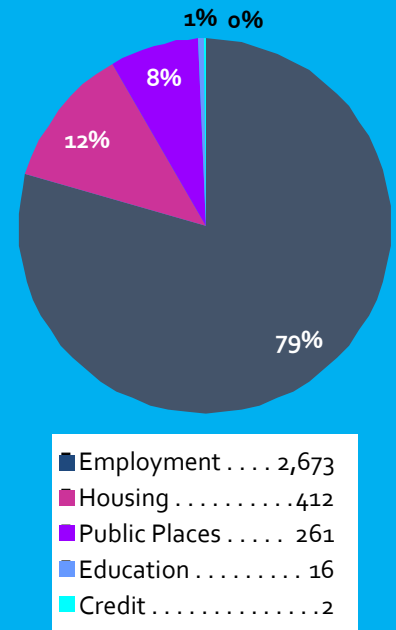
The MCAD's Investigations Division investigates Complaints of discrimination filed at the Commission. If the MCAD determines that it lacks jurisdiction or an investigation is not authorized, the Complaint is dismissed. Otherwise, the MCAD proceeds with a formal investigation.

First, the Complaint is served on the parties involved and the Respondent must answer the Complaint in the form of a Position Statement. The Complainant may then respond to the Position Statement with a Rebuttal. During the course of the investigation, the Investigator may interview witnesses, obtain documents, conduct site visits, or hold an investigative conference to gather additional information and seek clarification from the parties. When the Investigator concludes the investigation, they submit a recommendation in the form of a draft disposition for review to an Attorney Advisor. Once the Attorney Advisor completes the review, the disposition goes to the assigned Investigating Commissioner with a recommendation of Probable Cause (PC)—that it is more likely than not that unlawful discrimination occurred—or Lack of Probable Cause (LOPC). The investigation concludes when the Investigating Commissioner issues her findings, called the Investigative Disposition.

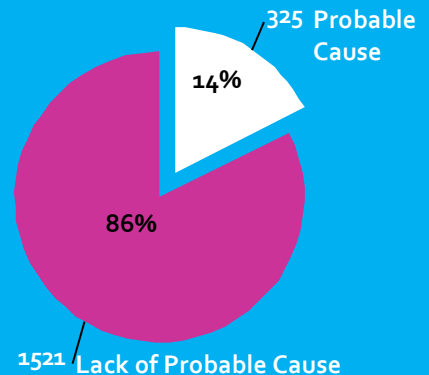
Thanks to the increase in state and federal funding, FY19 was a year of transition and growth for the MCAD's Investigations Division. Many employees were promoted to new roles, creating a cascade of opportunities within the division. Four (4) seasoned Investigators were promoted to supervisory positions, three in Boston and one in Worcester, along with a fifth (5) Investigator who has been serving in an acting supervisory role. We also promoted several Investigators to Attorney Advisor positions. We look forward to their continued growth with the Commission.

In FY19, the MCAD received a staggering 3,364 Complaints, which was approximately 450 cases more than calendar year 2018 (a 15% increase). Also of note, the Commission's cases over 18 months old awaiting a determination (the "backlog") now rests below 300 for the first time in a decade, and is now at 285 cases. The ongoing reduction in the backlog is a testament to the hard work and continued determination of the Investigations Division team.

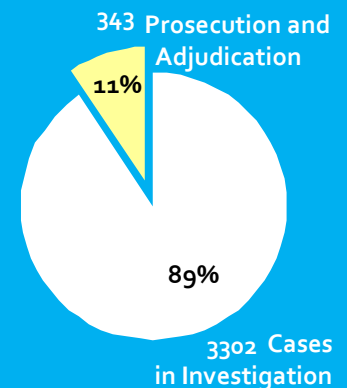
New Complaints by Jurisdiction



Substantive Determinations



Active Cases



Complaints by Protected Category

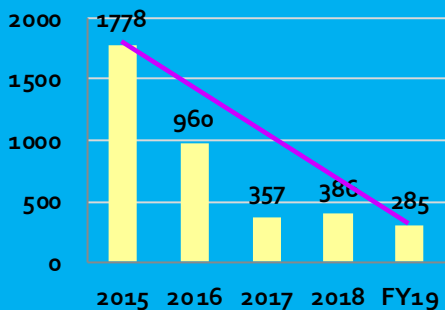
Disability	1,361
Retaliation	1,342
Race, Color	1,064
Sex	950
Age	598
National Origin	483
Religion/Creed	120
Sexual Orientation	113
Public Assistance	64
Other	53
Children	39
Gender Identity	32
Military Status	30
Family Status	28
Criminal Record	26
Lead Paint	17
Genetics	9
Marital Status	6
Veteran Status	6

* Includes Lead Paint, Marital status, Veteran, Genetic information

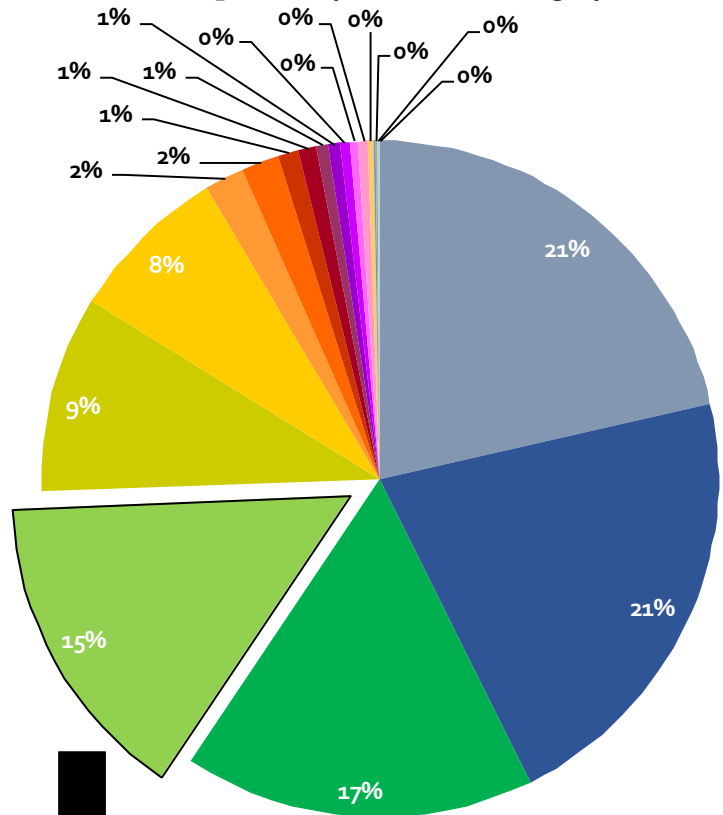
Sex Discrimination Breakdown

Sex Discrimination	597
Sexual Harassment	320
Parental Leave /Pregnancy	106

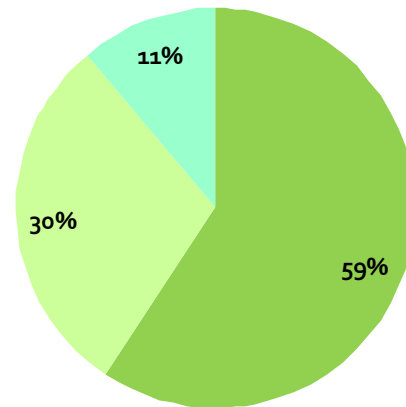
Inventory of Backlog Cases



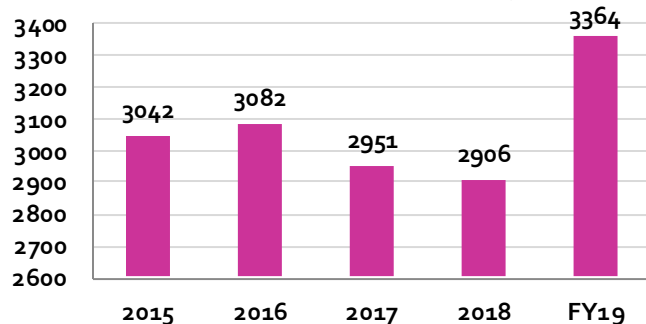
Breakdown of Complaints by Protected Category

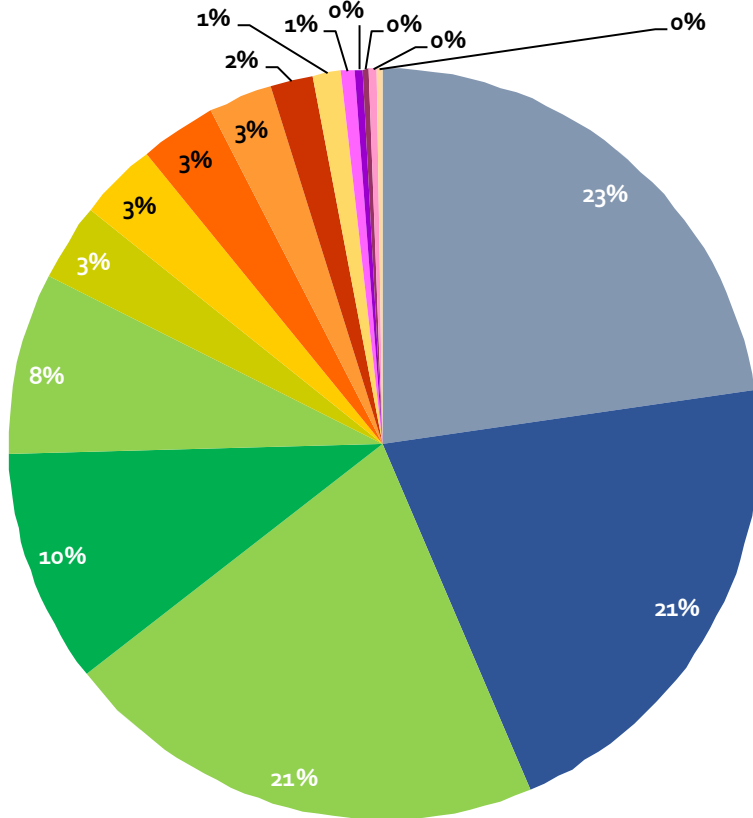


Spotlight on Sex Discrimination Complaints



Complaints Filed Annually

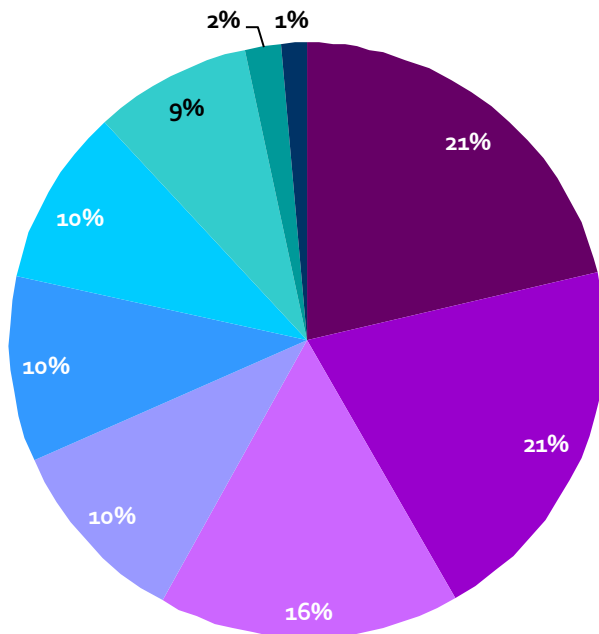


Breakdown of Probable Cause (PC) Findings by Protected Category

PC Findings by Protected Category

Disability	75
Retaliation	69
Sexual Harassment	69
Race	33
Sex	26
Age	11
National Origin	11
Sexual Orientation	11
Religion	9
Public Assistance	6
Lead Paint	4
Familial	2
Children	1
Family Status	1
Gender Identity	1
Veteran	1

Administrative Closures



Administrative Closures

Removed to Court	343
Settled Pre-determination	330
Conciliated	264
Dismissed	167
Settled Pre-determination	161
Withdrawn	157
Lack of Jurisdiction	137
Other*	32
Failure to Cooperate	22

* Bankruptcy, Compliance with Order, Failure to Accept Full Relief, Investigation Not Authorized, Removed to AGO, Unable to Locate Complainant, Violation/Enforcement

Legal Division Report

The Legal Division provides legal services and support to the Commission to achieve the goal of eradicating discrimination in Massachusetts. The Legal Division includes the General Counsel, Deputy General Counsel, Commission Counsel, the Clerk's Office, and the Full Commission Law Clerk. Two additional Commission Counsel were hired in FY19, bringing the total number of Commission Counsel to eight attorneys. The Legal Division also oversees the Full Commission review process, and provides recommendations on post-Probable Cause (PC) motions to the Investigating Commissioners.

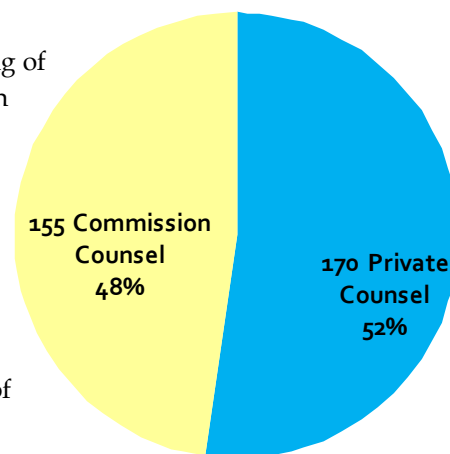
The Clerk's Office within the Legal Division consists of the Clerk of the Commission, Deputy Clerk/Records Access Officer, Hearings Clerk, Conciliation Clerk, and Appeals Clerk. The Clerk's Office in Boston is responsible for overseeing Commission Public Hearings and Full Commission filings, assignment of motions to Hearing Commissioners and Officers, issuing Commission decisions and responding to public inquiries. In FY19, the Clerk's Office responded to 589 public records requests. The Clerk's Office in Springfield is staffed by an Assistant Clerk and First Assistant Clerk.

Commission Counsel enforce the Commonwealth's anti-discrimination laws through prosecution of Complaints at public hearings and through litigation and appellate practice in Massachusetts courts. Commission Counsel also prosecute Commission-initiated complaints, and participate in conciliation proceedings. Commission Counsel hear and review appeals from Lack of Probable Cause (LOPC), Lack of Jurisdiction (LOJ) and Review and Authorization (R&A) dismissals, and provide recommendations to Investigating Commissioners regarding their findings. The Legal Division is also responsible for defending agency decisions when judicial review is sought in Superior Court and/or the State's appellate courts pursuant to M.G.L. c. 30A, § 14(7). The Legal Division defends challenges to the Commission's jurisdiction and procedure and files enforcement actions to obtain compliance with the Commission's final orders. The Legal Division also provides legal and procedural advice concerning matters affecting the Commission, motions presented to Investigating Commissioners, personnel, investigations, public records requests, and proposed legislation.

The Legal Division additionally develops publications for the Commissioners and public, providing guidance and responses to frequently asked questions (FAQs) concerning new and evolving areas of the laws enforced by the Commission. Members of the Legal Division also participate in outreach and training efforts to educate staff and the public. Additionally, the Legal Division provides significant support for new regulations issued by the Commission. It develops friend of court (amicus) briefs concerning Massachusetts anti-discrimination laws in cases litigated by private parties in the appellate courts. The Legal Division also works in conjunction with the Attorney General's Office when appropriate to defend the agency and its enforcement powers in administrative and litigation matters.

Cases Assigned to MCAD Commission Counsel

Commission Counsel prosecute cases at Public Hearings after a finding of Probable Cause by the Investigating Commissioner. Commission Counsel proceed in the public interest to eradicate discriminatory practices by obtaining affirmative relief and victim-specific relief for Complainants, particularly *pro se* complainants, who are not represented by private legal counsel. Of the 325 cases with a Probable Cause determination in FY19, the Legal Division was assigned to prosecute 155 new cases filed by *pro se* complainants. Additionally, Commission Counsel remained assigned to prosecute their caseload of 144 cases which existed as of June 30, 2018 (the end of fiscal year 2018).



Noteworthy Settlements by Commission Counsel

In the second half of FY19 (January 1, 2019 through June 30, 2019), Commission Counsel resolved a total of 52 discrimination cases through conciliation and negotiation, recovering \$823,617 in victim specific relief. In addition, the agency secured affirmative relief in the form of anti-discrimination training and policy reviews. For the entity of FY19, Commission Counsel resolved a total of 97 discrimination cases.

The following is a description of some representative matters which were resolved by settlement during the second half of FY19 (Jan 1 – June 30), classified by the type of alleged discrimination. For other representative matters resolved in the first half of FY19 (July 1 – Dec 31), please see the previously issued Commission's Calendar Year 2018 Annual Report.

Employment Cases Highlights

A skilled and seasoned firefighter/paramedic filed Complaints against two municipalities alleging that he was discriminated against because of his age when, despite his superior qualifications, he was passed over twice for hire in favor of younger, less qualified individuals. Resolving the matter independently with each municipality, the Complainant received compensation for lost wages and emotional distress in the amount of \$57,500. [Barnstable County]

In this disability discrimination case, Complainant, who had breast cancer, alleged that Respondent denied her the reasonable accommodation of an extension of a medical leave to allow her to obtain further treatment, and subsequently terminated her employment. Respondent agreed to pay Complainant \$25,000, provide fair employment training for its managers and staff, and revise its Equal Employment Opportunity policy. [Barnstable County]

In a Complaint filed against a Massachusetts governmental agency, an individual alleged that she was denied a promotion based on her age. Specifically, the Complainant alleged that her Supervisor favored younger employees, providing them with additional training opportunities and responsibilities in order to make them more attractive candidates for promotion. The Complainant alleged that despite outperforming all of the other applicants, she was denied a promotion in favor of a younger employee. Under the stewardship of a new Commissioner of the Respondent agency, the matter resolved by granting the employee the promotion and providing compensation for all lost wages. [Bristol County]

A Construction Manager filed a Complaint alleging that over a one-year period, he was subjected to sexual innuendo, an explicit sexual comment, and unwanted sexual touching by another male coworker. When the Construction Manager informed the Superintendent about the offensive conduct, his concerns were disregarded. In retaliation for his complaints, he was terminated from employment. In satisfaction of his claims, the construction company agreed to anti-discrimination training for all individuals with supervisory responsibilities, and a payment in the amount of \$50,000 representing back pay and emotional harm compensation. [Essex County]

In this retaliation case, a female employee internally complained that her company paid women less than men and shortly thereafter was terminated from the company. While the Commission issued a disposition finding that there was insufficient evidence to support gender-based pay disparities, it issued a probable cause on the retaliation claim based on the Respondent retaliating based upon the employee's Complaint and her belief that the pay disparity claim was in good faith. This company agreed to pay the Complainant \$30,000 and provide general anti-discrimination and retaliation training to two of its managers. [Essex County]

In this case alleging that Respondent, a social services provider, terminated Complainant's employment for advocating too strongly for the organization's Hispanic clients, Respondent agreed to

pay Complainant \$25,000, and to retrain its employees on proper procedures for addressing grievances by its clients. [Hampshire County]

The Complainant was a woman who worked for a regional retail chain of stores for 20 years. She internally complained that she was subjected to disparate terms and conditions of employment based upon gender by a male Store Manager, including disparities in the manner in which the Manager accommodated male employees' schedules while refusing to accommodate female employees' schedules. After her internal Complaint of sex discrimination, the company issued her the first written warning she had ever received. The warning asserted that she had failed to appear for work, a claim she denied. She also claimed that her Manager then refused to communicate with her directly and told other employees not to speak with her. She then complained to the company's human resources department that she was being retaliated against by her manager. When the retaliatory conduct continued and the company took no action, she resigned claiming that she had been constructively discharged. The company agreed to pay her \$60,000 and send the regional human resources representative to a three-day training on conducting internal discrimination investigations. [Middlesex County]

In this case, a long term employee of a regional supermarket chain claimed that his employer failed to engage in an interactive dialogue and provide a reasonable accommodation for his disability. The company agreed to pay the employee \$20,000, send its human resources professional to a three-day training program on disability discrimination and reasonable accommodation, and provide reasonable accommodation and disability training to all of its managers and supervisors at one of its locations. [Middlesex County]

A female facilities Supervisor filed a Complaint of gender discrimination and retaliation against an area university alleging that a misogynistic work environment existed in her department. Despite multiple complaints about gender discrimination and harassment, no remedial action was taken. Instead, she was subjected to retaliatory conduct and ultimately terminated from her position. In resolution of the matter, the university agreed to training for all department employees, with managerial or supervisory responsibilities, and a payment of \$28,000 representing back pay and emotional harm. [Norfolk County]

In this case, Complainant, an inside commercial representative for a multi-state company, took medical leave for the delivery of her child. Subsequently, she developed depression and required additional medical leave. Complainant alleged that she was terminated for needing and taking the additional leave for her disability. Respondent agreed to pay Complainant \$35,000, to provide fair employment training for its managers in Massachusetts, and to provide for review by the MCAD its Equal Employment Opportunity policy for Massachusetts. [Norfolk County]

In this sex discrimination case, a female security guard alleged that her male Supervisor terminated her on the basis of her sex. The company agreed to pay her \$25,000 and to send the Supervisor to anti-discrimination training. [Suffolk County]

In this case, a female employee alleged that her Supervisor had subjected her to sexual harassment. She further claimed that when she complained about the harassment, the company took no action against the male Supervisor, retaliated against her and subsequently, terminated her employment. The company agreed to pay the employee \$25,000. [Worcester County]

Housing Cases

In this sexual harassment case, Complainant, a tenant of Respondent, alleged that Respondent's maintenance Supervisor made inappropriate comments to Complainant that escalated to actual touching, repeated calls to the Complainant, and requests for sexual favors. Respondent agreed to pay Complainant \$13,000, and to adopt and provide to its tenants a fair housing policy regarding tenants' rights to be free of discrimination in housing, including but not limited to sexual harassment. [Middlesex County]

Complainant and her husband were existing tenants of Respondent landlord, who was also a licensed real estate broker. In this housing discrimination case on the basis of familial status, lead paint, and discriminatory statements, Complainant alleged that Respondent refused to renew their lease after learning that Complainant was pregnant because of the possibility of lead paint in the unit. Respondent agreed to pay Complainant \$10,000; test the property for lead paint and remediate (de-lead) as required under the Commonwealth's lead paint law; receive fair housing training; and include the term "De-leaded" in all rental advertisements for the property for a period of five years. [Middlesex County]

In this disability discrimination case, Complainant, the mother of a minor child with cerebral palsy who required the use of a wheelchair, applied for an apartment for herself and her two children. Complainant alleged that, after initially encouraging her to rent the apartment, Respondents refused to rent it to her after she advised the Respondents that she would need to install a wheelchair ramp and stair lift to accommodate her child's disability. Respondents agreed to pay Complainant \$12,500, to receive training on the fair housing laws of the Commonwealth, and to adopt and disseminate a reasonable accommodation policy to all incoming tenants at Respondent's properties in Massachusetts. [Plymouth County]

In a case alleging that Complainant, his wife and seven (7) month old daughter were denied an apartment rental by the property's owners because of the presence of known lead paint hazards, Respondents agreed to resolve the matter for a payment of \$5,000, participation in an MCAD anti-discrimination training, and an agreement that all subsequent advertisements for rental units at the subject property for the next three (3) years would include the statement, "'We do not discriminate against applicants or tenants with children of any age, or based on familial status or any other class protected by law. This property may contain lead paint, but this shall not be a factor in an applicant's eligibility or rental decisions.'" [Worcester County]

Public Accommodations

A mother filed a Complaint of race discrimination (black) because she and her family were denied service at a gas station yet the attendant subsequently served caucasian customers. Complainant immediately returned to the gas station after observing him dispensing gasoline to Caucasian customers and questioned the attendant regarding the denial of service. This resulted in an unsatisfactory interaction and the accusation that the attendant opened complainant's car door and threatened to call the police on her. The situation resolved by the Respondent paying \$10,000 to the complainant; agreeing to train its management team on public accommodation discrimination laws; implementing a Public Accommodation Nondiscrimination Policy for all its Massachusetts' employees; posting a notice to the public that the establishment will not discriminate and including the management contact information; and the implementation of a policy to contemporaneously document any refusal of service to include a description of the patron, vehicle and reason(s) for denial of service. [Middlesex County]

A man alleged that he was treated offensively and denied the opportunity to lease a vehicle from a car dealership based upon race (black). The car dealership compounded the issue when, after the Complainant reported that he believed the dealership treated him poorly based upon his race, the dealership ceased communicating with him. The case was resolved by the Respondent paying the Complainant \$13,500; agreeing to train its employees and managers on public accommodation discrimination laws; implementing a Public Accommodation Nondiscrimination Policy; posting a notice to the public that the establishment will not discriminate and including the MCAD telephone number; and a written apology to the complainant. [Plymouth County]

A man filed a Complaint of race discrimination (black) alleging that while waiting for his takeout food order, he was accosted, belittled and told to move away from the store entrance as he was scaring away customers based upon his race/color. The matter was resolved by the Respondent paying the Complainant \$6,500; agreeing to train its employees and Managers on Public Accommodation discrimination laws; implementing a Public Accommodation Nondiscrimination Policy; and posting a notice to the public that the establishment will not discriminate and including the MCAD telephone number. [Suffolk County]

Noteworthy Public Hearings Prosecuted by Commission Counsel

Commission Counsel prepare and prosecute cases at public hearings through discovery, motion practice, argument, witness preparation and examination. Commission Counsel also prepare proposed findings and conclusions of law following the public hearing. Several public hearings prosecuted by Commission Counsel in FY19 are reported in the Commission's Calendar Year 2018 report. An additional public hearing involving Commission Counsel conducted in calendar year 2019 is described below. Decisions issued in certain cases tried at prior public hearings by Commission Counsel are also described.

MCAD and Paul Dauwer v. Coca-Cola Refreshments U.S.A., Inc., formerly doing business as Coca-Cola Bottling Company of New England and Mark Woodford, MCAD NO. 11-BEM-02659. This is an associational disability discrimination case alleging that Complainant, Mr. Dauwer, was terminated based on his spouse's severely disabling conditions which allegedly significantly increased the health insurance costs for the Respondent which had a self-funded health insurance plan. A three-day public hearing was held on June 17-19, 2019. Post-hearing briefs are due on September 9, 2019.

MCAD, Roberge v. Sullivan Keating & Moran Insurance Agency, MCAD Docket No. 15SEM00594. Sullivan Keating & Moran Insurance Agency ("Insurance Agency") is a Springfield-based insurance agency. Its former employee, Mr. Roberge, suffered from a number of medical conditions that impacted his essential life activities and the operation of major bodily functions. Mr. Roberge was terminated a few hours after returning to work from a medical appointment. Mr. Roberge's colleagues insisted that he did not look well enough to be at work and told him to go home. Relying on statements from colleagues, the owner of the Insurance Agency directed Mr. Roberge to go home and then terminated Mr. Roberge for staying at work. The Hearing Officer's decision was issued on April 25, 2019. The Hearing Officer determined that Mr. Roberge's termination was for legitimate, non-discriminatory reasons and not a violation of M.G.L.c.151B. The Hearing Officer also determined that Respondent failed to engage in an interactive process concerning Mr. Roberge's request to install a Call Caption telephone at his desk to accommodate his hearing impairment. However, finding the Complainant's testimony regarding his distress unpersuasive, the Hearing Officer declined to award any damages for emotional distress. Instead, the Hearing Officer ordered Respondent to participate in disability discrimination training.

MCAD and Attorney General of the Commonwealth of Massachusetts and Madeline Serrano v. Cataldo Ambulance Service, Inc., MCAD Docket No. 14BEM02913. This is a joint prosecution between the MCAD and the Attorney General of the Commonwealth alleging that Complainant, Ms. Serrano, suffered sex and disability discrimination. The Respondent's policies included not permitting leaves of absence to employees during their first year of employment, and a policy of not approving maternity leave for employees unless they were eligible for FMLA leave. Rather than permitting a leave of absence for Ms. Serrano's hospitalization for pregnancy-related complications, Respondent decided to terminate her employment. The Hearing Officer's decision was issued on June 27, 2019. The Hearing Officer determined that Respondent was liable for pregnancy/sex discrimination and disability discrimination based upon its failure to consider reasonably accommodating Ms. Serrano's pregnancy-related disability with a brief leave and for terminating her employment. Complainant was awarded \$43,560 in damages for lost wages and \$200,000 in emotional distress damages. The Hearing Officer also assessed a civil penalty of \$5,000 based upon the deliberate, willful and egregious nature of its discriminatory treatment of Complainant.

Massachusetts Superior Court Activity

The Legal Division defends the Commission's decisions and procedures in the Massachusetts courts. These cases include M.G.L. 30A administrative appeals and challenges to the Commission's investigative and enforcement authority. During FY19, Commission Counsel were assigned 15 new Superior Court cases to defend. The Legal Division and Commission Counsel remained responsible during FY19 for the 14 cases which were pending as of June 30, 2018. The following report describes some of the activity in cases against the Commission being defended in the Massachusetts Superior Courts.

American Reclamation Corp. and Vincent Iuliano v. Massachusetts Commission Against Discrimination et. al, Worcester County Superior Court 2015-0283-C. In 2015, Plaintiffs, American Reclamation Corp. and Vincent Iuliano, filed a M.G.L. c. 30A action seeking review of an MCAD decision finding them liable for associational race discrimination. They then filed a motion for leave to present additional evidence pursuant to M.G.L. c. 30A, § 14(6) associated with Complainant's bankruptcy, which was granted by the Superior Court, staying the matter until further action by the MCAD. The case returned to the MCAD and the parties briefed the issues to the Hearing Officer, who issued a decision in 2017 concluding that a new hearing was not required. Plaintiffs then appealed the Hearing Officer decision to the Full Commission which issued a decision affirming the hearing officer's decision on May 2, 2019, determining that Complainant's failure to disclose his MCAD charge to the Bankruptcy Court did not judicially estop the MCAD's administrative proceeding. The Commission notified the Worcester Superior Court and asked that the Court lift the stay. The Commission compiled and filed a supplemental administrative record. A status conference is being scheduled.

Bear Hill Nursing Ctr. v. MCAD, et al., Suffolk County Superior Court. C.A. No. 1984CV01309D. Bear Hill Nursing Center filed a Complaint in Superior Court seeking judicial review of an Order of the Full Commission. The Full Commission Order affirmed the decision of the Hearing Officer finding that the complainant, Dorothea Codinha, was subjected to discrimination based on her age and disability when her employment was terminated while she was out of work on a medical leave of absence. Ms. Codinha was awarded damages for emotional distress. The Commission is in the process of compiling the Administrative Record.

Camille T. Mata v. Massachusetts Commission Against Discrimination, Franklin County Superior Court Civil Action No. 1878CV00079. The Commission issued an LOPC determination in this education discrimination matter. The MCAD affirmed the LOPC following a preliminary hearing and the pro se Complainant sought relief in Superior Court. The Complainant argued that she was entitled to relief pursuant to M.G.L. c. 30A. The MCAD motion to dismiss based upon lack of jurisdiction over the review of an investigative disposition and failure to state a claim was granted on January 28, 2019 (Mason, J.). Complainant filed a Notice of Appeal and served the Commission with a copy of the Superior Court transcript. The Commission awaits the Clerk's Notice of Assembly of the Record and docketing of the appeal.

Federal Square Properties, Inc. and Pacific Land, LLC v. MCAD, et al., Worcester Superior Court, C.A. No. 1885CV01751B. In this matter, Federal Square Properties and Pacific Land, LLC filed an action in Superior Court seeking judicial review, in accord with M.G.L. c. 30A. The Commission's final order upheld a Hearing Officer's decision finding that Melissa Derusha had been subjected to unlawful housing discrimination. The Hearing Officer awarded emotional distress damages and assessed civil penalties against both the property owner and the rental/management company. This matter is scheduled for argument in August 2019.

Madonna v. MCAD & Fall River Police Department, Suffolk County Superior Court, C.A. No. 1984CV1428. The Plaintiff, Mr. Madonna, filed an action pursuant to M.G.L. c. 30A challenging the Full Commission's decision affirming a Hearing Officer's dismissal of his disability discrimination claim. The Commission is in the process of compiling the Administrative Record.

Poirier v. MCAD, Worcester County Superior Court C.A. No. 1985CV00676. Pro se Complainant, whose discrimination claim on the basis of sex was dismissed at MCAD for Lack of Probable Cause after investigation, alleges that the Commission is responsible on various grounds for her failure to file a timely court action against her former employer. The Commission served Complainant with Defendant's Motion to Dismiss Complainant's Complaint and Memorandum in Support on June 14, 2019.

Premier Diagnostic Service, Inc. v. MCAD and Kathleen Thompson, Suffolk County Superior Court Civil Action No. 1984CV00334E. Premier Diagnostic filed an action pursuant to M.G.L. c. 30A seeking review of the MCAD Full Commission decision affirming a Hearing Officer determination finding it liable for disability discrimination. The parties resolved the matter prior to filing of the Administrative Record in Superior Court.

Sea View Retreat, Inc. et al v. Michelle A. Falzone, MCAD, Essex County Superior Court No. 1977CV00121. After a Hearing Officer's decision that Respondents retaliated against Complainant by terminating her employment after she made an internal report of sexual harassment, and her award of emotional distress damages and lost wages to the Complainant, the Full Commission affirmed the Hearing Officer's decision and awarded attorney's fees and costs. Sea View filed this appeal challenging the Commission's conclusions and awards of damages and attorney's fees and costs. The Commission filed its Notice of Appearance and Short Answer on May 10, 2019, and Notice of Proposed Administrative Record on June 28, 2019.

Slive + Hanna, Inc. v. MCAD et al., Suffolk Superior Court No. 1884CV3513C. The Full Commission upheld a Hearing Officer's Decision partially in favor of Complainant, in which Respondent was held to have retaliated against Complainant after he filed his MCAD Complaint alleging discrimination on the basis of disability. Respondent obtained a default court judgment against Complainant for money owed, and executed the judgment by taking the Complainant's ex-wife's van, which she used to transport her children. Respondent told Complainant's ex-wife that she could have the van back if her ex-husband dropped his MCAD claim. Respondent filed an appeal of the decision in Superior Court, claiming that it could not have retaliated against the Complainant because it had the right under the state and federal constitutions to file a court action for monies owed. The Commission's Answer and Counterclaim for Enforcement were filed November 28, 2018. After the Commission submitted the Administrative Record, Slive + Hanna filed a Motion for Judgment on the Pleadings, which MCAD and the other defendant opposed. Oral argument was held on June 13, 2019, and the case taken under advisement.

Swissport S.A., LLC, v. Massachusetts Commission Against Discrimination and Sasso, Suffolk County Superior Court 1884CV01844D. The Plaintiff, Swissport S.A., LLC, filed an action pursuant to M.G.L. c. 30A challenging the Commission's decision that Swissport, formerly doing business as Servisair, violated M.G.L. c. 151B when it refused to consider transferring Mr. Sasso to available positions based on his age. The parties resolved the matter prior to the filing of the Administrative Record in Superior Court.

Veena Sharma v. Commonwealth of MA - MCAD, Essex County Superior Court Civil Action No. 1877CV01832. Ms. Sharma filed a Complaint in Superior Court alleging that the MCAD failed to properly investigate her underlying discrimination Complaint against County Mortgage, Inc. MCAD filed a motion to dismiss for lack of jurisdiction and failure to state a claim that was granted by the court. On March 26, 2019, the court entered judgment dismissing Ms. Sharma's complaint.

15 LaGrange Street Corp., d/b/a The Glass Slipper et al. v. MCAD & Sims, Suffolk County Superior Court C.A. No. 1984-CV-0182E. The Plaintiffs, 15 Lagrange Street Corp., d/b/a The Glass Slipper, Michael Bennett and Nicholas Romano, filed an action pursuant to M.G.L. c. 30A challenging the Commission's decision which found them liable for race discrimination when they subjected Mr. Sims to a racially hostile work environment and terminated him based on his race. The parties have briefed the matter to the Superior Court, and await oral argument.

Massachusetts Appeals Court Activity

Camille T. Mata v. Massachusetts Commission Against Discrimination Appeals Court No. 2018-P-0782. The Commission issued an LOPC determination in this education discrimination matter. The MCAD affirmed the LOPC following a preliminary hearing and the pro se Complainant sought relief in Superior Court. The Complainant argued that she was entitled to relief pursuant to M.G.L. c. 30A. The MCAD filed a motion to dismiss. The lower court (Callan, J.) granted the MCAD's motion to dismiss based upon lack of jurisdiction on February 14, 2018. Complainant appealed the matter to the Massachusetts Appeals Court and the appeal was denied. Complainant applied to the Supreme Judicial Court for further appellate review, the Commission submitted an opposition. Complainant's request for further appellate review was denied on May 9, 2019.

C-Worcester v. MCAD & Tatum/Harris, Appeals Court No. 2018-P-0576. In February 2019, the Appeals Court heard arguments in this matter involving the failure to promote two Black police officers to the position of sergeant because of their race and color. The Superior Court reversed two full commission decisions addressing the disparate treatment and disparate impact claims of two officers citing res judicata as the basis. (1585CV01263, 1185CV02497, 1185CM02500). Both the MCAD and the Officers appealed the Superior Court decision. A decision is currently pending.

Gerard Grandoit v. MCAD & Boston Housing Authority, Appeals Court 2018-P-1493, consolidated with Grandoit v. MCAD & Executive Office of Health and Human Services et. al, Appeals Court 2018-P-0762. These consolidated appeals concern pro se Plaintiff Mr. Grandoit's appeal of five (5) lack of probable cause (LOPC) dispositions which were affirmed at preliminary hearings. The Superior Court dismissed these matters on the grounds that there is no jurisdiction pursuant to M.G.L. c. 30A or a writ of certiorari. Mr. Grandoit appealed and oral argument was held on May 14, 2019. The Appeals Court issued a decision affirming the lower courts, concluding that there is no right of action pursuant to M.G.L. c. 30A or G. L. c. 249, § 4 (declaratory judgment) for an MCAD Complainant seeking judicial review of a preliminary hearing affirming an LOPC/LOJ.

Mr. Grandoit has three additional cases pending against the MCAD: (1) Suffolk Superior Court No. 1784CV03181 (Milton Housing Authority); (2) Suffolk Superior Court No. 18-02906 (Roche Ins. Agency); and (3) Suffolk Superior Court No. 18-02909 (Arbella Ins. Co.), all three of which have been dismissed by the Superior Court.

J. Whitfield Larrabee v. MCAD, Suffolk Superior Court No. 1584CV02725; Appeals Court No. 2018-P-0464. In this action alleging breach of contract and violation of the Massachusetts Public Records Act, Plaintiff, an attorney, sought access to data and complaints regarding case data and complaints still under investigation at the Commission. The Commission denied such access under several exemptions to the Public Records Act, as well as its own regulations. Plaintiff also alleged that the Commission breached an earlier agreement reached with the Commission to provide access to open case records, which the Commission denied.

sought damages, preliminary and permanent injunctions, a writ of mandamus, and other legal and equitable relief. After the Superior Court ruled in the Commission's favor, Plaintiff sought relief in the Appeals Court. Oral argument was held on March 8, 2019. On March 12, 2019, the Appeals Court called for amicus briefs, which were due on May 17, 2019. The MCAD, through its attorney the Massachusetts Attorney General, submitted a Motion to file a post-argument letter in support of its position and accompanying letter on March 26, 2019. The U.S. Equal Employment Opportunity Commission (EEOC) submitted an amicus letter in support of the Commission on April 19, 2019, explaining that the Commission's public records practices are consistent with its requirement under the EEOC workshare agreement to keep investigations confidential. The Appeals Court rejected the letter on April 19, 2019, ruling that it contained matters outside the record, which "is not permitted." The U.S. Department of Housing and Urban Development (HUD) also submitted an amicus letter in support of the Commission,

which was initially disallowed, then edited and resubmitted. The Appeals Court accepted the HUD letter for filing on May 24, 2019. Boston Globe Media Partners LLC submitted an amicus brief in support of the appellant, J. Whitfield Larrabee, on May 24, 2019. The decision is pending.

Kathleen M. Stefani v. Massachusetts Comm'n Against Discrimination et. al, Appeals Court 2018-P-1631. This matter is the result of a M.G.L. c. 30A action filed by Kathleen Stefani seeking reversal of the MCAD's final decision. After public hearing, the MCAD dismissed Complainant, Kathleen Stefani's sex discrimination claim against the Massachusetts State Police. Ms. Stefani appealed to the Full Commission and the Superior Court, both of which affirmed the Commission's decision. The parties have briefed the matter to the Appeals Court and await oral argument.

Mansir v. BJ's Wholesale Club, Inc. & Massachusetts Commission Against Discrimination, Appeals Court 2019-P-0393. Pro se Complainant, Mr. Mansir, filed an action in Superior Court after receiving a Lack of Probable Cause (LOPC) disposition which was affirmed after a preliminary hearing. The Superior Court dismissed the action with prejudice. Mr. Mansir appealed and the matter is pending in the Appeals Court. The Commission's brief is due August 2, 2019.

Massachusetts Supreme Judicial Court – Amicus Briefs

In Yee v. Massachusetts State Police, 481 Mass. 290 (2019) the Supreme Judicial Court solicited amicus briefs on whether and in what circumstances the denial of an employee's request for a lateral transfer constitutes an adverse employment action actionable under G.L. c. 151B. The Commission filed an amicus brief in support of Mr. Yee, describing the circumstances under which Massachusetts state and federal courts have found an employer's actions to constitute an "adverse employment action." On January 29, 2019, the SJC issued a decision adopting the Commission's amicus position that where there are material differences between two positions in the opportunity to earn compensation, or in the terms, conditions, or privileges of employment, the failure to grant a lateral transfer to the preferred position may constitute an adverse employment action under G.L. c.151B.

Procedural Regulations Review and Publication

In FY19, the Legal Division assisted in a thorough review of the Commission's procedural regulations found at 804 CMR 1.00, furthering the Commission's goal of developing clearer procedural rules that accurately reflect the agency's practices. The revision process greatly benefited from input from the public invited via a "soft launch" of the proposed regulations in January 2019. The Commission is scheduled to hold formal public hearings on the revised proposed regulations in October 2019.

The proposed regulations clarify and simplify the processes and procedures at the MCAD by including a new definition section at the beginning of the regulations, and reordering the sections chronologically to mirror the investigation, prosecution and adjudication proceedings at the agency. Additionally, informal practices developed over the nearly 20 years since the procedural regulations were first promulgated have been incorporated into the proposed regulations, as well as new rules intended to promote efficiency. Other changes include specific timelines related to housing discrimination complaints dually filed with the U.S. Department of Housing and Urban Development (HUD); the expansion of time permitted for filing motions to reconsider Probable Cause findings; and new service rules applicable to the Commission.

Hearings Division Report

The Hearings Division is comprised of two (2) full-time Hearing Officers, one part-time Hearing Officer, and the three (3) Commissioners. In addition to presiding over formal adjudicatory hearings and issuing comprehensive written decisions, the Hearings Unit also conducts motion conferences, pre-hearing conferences, certification conferences, conciliations and mediations, and issues rulings on discovery matters and other motions.

In FY19, the MCAD scheduled 47 Public Hearings. Of the 46 cases scheduled, hearings were held in 12 cases and 27 cases settled prior to the hearing. Eight (8) cases were continued or dismissed. The MCAD scheduled 123 pre-hearing conferences, held 54 Pre-Hearing Conferences, and continued 41 cases at the request of a party. 21 cases settled prior to the Pre-Hearing Conference. The remainder were dismissed or withdrawn. The Hearings Division conducted some 20 mediations or conciliations, the vast majority of which resulted in significant settlements for Complainants.

In FY19, the Hearings Division issued 11 Hearing Decisions. The majority of those addressed claims of employment discrimination, one addressed claims of housing discrimination, and one addressed claims of discrimination in a place of public accommodation. One case was against a labor union for disability discrimination. Of the 11 cases decided, 6 were decided in favor of Complainant and 5 were decided in favor of Respondent. The following is a summary of some of the significant decisions issued. All of the decisions and awards are published in the Massachusetts Discrimination Law Reporter and on MCAD's website.

Significant Hearing Officer Decisions

MCAD & Iris Quinones v. Faridoon Zamani, DMD & Faridoon Zamani, DMD, PC 40 MDLR 71 (Sexual Harassment-Hostile Work Environment- Constructive Discharge)

Complainant was hired as a dental assistant by Respondent Zamani, owner of a dental practice. A few weeks into her job, Complainant was subjected to a sexual advances by Zamani, including attempts to kiss her, and forcing her to touch his genitals. Complainant rejected these advances, and was so fearful of Zamani that she did not return to work and later sent Zamani a text advising him that she would not return. The Hearing Officer found that Zamani's behavior constituted a physical attack on Complainant's person and was egregious and unwelcome. She concluded that the behavior was sufficiently severe and pervasive to create a sexually hostile work environment for Complainant. As the sole owner of the business, and Complainant's direct Supervisor, Zamani exercised authority over the terms and conditions of Complainant's employment. In addition to finding Zamani individually liable for his conduct, Complainant's employer, the professional corporation, was found to be vicariously liable for his unlawful conduct. The Hearing Officer concluded that Zamani's conduct was sufficiently intimidating as to create a sexually hostile work environment that justified Complainant leaving the job. Where the hostile work environment was perpetrated by the owner and Manager of the practice, Complainant had no options for seeking relief and had no expectation of a resolution, warranting a finding of that she was constructively discharged. The Complainant was awarded damages for emotional distress in the amount of \$135,000 based on her credible testimony that she suffered from persistent anxiety, insomnia, high blood pressure, neck pain, and panic attacks that were a direct result of her employer's unlawful conduct. The Hearing Officer also credited evidence that Complainant lost her sense of enjoyment of life, experienced feelings of alienation from friends and family, and sought medical help and treatment for the first time in her life from mental health providers who ultimately diagnosed her with post-traumatic stress disorder. Complainant was also awarded lost wages in the amount of \$12,800 for the 16 weeks she was unemployed.

MCAD and May vs. Parrish Café and Bar, 40 MDLR 75 (2018) (discrimination in a place of public accommodation/harassment based on sexual preference)

Complainant, a gay male patron of a South End restaurant charged that he was refused access to the restroom of the establishment, was grabbed by the arm, man-handled, and subjected to homophobic slurs by a restaurant doorman. Respondent asserted that the incident was caused by the doorman's mistaken belief that Complainant was not a patron of the restaurant was therefore legitimately barred from the establishment's restroom. The Manager of the restaurant apologized to Complainant and "comped" the dinners of Complainant and his partner. Complainant subsequently reported the incident to the Boston Police and brought criminal charges against the doorman for assault and battery, of which he was ultimately acquitted. The Hearing Officer credited Complainant's version of the incident and found that Complainant was restricted in his use and enjoyment of a place of public accommodation based on his sexual orientation. She credited his testimony that the incident caused him great shame and humiliation and awarded him damages for emotional distress in the amount of \$25,000.

MCAD and Omar Sahir, et al. v. 2 Belsub Corp. et. al. 40 MDLR 81 (2018) (discrimination in a place of public accommodation based on national origin, race, religion)

Complainants alleged their rights to access a place of public accommodation were interfered with when they and their children were treated disrespectfully at a Subway franchise in Easton, MA and were told after registering complaints that Subway does "not serve foreigners" and that they were "banned" from the restaurant and should "go back to [their] f***ing country and learn how to speak English." Complainants are Muslim Arab-Americans of Moroccan descent who identify as people of color. When Complainants' children were uncertain about what to order and took some time deciding, and when Complainant asked about the variety of cheeses available, they were treated rudely and impatiently by an employee. When they subsequently attempted to register a complaint by phone about their treatment in the store, they were called by a woman purporting to be the Manager of the franchise who made the above-described discriminatory comments. The Hearing Officer credited Complainants' version of the events and did not credit the Respondent's denial that the Manager (who did not testify) made the discriminatory statements. The Hearing Officer awarded Complainant's \$25,000 for emotional distress and ordered the owners and staff of Respondent to attend MCAD-sponsored training.

MCAD & Kevin O'Leary v. Brockton Fire Dept. et al., 40 MDLR 91 (2018) (Disability Discrimination)

Complainant brought a Complaint for disability discrimination based on a failure to accommodate his learning disability and for being subjected to a hostile work environment. Regarding the disability claim, Complainant requested an accommodation at the Fire Training Academy (which he passed) but did not make a subsequent request for an accommodation during his on-the-job-training at three (3) fire houses. At his first rotation Complainant received daily and individualized training in the basic fundamentals of ladder and squad operations. In his second rotation he was provided with numerous practical drills, claiming he learned best from repetition. The evidence established that despite additional training, Complainant was unable to master the basic operations and rudiments of firefighting, and lacked an aptitude for the mechanical aspects of the job, many of which were paramount to successful firefighting. The Hearing Officer concluded that given these circumstances, even if Complainant had requested an accommodation, an interactive process would have been futile where his suggested accommodation of less stressful drilling conditions and fewer repetitions of drills would have been inadequate to ensure his success in learning essential tasks of firefighting. Respondents made a persuasive argument that stressful drilling was a necessary training technique that simulated real life fire situations. However, Complainant prevailed on his hostile work environment claim where the evidence showed that Complainant was subjected to constant pranking at Station 1 based on his disability and that the hostile treatment he received altered the conditions of his employment. Complainant was awarded damages of \$40,000 for the emotional distress resulting from the unlawful harassment. The amount is modest because a substantial part of Complainant's emotional distress claim related to his termination which was not compensable.

MCAD and James Earl Halstead v. Leidos, Inc. et al., 41 MDLR 38 (2019) (disability and retaliation)

Complainant filed charges of discrimination based on disability and retaliation against his former employer (a manufacturer of military equipment) and his Supervisor alleging that due to cognitive complications from surgery, he was disabled and had to work on a part-time basis. Despite his diagnosis, his Supervisor believed him to be seeking special privileges and never ceased endeavoring to force his return to a full-time schedule. The factual circumstances presented at the public hearing establish that it was not essential for Complainant to return to a full-time schedule and that allowing Complainant to maintain a 30-hour-per-week schedule was not an undue hardship to the employer. Nonetheless, Respondents denied Complainant a meaningful merit raise, taunted him, placed him in a trailer away from co-workers, laid him off prior to his co-workers, deprived him of promised assistance in locating an alternative job, and denied him a personal employment reference. The totality of adverse actions directed at Complainant gives rise to an inference of handicap discrimination and retaliation. Insofar as Complainant's application for SSDI benefits is concerned, the statements on his SSDI application about being incapable of working pertained to his inability to handle a full-time job, not the 30-hour-per-week schedule he was successfully performing prior to his lay-off. As far as individual liability is concerned, Complainant's Supervisor was deemed to have acted in "deliberate disregard" of Complainant's right to be free from handicap discrimination and from retaliation. Hearing Officer Waxman ordered \$175,000 in emotional distress damages.

MCAD and Tia v. Herb Chambers 1186, Inc., 41 MDLR 105 (2019) (Creed, sex, sexual harassment)

Complainant filed charges of discrimination against Herb Chambers Honda based on creed, sex, sexual harassment, and retaliation. These claims were found to lack credibility for the following reasons. Graphic details were added at the public hearing in an unpersuasive effort to bolster the Complainant's claims, some incidents raised at the Public Hearing were not mentioned at all in the original Complaint, and one alleged incident which Complainant described as occurring on a "snowy, very bad day" was contradicted by internet descriptions which described the day in question as a fair day with no precipitation. Complainant also made an implausible assertion that she didn't understand the meaning of the term "insubordination." Her credibility was further undermined by findings in a prior adjudicatory hearing before the state Board of Registration of Physician Assistants which deemed similar accusations of sexual harassment to be "contradictory" and "inconsistent." Turning to Complainant's retaliation claim, her charge that she was denied car repair service for several hours is too insignificant to give rise to a claim of retaliation. Given Complainant's history with Respondent resulting in her termination and the fact that she was likely viewed as fabricating allegations against the dealership, it is understandable that Respondent might have been leery of conducting further business transactions with her. Respondent quickly reversed its decision, however, and proceeded to service Complainant's car on an ongoing basis.

MCAD and Wiggins v. Land Air Express 41 MDLR 24 (2019) (race and color)

Complainant is an African American male who charged his former employer with discrimination based on his race and color and retaliation. Respondent did not appear at the hearing and was defaulted. Complainant was hired by Respondent in 2009 as a Class A delivery truck driver at its Springfield terminal. He drove throughout New England and parts of Canada. Complainant's employment was terminated on June 23, 2015. Complainant alleged that his Supervisor called him the "n-word" several times a week, and once told him, "No black son-of-a-b***h is going to tell me how to run my terminal." Complainant drove a rental Cadillac and the Supervisor once threatened his job by asking him how a n****r could afford a Cadillac if he were unemployed. Complainant also alleged that his Supervisor repeatedly called him "illiterate" and "ignorant" and told him he was lucky to have a job. Complainant asserted there were times he left work crying because of the Supervisor's use of racially offensive language. Complainant testified credibly that the Supervisor's constant use of a racial epithet was extremely hurtful and painfully evocative of his negative experiences growing up in the segregated South.

In June 2015, Complainant had an accident while on the job with his truck. The Supervisor terminated his employment the following day ostensibly because of the previous day's incident. Complainant testified credibly that a caucasian driver, who had demolished his truck by driving off an embankment, requiring the truck to be towed out of the woods at great expense to Respondent, was not disciplined and in fact was assigned a newer truck the following day.

Complainant testified that he suffered from significant stress and frequent headaches as a result of constant harassment from the Supervisor. Complainant cried and was overcome with emotion in testifying about his Supervisor's racially offensive comments. The loss of income from Complainant's termination caused him to lose his apartment and car and he had to move in with his sister. Complainant remained unemployed for close to a year, during which time he suffered from depression, stress, and loss of sleep. He was unable to afford outings to the mall and the movies with his young daughter and was upset that he could no longer provide her with those same experiences. After his termination, Complainant also ceased other social activities he enjoyed such as playing basketball. He suffered from the stress of not being able to pay for groceries and other necessities until he found subsequent employment. As of the time of hearing, Complainant still had flashbacks to his job at Respondent. When he saw the Supervisor at a gas station a few months prior to the public hearing, he left the premises to avoid engaging with him.

The Hearing Officer credited Complainant's testimony and since Respondent did not appear at the hearing, she concluded that Complainant had established an un rebutted prima facie case of racial harassment in the workplace. She found that the Supervisor's racially offensive speech and conduct were cruel and demeaning and sufficiently severe and pervasive so as to alter the conditions of Complainant's employment and create a racially hostile working environment. Respondent was found to be vicariously liable for the behavior of its Supervisor who was the Manager of the Springfield garage.

The Hearing Officer also found that Complainant established an un rebutted prima facie case of discriminatory termination based on disparate treatment because of his race and color. Complainant was terminated after a relatively minor accident on the job, while a similarly situated caucasian truck driver involved in a much more severe accident with his truck was not disciplined. The ample evidence of the Supervisor's racist attitude and actions also suggests that Complainant's termination was motivated by discrimination based on his race, and that he would not have been fired but for his race. Respondent was found liable for unlawful termination and Complainant was awarded \$150,000 in damages for emotional distress and \$60,000 in lost wages.

MCAD and Patricia Soumala v. MSPCA, et al., 41 MDLR 15 (2019) (retaliation)

Complainant alleged that she was terminated from her employment as the Director of Inpatient Services at the MSPCA in retaliation for her having reported a subordinate employee's conduct toward a co-worker as sexual harassment and for urging Respondent to terminate the offending employee for such behavior. Respondent asserted that Complainant's characterization of the conduct of her subordinate was not protected activity within the meaning of the statute, because despite being abusive and threatening, the conduct was not sexual in nature and did not conform to the legal definition of sexual harassment. Respondent also asserted that the termination was not related to complaints of sexual harassment, but rather due to Complainant's persistent conduct that undermined the authority and directives of her boss, the Chief of Staff, and for her repeated disputes with the Director of Human Resources over issues within the domain and expertise of HR. Respondent asserted that Complainant failed to be a team player and demonstrated poor communication and management skills, particularly regarding initiatives aimed at improving communication and morale among the leadership team.

The Hearing Officer concluded that an expansive reading of sexual harassment could encompass the conduct of the subordinate employee and therefore Complainant's complaints could be protected activity. Notwithstanding, the Hearing Officer found there was sufficient evidence to support Respondent's explanation for the termination, and that it was not motivated by retaliatory intent, motive or state of mind. The Complaint was dismissed.

MCAD, Commonwealth of Mass by its Attorney General and Serrano vs. Cataldo Ambulance, 41 MDLR 90 (2019) (pregnancy, gender, disability)

Complainant charged her former employer with discrimination based on gender/pregnancy and disability (serious pregnancy related complications). Complainant was hired by Respondent as the Senior Human Resources Representative for Respondent and reported to the Director of HR. Shortly after being hired Complainant learned she was pregnant and was hospitalized for medical emergency related to her pregnancy. Complainant had been undergoing fertility treatments prior to being hired but did not disclose this to Respondent prior to being hired. Prior to her hospitalization, Complainant notified the Director of HR that she was pregnant and discussed her medical conditions. She subsequently relayed this information to the VP of Operations who was the son of the company's owners. Complainant ultimately required approximately a three week medical leave of absence. She remained in frequent communication with the Director of HR regarding her prognosis and her anticipated return to work date. One day prior to her anticipated return to work, Complainant was notified of her termination.

Respondent denied having any knowledge whatsoever of Complainant's pregnancy or pregnancy related medical conditions. Respondent asserted that it could not ask, and did not ask about the reasons for Complainant's absence. It asserted that Complainant was terminated for failure to report to work and to meet the obligations of the job she was hired to perform.

Respondent had policies which permitted leaves of absence only after one year of employment, did not permit maternity leave unless the employee was eligible for FMLA leave which requires employment for period of at least 12 months and had no policy with regard to reasonable accommodation of disabilities. The Hearing Officer concluded that such policies were in non-compliance with state and federal laws regarding parental leave and reasonable accommodation of disabilities.

The Hearing Officer credited the testimony of Complainant that she had informed Respondent of her pregnancy and related medical complications. She found that Respondent's decision to terminate Complainant's employment was motivated by concerns about her pregnancy and related medical complications which were disabling or at the very least, perceived by Respondent as a disability. She concluded that the termination violated the provisions of G.L. c. 151B prohibiting discrimination on the basis of gender/pregnancy and disability, and found that Respondent failed to consider a brief medical leave of absence as a reasonable accommodation.

Complainant presented compelling evidence of severe emotional distress resulting from her termination was awarded \$200,000 in damages for her distress. Complainant was able to secure employment after her baby was born. She was awarded \$43,560 for lost wages. The Respondent was ordered to promulgate parental leave and reasonable accommodation policies that are in compliance with the law.

MCAD and Reed v. Pipefitters Assoc. of Boston, Local 537 and Leo Fahey, 41 MDLR 49 (2019) (disability)

Complainant filed a charge of disability discrimination against her union and its Business Manager pursuant to G.L. c. 151B s. 4(2) which makes it an unlawful practice for a labor organization to exclude from full membership or to discriminate in any way against any of its members because of their disability. Complaint alleged that the Union denied her full access to membership rights and failed to provide meaningful access to participation in Union meetings by failing to accommodate her disability, a severe hearing impairment. Complainant suffers from a severe hearing impairment, tinnitus, which causes ringing in her ears and currently has an 85% hearing loss. She sought a reasonable accommodation from the Union including simultaneous stenographic transcription of the discussion at union meetings. After lengthy deliberations, the Union offered Complainant a sign language interpreter or in the alternative a sound proof booth, but Complainant does not know sign language and testified that the latter would not aide her specific hearing impairment.

The Hearing Officer found that absent specific statutory language requiring a reasonable accommodation for disability, such an obligation could nonetheless be implied, analogizing to other areas of the law, including protections in public accommodations and test taking scenarios. She also determined that the accommodations offered were less than satisfactory and rejected the Union's reasons for its refusal to provide stenographic transcription of the meetings. She concluded that the Union was extremely lax in its response and took an inordinate amount of time to offer any accommodation. She ordered the Union to provide options for an accommodation that included simultaneous stenographic transcription and awarded the Complainant \$25,000 in damages for emotional distress she suffered as a result of the Union's failure to provide an accommodation and its disrespectful treatment of her request.

MCAD, Borosky and Wallen v. Professional Fitness, 41 MDLR 64 (2019)(sexual harassment)

Complainants, who were trainers at a health club, charged their employer with sexual harassment. These cases are a rare example of a ruling against Complainants despite Respondent failing to appear to present a defense and a default hearing being held. The Hearing Commissioner found that Complainants failed to establish a prima facie case of a sexually hostile work environment or constructive discharge. The Hearing Officer discredited a large portion of their allegations or found that the behavior in question was not sexual in nature or that certain sexually inappropriate comments were not sufficiently severe, pervasive or egregious to constitute sexual harassment within the meaning of the law. She found that some of the comments were sporadic and casual and that certain others related to Complainants' fitness were related to the nature of job of personal trainer. The Hearing Officer was not persuaded that Complainants were offended by the comments, determined that they testified without emotional affect and seemed more concerned with the lack of remuneration, as represented, due to the discrepancies in pay and Respondent's generally bad business practices. The complaints including the Complaint for constructive discharge were dismissed since the alleged perpetrator had been transferred to another location and no internal complaints were made.

MCAD and Roberge v. Sullivan, Keating & Moran Insurance Agency, 41 MDLR 74 (2019) (disability)

This case of disability discrimination involves the unusual situation where the Complainant prevailed on one prong of his claim, but was awarded no damages. Complainant suffered from a number of medical conditions. After a doctor's appointment where he underwent a procedure to remove a stent from his kidneys, he returned to work but appeared to be so ill that Respondent ordered him to go home to recuperate. When Complainant refused to go home because he had exhausted his sick leave, Respondent told him he "was done," and terminated his employment. The Hearing Officer found that the termination was not motivated by discriminatory animus, but rather Complainant's insubordination. She also concluded that the failure to engage in an interactive dialogue regarding Complainant's request for an accommodation to his hearing impairment was a violation of G.L. c. 151B s. 4(16), but that Complainant suffered no damages. The Respondent was ordered to attend training on the issue of reasonable accommodations.

Significant Full Commission Decisions

In FY19, the Full Commission issued 20 Decisions and four (4) orders. The decisions issued in July through December 2018 are described in the Commission's Calendar Year 2018 Annual Report. The remaining Full Commission Decisions issued in FY19 are described below.

MCAD & Clark v. New Bedford Housing Authority, 41 MDLR 13 (2019)

The Full Commission affirmed the Hearing Officer's dismissal of a housing discrimination complaint. The Hearing Officer determined that a tenant could not establish that keeping a python as a "companion animal" in her apartment was a reasonable accommodation for her disability given the snake's potential harm to other residents and the landlord's interactive dialogue about the request for an accommodation. The Full Commission affirmed the conclusion that, on balance, it would have been an undue hardship to grant the request due to the public health and safety risks associated with keeping the snake.

MCAD & Eddings v. Capitol Coffee House, 41 MDLR 9 (2019)

The Full Commission, consisting of Chairwoman Thomas George and Commissioner Quiñones, reversed the Hearing Officer's decision finding public accommodation discrimination when Respondent's employee required a black police officer to pay when ordering, but did not require his four white colleagues to do so. The Full Commission determined that there was insufficient evidence to support the Hearing Officer's conclusion because a legitimate business reason supported by the evidence was presented for the distinction and the white officers were not similarly situated comparators. The white officers were sitting at the counter when they initially ordered but then moved to a table. In contrast, Complainant stood at the counter when ordering and was perceived to be associated with the white officers at the table. The Respondent explained that its business practice was to require payment upon ordering, but relaxed the immediate payment requirement when patrons sat at the counter. The Respondent offered to relax its rule for the Complainant if he was on the same bill as the white officers, but Complainant declined. The Full Commission determined that Complainant did not meet his burden of proof to show that the different treatment was motivated by discriminatory animus. Commissioner Hubbard dissented.

MCAD & Heath v. MA Parole Board, 41 MDLR 33 (2019)

A Hearing Officer's decision dismissing a gender discrimination in employment Complaint was affirmed by the Full Commission. The Full Commission found sufficient evidence to support the Hearing Officer's conclusion that gender discrimination did not cause the Respondent's bypass of Complainant for a promotional opportunity. The Hearing Officer's determination crediting witnesses' testimony that the bypass resulted from their opinion of Complainant's interview and apparent lack of understanding of the position was not disturbed by the Full Commission.

MCAD & Leahy v. City of Boston and Berlo, 41 MDLR 59 (2019)

The Full Commission affirmed a dismissal of claims of sexual harassment against the Respondents as untimely, agreeing with the Hearing Officer that internal disciplinary proceedings concerning Berlo's action did not toll the 300 day filing deadline. The Full Commission also affirmed the Hearing Officer's determination that the city retaliated against Complainant in assigning her to a different location in response to her sexual harassment complaint. The Full Commission remanded the case to the Hearing Officer for a determination concerning Berlo's individual liability and for consideration of the city's liability for retaliation under the "cat's paw" theory of liability relating to Complainant's resignation following Berlo's sister's report to the Boston Residency Commission. See Staub v. Proctor Hosp., 562 U.S. 411 (2011).

MCAD & Coburn v. Cuca, Inc. d/b/a Bella Notte, 41 MDLR 29 (2019)

The Hearing Officer's determination that Respondent was liable for discriminating against Complainant in this sexual harassment in employment case was affirmed by the Full Commission. The Hearing Officer determined that Complainant's co-worker subjected Complainant to a hostile work environment, and Respondent failed to remedy her complaints of sexual harassment, resulting in her constructive discharge. The determination that the re-hiring of the co-worker following the Complainant's earlier complaints of sexual harassment constituted an anchoring event for a timely continuing violation claim was also affirmed.

MCAD & Codinha v. Bear Hill Nursing Center, 41 MDLR 35 (2019)

In this employment discrimination matter, the Full Commission affirmed the Hearing Officer's determination that Respondent's failure to accommodate Complainant's broken wrist and subsequent termination were based upon her age and disability. The Respondent failed to engage in an interactive dialogue with Complaint about what accommodation would permit her to perform the essential functions of her job. Complainant sought to return to work with a lifting restriction, but Respondent refused to permit her to return to work, instead informing her that she needed to extend her medical leave of absence. There was sufficient evidence to show that other employees with lifting restrictions had been permitted to return to work following injuries. Further, the Hearing Officer credited Complainant's testimony that she was referred to as "the old one" and was asked by a supervisory nurse when she intended to retire. The Full Commission deferred to the Hearing Officer's credibility determinations.

MCAD & Madonna v. Fall River Police Department, 41 MDLR 63 (2019)

The Hearing Officer's dismissal of a Complaint of disability discrimination in employment was affirmed by the Full Commission. The Full Commission determined that there was sufficient evidence to support her finding that the Police Chief's decision to assign Complainant to a position as evidence custodian and minimize his contacts with the public was a reasonable accommodation for his disability. The Full Commission did not disturb the Hearing Officer's credibility determinations and assessment of the evidence finding that the Chief's concerns leading to this restricted position were legitimate given the evidence in the record.

MCAD & Hedvat v. The Herb Chambers Companies, et al., 41 MDLR 71 (2019)

The Full Commission affirmed the Hearing Officer's dismissal of a religious discrimination in employment claim. The Hearing Officer's determination that Complainant was terminated for poor performance, and Complainant failed to prove that Respondent's reason was pre-textual, was not disturbed. The Full Commission also found that the Hearing Officer's alleged decision to bar a deposition of the individual Herb Chambers, did not constitute an abuse of discretion where there was no evidence that Mr. Chambers had evidence relevant to the discrimination complaint.

MCAD & Grzych and Joseph Collins as Trustee for Grzych, v. American Reclamation Corp., et al., 41 MDLR 79 (2019)

This Full Commission decision results from a Superior Court Order in a M.G.L. c. 30A appeal of an earlier Full Commission decision requiring this associational race employment discrimination case to be remanded to the Commission to consider evidence of Complainant's bankruptcy. Following consideration of the evidence and law, the Hearing Officer found the doctrine of judicial estoppel inapplicable to the Commission proceeding. The Full Commission determined that the Hearing Officer's conclusion that the Commission is not judicially estopped by Complainant's failure to disclose the bankruptcy proceeding to the Commission and his failure to disclose the Commission proceeding to the bankruptcy court was not an abuse of discretion. The Full Commission recognized that judicial estoppel

is an equitable doctrine which should not be applied to a Commission proceeding intended to vindicate the public interest, even if a private party might otherwise be affected by the bankruptcy. Consistent with its law enforcement role, the Full Commission agreed that the Commission should not be estopped from vindicating in the public interest to eradicate discrimination, deterring employers from unlawful discriminatory conduct and awarding victim-specific relief.

MCAD & Flint v. MA Trial Court, 41 MDLR 85 (2019)

A Hearing Officer's dismissal of a race and color employment discrimination claim was affirmed by the Full Commission. The Full Commission found that there was substantial evidence to support the Hearing Officer's determination that Complainant failed to establish a prima facie case of race and color discrimination where he could not satisfy his burden to show that he was performing his job in a satisfactory manner. The Full Commission affirmed the Hearing Officer's determination that even if Complainant could satisfy the elements of a prima facie case, the Respondent articulated legitimate, non-discriminatory reasons for its termination decision given the substantial disciplinary record. The Full Commission found no error in the Hearing Officer's conduct in controlling the hearing and rulings, recognizing that Hearing Officers retain significant discretion in making evidentiary rulings in an administrative proceeding.

MCAD & Lewis v. Department of Correction, 41 MDLR 89 (2019)

The Full Commission affirmed the Hearing Officer's dismissal of claims of race, color and gender discrimination in employment. The Full Commission held that there was substantial evidence to support the Hearing Officer's determination that Complainant failed to show that the disciplinary actions brought against Complainant were racially motivated and harsher than discipline imposed upon white male officers for comparable conduct. The Full Commission held there was no error in the Hearing Officer's determination that Complainant did not show that the Respondent's articulated legitimate non-discriminatory reasons for discipline were a pretext for discrimination. Instead, there was substantial evidence supporting the disciplinary actions and evidence that similar discipline was imposed upon white males for similar conduct.

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 disputants are assisted in reaching an amicable resolution through the use of various techniques. ADR describes a variety of approaches to resolve conflict which may avoid the cost, delay, and unpredictability of an adjudicatory process.

Americans with Disabilities Act (ADA): The Americans with Disabilities Act is a federal 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 when the Complaint is withdrawn from MCAD to remove the case 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 at the conclusion of an investigation.

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

HUD: The U.S. Department of Housing and Urban Development. Within the Department of Housing and Urban Development, the Office of Fair Housing and Equal Opportunity (FHEO) administers and enforces federal laws 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 did not commit 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 with the assistance of MCAD trained personnel.

Pre-Determination Settlement: When a settlement is reached before the conclusion of the investigation.

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 characteristic of a person which cannot be targeted for discrimination. Protected categories differ based on the type of alleged discrimination. Common protected categories include race, gender, gender-identity, ethnicity, age, national origin, sexual orientation, military status, 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.”

Staff List

Eric Allbright
 Melvin Arocho*▪
 Deborah A'vant*
 Sarah Biglow
 Eric Bove*
 Katherine Brady◊▪
 Aldel Brown▪
 Ashley Cain
 Kenneth Callahan, II
 Candice Carrington
 Wendy Cassidy*
 Alison Caton
 Ellen Cobb◊▪
 Joseph Cohen
 Evan Coleman
 Ethan Crawford
 Beth Crosby
 Kristen Dannay
 Vanessa Davila*
 Edith Demont-Rosenthal
 Karen Erickson*▪
 Andrew Espinosa
 Geraldine Fasnacht*
 Jillian Fisher
 Cynthia Garcia
 Sunila Thomas George**
 Karlyn Greene
 Joseph Greenhalgh
 Eugenia Guastaferrri**
 Heather Hall
 SuJin Han▪
 H Alex Harrison
 Winnie Hien◊▪
 Marzella Hightower**
 Deirdre Hosler
 Sheila Hubbard▪
 Neldy Jean-Francois
 David Cromwell Johnson
 Judy Kalisker◊
 Judith Kaplan**
 Kristina Khoury
 Nomxolisi Khumalo*
 Patricia LaFore
 Paul Lantieri
 Jennifer Laverty*▪
 Nicole Leger

Theresa Lepore
 Simone Liebman*
 Melanie Louie-Tso**
 Jennifer Maldonado-Ong
 Matthew Marotta
 Angela Matute
 Gilbert May**
 Sheree McClain
 Constance McGrane
 Michael Memmolo
 Lynn Milinazzo-Gaudet*
 Ying Mo**
 Carol Mosca**
 Korey Moscatelli
 Carol Murchison*
 Pamela Myers*
 Helene Newberg
 Chanel Ortiz
 Holly Papantonakis◊
 Yudelka Peña**
 Victor Perez
 Marc Perlman
 Elisa Petrigliano
 Michelle Phillips*
 Monserrate Quiñones
 Lila Roberts*
 Jeremy Scheiner
 Vera Schneider
 Caitlin Sheehan*
 Dina Signorile-Reyes
 Andre Silva*
 Alexander Smith
 Myrna Solod**
 Abigail Soto-Alvira**
 Matthew Stewart▪
 Ethel Stoute**
 Tania Taveras*
 Nancy To**
 Reid Wakefield▪
 Betty Waxman**
 Devin Wintemute
 Paul Witham**
 Pattie Woods*
 Carmen Zayas*
 Michael Zeytoonian

Key

- Employed by MCAD for a portion of FY19
- * 10+ years of service to MCAD
- ** 20+ years of service to MCAD
- ◊ Contract employee

Advisory Board

Thomas J. Gallitano (Chair)
Tani E. Saperstein, Esq. (Co-Chair)
Margarita Alago
Barbara Chandler
Nadine Cohen, Esq.
Remona L. Davis
Emily Derr, Esq.
Jeff Dretler, Esq.
Sheryl Goldstein
Gail Goolkasian, Esq.
Jeffrey L. Hirsch, Esq.
Anne L. Josephson, Esq.
Christopher Kauders, Esq.

Elizabeth Leahy, Esq.
Jonathan Mannina, Esq.
Lucinda Rivera, Esq.
James Rudolph, Esq.
Bronwyn Roberts, Esq.
Richard Rodriguez, Esq.
James L. Rudolph, Esq.
Thomas L. Saltonstall, Esq.
Courtney B. Scrubbs., Esq.
Reena Thadhani, Esq.
Ivonne Vidal, Esq.
Richard L. Wise, Esq.

FY19 Interns

Victoria Arend
Anjali Biswas
Angela Camacho-DeSousa
Mitchell Carney
Candice Carrington
Michelle Contos
Eilidh Currie
Tori Douglas
Sarah Eagan
Sarah Friedman
Beatrice Gonzalez
Aurora GrantWingate
La'Dericka Hall
Ashley Hernandez-Garcia

Sara Hogenboom
Sangyeol Lee
Connor Locke
Deja Morehead
Justine Morgan
Cullen Mulrooney
Jenna Ricci
Maria Caudia Schubert-Fontes
Elias Seeland
Stacey Smith
Bradley Souders
Rebecca Sparks
Anne-Sophie Tomé
Tianren Zhang

