

Massachusetts Civil Service Commission

Calendar Year 2007 Statistics

Highlights

- Total discipline and bypass appeals pending before the Commission as of December 31, 2007: 451¹; 24 less than one month ago; and 362 less than one year ago, representing a 45% decrease in appeals pending before the Commission during calendar year 2007;
- The Commission closed out more than twice the amount of new discipline and bypass appeals filed in CY07, *disposing* of 741 such appeals in CY07, as compared to 363 new appeals *filed* during the same time period.

¹ 53% of pending appeals as of 12/31/07 were filed with the Commission during the past 12 months.

Massachusetts Civil Service Commission
Open Discipline and Bypass Cases: Month-End Report

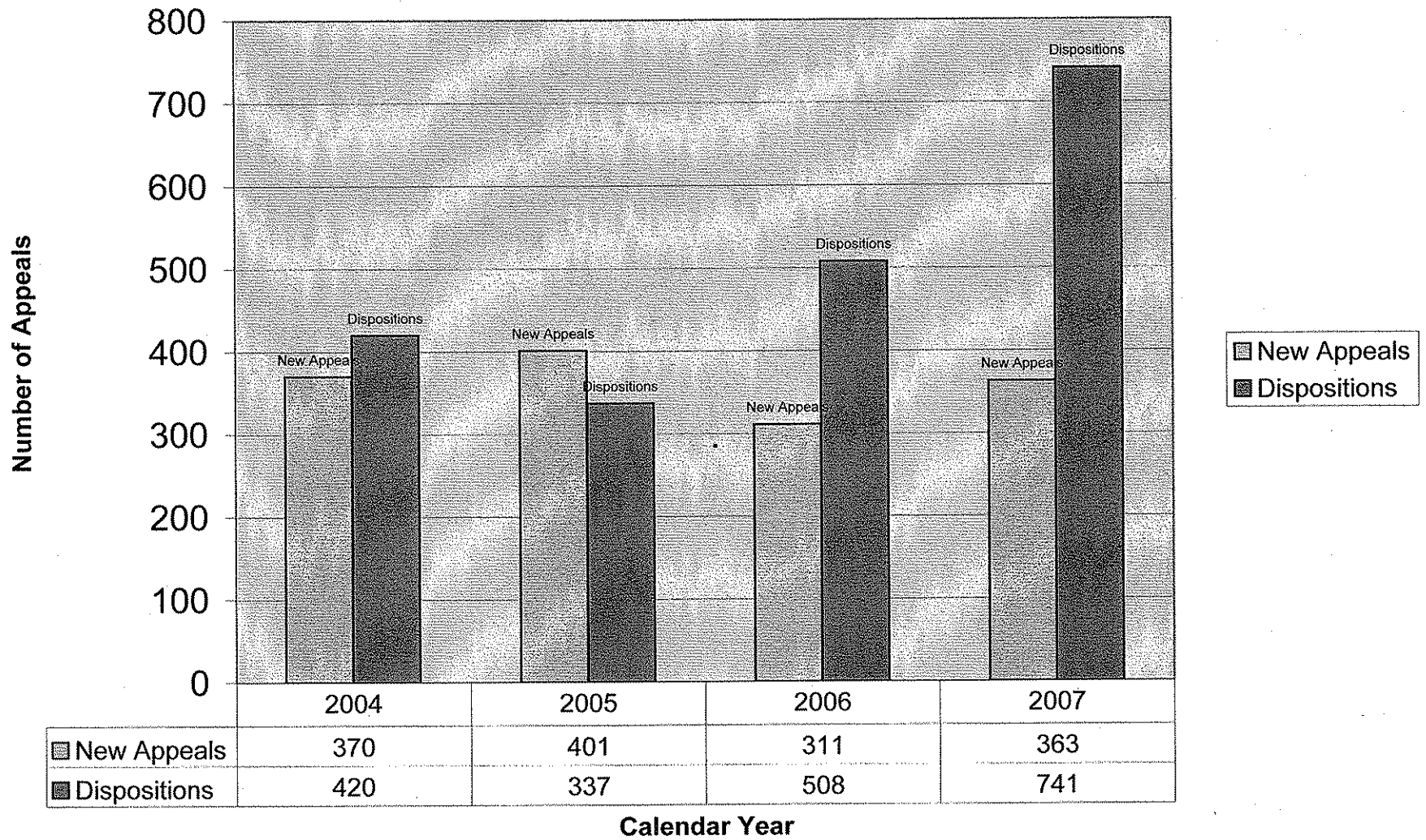
	<u>Dec 06</u>	Jan 07	Feb 07	March 07	April 07	May 07	June 07	July 07	Aug 07	Sep 07	Oct 07	Nov 07	<u>Dec 07</u>
OPEN DISCIPLINE CASES	427	404	389	351	327	322	309	293	273	253	245	230	218
OPEN BYPASS CASES	386	383	374	359	348	330	314	299	278	259	240	245	233
TOTAL OPEN DISCIPLINE & BYPASS CASES	813	787	763	710	675	652	623	592	551	512	485	475	451

Massachusetts Civil Service Commission
Open Discipline and Bypass Cases: Month-End Aging Report

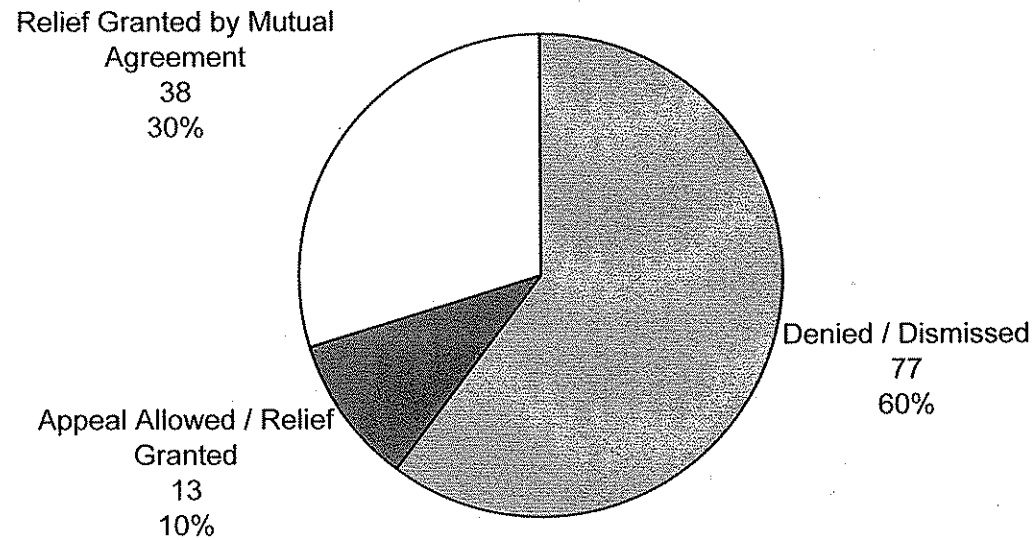
YEAR APPEAL FILED	Dec 06	Jan 07	Feb 07	March 07	April 07	May 07	June 07	July 07	Aug 07	Sep 07	Oct 07	Nov 07	Dec 07
Pre-2004	172	154	136	120	102	86	79	69	52	42	38	29	20
2004	145	134	133	121	105	93	75	69	48	40	33	30	25
2005	233	222	206	187	177	170	155	142	116	99	88	84	79
2006	263	250	241	202	178	161	150	143	129	116	101	91	86
2007	--	27	47	80	109	142	162	167	206	215	224	241	241
Total	813	787	763	710	675	652	623	592	551	512	485	475	451

12/31/07

Discipline and Bypass Cases New Appeals Filed v. Dispositions

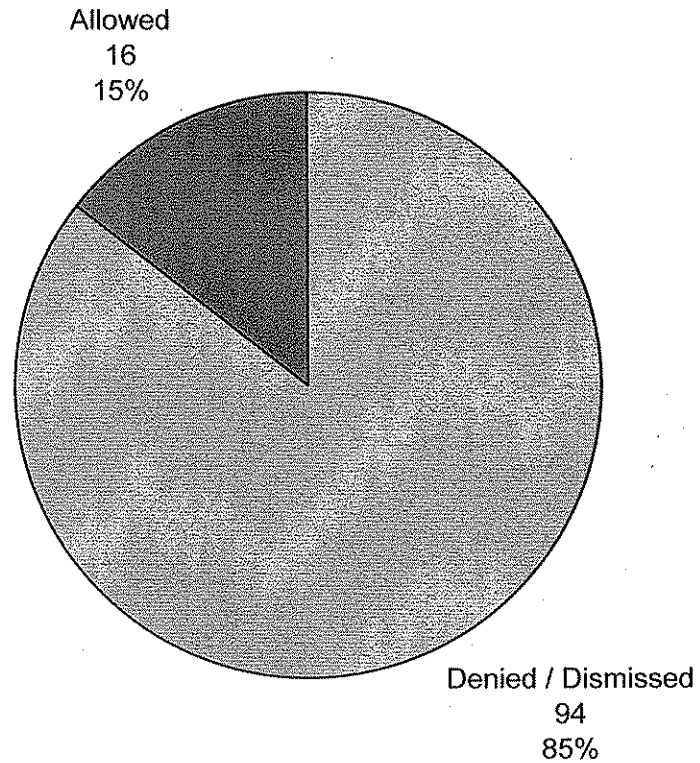


2007 Bypass and Related Appeals Seeking Relief: 128 Decisions

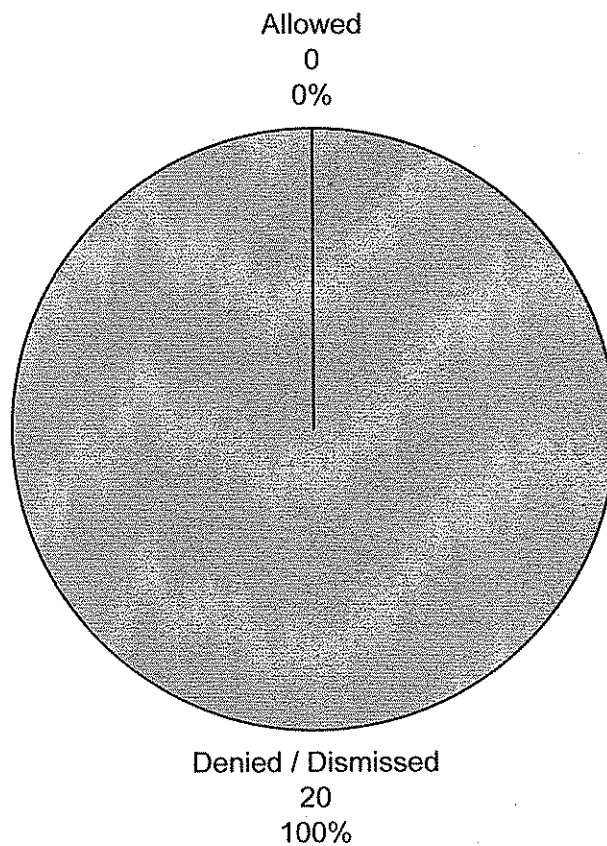


**2007 Disciplinary Appeals: 110 Substantive Decisions
Allowed v. Denied**

Does not include those cases where the parties reached a settlement agreement prior to the full hearing .



2007 YTD Classification Appeals: 20 Substantive Decisions Allowed v. Denied



**YEAR-TO-DATE COURT DECISIONS ISSUED IN 2007 REGARDING APPEAL OF COMMISSION DECISIONS
(AFFIRMED – 17; OVERTURNED / REMANDED – 4)**

Date of Court Decision	Court	Date of Commission Decision	Original Commission Decision In Favor Of?	Case Name	CSC Case No.	Commissioner	Court Decision	Issues
1/5/07	Suffolk Superior (Judge Locke)	8/17/05	Appellant (Bypass Appeal Allowed)	Gaudette v. Town of Oxford	G-02-298	Henderson	*Remanded to Commission for de novo hearing	<ul style="list-style-type: none"> ▪ Commission conclusion that there was bias not supported by findings; ▪ Commission correct in ruling that negative reasons should have been given at time of bypass in this particular case. Court concerned, however, that Commission then proceeded to determine if negative reasons were supported by evidence.
2/8/07	Suffolk Superior (Judge Walker)	1/28/05	Appointing Authority (Termination Upheld)	Ly v. Lowell Police Department	D-01-1317	Henderson	Affirmed	<ul style="list-style-type: none"> ▪ Appellant's "Carney Rights" were not violated; issue of whether information was obtained by police department as part of "criminal" investigation or "internal investigation."
2/21/07	Suffolk Superior (Judge Walker)	2/16/06	Appointing Authority (Termination Upheld)	Loughlin v. City of Fitchburg	D-03-10; D-04-274	Henderson	Affirmed	<ul style="list-style-type: none"> ▪ Employee was terminated for poor performance, insubordination; rudeness and removing confidential information from files of fellow employees; ▪ On appeal to Superior Court, Appellant argued that Commission acted unlawfully by considering illegally obtained evidence (tape-recorded phone conversation); ▪ Court ruled that tape was only minimally mentioned in Commission decision and not heavily relied on in making decision; ▪ Court referenced credibility determinations made by Commission in supporting the affirmation.

Date of Court Decision	Court	Date of Commission Decision	Original Commission Decision In Favor Of?	Case Name	CSC Case No.	Commissioner	Court Decision	Issues
3/7/07	Suffolk Superior (Judge Fahey)	4/10/04	Appellant (Bypass Appeal Allowed)	Nelson Nahim v. Boston Police Department	G-02-400	Guerin	Affirmed	<ul style="list-style-type: none"> Commission had allowed bypass appeal. Although 209A issued, it was limited in scope and the circumstances surrounding its issuance were subsequently determined to be suspect.
3/14/07	Suffolk Superior (Judge Sanders)	11/24/06	Appointing Authority (Termination Upheld)	Pau G. Chafe v. City of Chelsea	D-05-89	Guerin	Affirmed	<ul style="list-style-type: none"> Commission dismissed disciplinary appeal which was filed four years after termination, far beyond the 10-day filing requirement.
3/13/07	Suffolk Superior (Judge Cratsley)	10/3/05	Appointing Authority (Promotional Bypass Appeal Dismissed)	Palmer et al v. Department of Correction	G2-03-438	Guerin	Affirmed	<ul style="list-style-type: none"> Court affirmed Commission's decision that DOC promotions were conducted in accordance with applicable provisions of c. 31.
3/26/07	Middlesex Superior (Judge Fischman)	3/11/05	Appellant (30-day suspension overturned)	Metzler v. Lowell Public Schools	D-02-860	Taylor	Affirmed	<ul style="list-style-type: none"> Commission overturned 30-day suspension issued to custodian for charges related to sexual harassment; No credible evidence to support charges; case relied heavily on credibility assessments of various witnesses; Court upheld Commission's decision without much comment.

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4/23/07	Suffolk Superior (Judge Walker)	10/20/06	Appointing Authority (Layoffs upheld)	Porio, Shea & Trachtenberg v. DOR and HRD	D-02-715; D-02-763; D-02-408	Bowman	Affirmed	<ul style="list-style-type: none"> ▪ Plight of the Provisionals ▪ In regard to layoffs, individuals promoted to provisional positions are considered to have left their permanent position; ▪ Court decision centered on whether the SJC decision in Andrews was retroactive to this case (Timberlane exceptions). Court ruled that CSC correctly determined that Andrews case was effective retroactively.
5/7/07	Suffolk Superior (Judge Cratsley)	6/29/06	Appellant and HRD	Tarpy v. Haverhill and HRD		Bowman	Reversed (Commission Appealing)	<ul style="list-style-type: none"> ▪ Court ruled that Commission (and HRD) were wrong to determine that an individual "shall have been employed" in the next lower position in order to sit for promotional exam, ruling that a retroactive seniority date, previously ordered by the Commission, was sufficient to allow the Appellant to sit for the exam.
5/22/07	Suffolk Superior (Justice MacDonal d)	4/25/06	Appointing Authority (Termination Upheld)	Dapkas v. Department of Correccion	D-02-793	Marquis	Affirmed	<ul style="list-style-type: none"> ▪ Court affirmed CSC Decision in which it determined DOC had reasonable justification for terminating an employee with a long disciplinary history for falsifying forms regarding an alleged on-duty injury not disturbing the Commission's credibility assessments, which were central to the decision.

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6/7/07	Appeals Court	11/5/04	Appointing Authority (Termination Upheld)	Fierimonte v. Lowell Public Schools	D-03-407	Henderson	Affirmed	<ul style="list-style-type: none"> Appeals Court ruled that the overwhelming evidence of the Appellant's poor work performance was more than ample to support the Commission's decision.
6/21/07	Appeals Court	10/9/03	Appointing Authority (Termination Upheld)	Pearson v. Town of Whitman	D-01-1564	Tierney	Affirmed	<ul style="list-style-type: none"> Appeals Court ruled that Commission was correct in determining that there was substantial evidence justifying termination
6/25/07	Plymouth Superior Court (Judge Powers)	4/20/06	Appointing Authority / HRD	Gillis v. City of Boston and HRD	G-02-587	Taylor	Affirmed	<ul style="list-style-type: none"> Commission's decision was not arbitrary or capricious when it determined that Appellant was not eligible for preference authorized by G.L. c.31, s. 26.
7/6/07	Plymouth Superior Court (Judge McLaughlin)	8/16/05	Appointing Authority (5-day suspension)	Lapworth v. Town of Carver	D-02-417	Guerin	Affirmed	<ul style="list-style-type: none"> Commission possessed substantial evidence to support its conclusions regarding the Appellant's misconduct.
7/12/07	Suffolk Superior Court (Judge Troy)	2/16/06	Appellant (termination overturned)	Mullen and McGuinness v. DOC	D-05-53 & D-05-54	Henderson	Vacated / Remanded	<ul style="list-style-type: none"> Commission decision not supported by substantial evidence; was arbitrary and capricious and exceeded Commission's authority.
8/22/07	Bristol Superior Court (Judge Moses)	3/23/06	Appointing Authority (termination upheld)	Markland v. City of Fall River	D-02-882	Guerin	Affirmed	<ul style="list-style-type: none"> Findings of Commission supported by substantial evidence and were not arbitrary or capricious.

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9/20/07	Suffolk Superior Court (Judge Hogan)	1/10/06	Appointing Authority (upheld decision to bypass)	Anthony Gaul v. City of Quincy	G-02-673	Taylor	Affirmed	<ul style="list-style-type: none"> Appellant was bypassed for reasons related to driving record; 209A; incomplete application; and being a smoker. Commission's decision was "legally sound and was not arbitrary, capricious or an abuse of discretion".
10/30/07	Bristol Superior Court (Judge Kane)	7/7/05	Appointing Authority (upheld denial of request for reclassification)	Nancy Fournier v. Department of Revenue	C-02-558	DALA	Affirmed	<ul style="list-style-type: none"> Substantial evidence for the magistrate to find that Fournier did not former the duties of the position being sought more than 50% of the time.
10/30/07	Bristol Superior Court (Judge Kane)	7/7/05	Appointing Authority (upheld denial of request for reclassification)	Theresa Hyde v. Department of Revenue	C-02-334	DALA	Remanded	<ul style="list-style-type: none"> Magistrate erred by relying solely on job duties established by DOR and HRD after the Appellant's request for reclassification was required. Case must be re-heard and decided based upon job duties in place at time of appeal.
10/30/07	Plymouth Superior Court (Judge Chin)	6/15/06	Appointing Authority (upheld one-day suspension)	Raymond Orr v. Town of Carver	D-02-2	Bowman	Affirmed	<ul style="list-style-type: none"> Commission did not abuse its discretion when it found that Orr's posting of an offensive cartoon was not activity protected under G.L. c. 150e; Commission did not abuse its discretion by assigning the case to another Commissioner to write decision after a former Commissioner left the Commission; Decision supported by the evidence and not arbitrary or capricious.

Date of Court Decision	Court	Date of Commission Decision	Original Commission Decision In Favor Of?	Case Name	CSC Case No.	Commissioner	Court Decision	Issues
11/26/07	Suffolk Superior Court (Judge Cratsley)	1/12/07	Appointing Authority and HRD (ruled there was no bypass)	James Verderico v. Boston Police Department	G-02-213	Bowman	Affirmed	<ul style="list-style-type: none"> ▪ On remand, the Commission was directed to determine if the Appellant would still have been "not reachable" on civil service list based on end of consent decree in City; ▪ Commission concurred with HRD that Appellant would not have been reachable and hence, there was no bypass; ▪ Court concurred.