

Annual Report 2011



Massachusetts Commission Against Discrimination

Chairman Julian T. Tynes
Commissioner Sunila Thomas-George
Commissioner Jamie R. Williamson



MCAD Annual Report 2011

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MCAD Commissioners



Jamie R. Williamson

Julian T. Tynes

Sunila Thomas-George

Letter from the Commissioners

Governor Patrick, Lt. Governor Murray, Members of the Legislature and People of the Commonwealth: It is our pleasure to submit the 2011 Annual Report for the Massachusetts Commission Against Discrimination.

In 1946, Governor Tobin and the Legislature passed legislation to create an agency whose purpose was to enforce the civil rights laws of the Commonwealth, the Massachusetts' Commission Against Discrimination ("MCAD" or "Commission"). The MCAD, the second oldest state civil rights agency in the nation, marked its sixty-fifth anniversary in 2011. In the sixty-six years since its inception, the MCAD has been at the forefront nationally in its enforcement of the civil right laws that protect all persons working, visiting, or residing in the Commonwealth. The Commission continues to serve the people of the Commonwealth and zealously enforces the anti-discrimination laws by investigating, prosecuting, and adjudicating cases of discrimination, harassment, and retaliation in employment, housing, places of public accommodation, credit, and education. In addition, the MCAD fulfills its mission by reaching out to communities protected under Chapter 151B with education and training, and prioritizes enforcement efforts to reflect the needs of Massachusetts' most vulnerable populations. The Commonwealth's anti-discrimination laws remain among the most progressive and far-reaching laws in the country, and provide the Commission with the tools necessary to fulfill its Legislative mandate of ending discrimination in the Commonwealth.

Reflecting on 2011

The year 2011 marked the completion of the Commission's first full year under the leadership of Chairman Julian T. Tynes and Commissioners Sunila Thomas-George and Jamie R. Williamson. Some of 2011's highlights include:

- Substantially reducing the backlog in the Springfield Office by prioritizing conciliation efforts and targeting scarce resources toward resolving complaints;
- Developing an enforcement program following the Legislature's enactment of the CORI Reform "ban the box" law that has resulted in increased compliance by employers of various sizes doing business in Massachusetts;
- Aggressively using the Commission's statutory authority to initiate complaints to remediate discriminatory practices that have resulted in public interest remedies covering a wide variety of areas;
- Initiating and strengthening collaborative efforts with community groups, local Human Rights Commissions, and immigrant communities;
- Co-sponsoring an all New-England Housing Civil Rights Conference to address fair housing and civil rights issues throughout the region, and collaborating with various advocacy groups and organizations in innovative ways to address these issues;
- Implementing a housing oversight panel in the Central and Western portions of the Commonwealth to advise and assist in rebuilding efforts in the wake of the devastating tornado of June 1, 2011;
- Significantly increasing the number of completed Investigative Dispositions from previous years by improving the efficiency of the investigation process and returning to automatically scheduled investigative conferences on select cases;

-
- Successfully defending the agency against attacks on its jurisdiction and obtaining court rulings affirming MCAD's interpretation of anti-discrimination laws;
 - Increasing collaborative efforts with the MCAD's federal partners, the Equal Employment Opportunity Commission (EEOC) and Housing and Urban Development (HUD);
 - Working with the Legislature in advancing civil rights bills, including the newly-enacted Gender Identity law, an expansion of the scope of G.L. c. 151B.

Looking Forward

As the Commission looks toward 2012, its objectives include:

- Continuing to collaborate with both state agencies and the MCAD's federal partners on joint litigation and cooperative state and federal initiatives, such as workforce re-entry programs and protecting the rights of vulnerable populations;
- Expanding the scope of the Commission's Testing Division to include housing and public accommodation discrimination and using the testing process as a tool to ensure compliance with state and federal anti-discrimination laws;
- Developing an enforcement and educational outreach plan under the new Gender Identity law;
- Continuing to use the Commission-initiated complaint process as a tool for law enforcement efforts, including as a means of seeking compliance by state and municipal employers with the anti-discrimination laws, and for accelerated responses to discriminatory practices the Commission becomes aware of;
- Advising the Legislature on bills that subvert or advance the Commission's public interest mission;
- Updating and issuing new regulations;
- Continuing to enhance outreach and strengthen collaborative efforts with community groups, local Human Rights Commissions, immigrant communities, traditional Civil Rights groups and advocacy groups as well as municipal governments, the business community, and underserved communities.

In closing, the Commissioners would like to thank community group leaders, advocates for civil rights, members of the business community, members of the bar, the MCAD Advisory Board and the Legislature who, along with Governor Patrick and Lieutenant Governor Murray, continue to support the Commission in its quest to achieve its mandate of eradicating discrimination within the Commonwealth. Most of all, we thank our dedicated staff for the determination, drive, and tireless work ethic they exhibit on a daily basis.

We look forward to 2012!

Enforcement

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

The Enforcement Division had a productive year investigating, processing, and completing investigations. The Enforcement Division staff, located in four offices - Boston, New Bedford, Springfield, and Worcester- is comprised of a staff of 14 employment investigators, 5 housing investigators, 3 senior supervisors, 3 unit supervising investigators, 6 administrative assistants, 1 supervising attorney, 5 attorney advisors, and the Chief of Enforcement.

Investigative Dispositions

In 2011, individuals filed 3,195 charges of discrimination with the Commission; slightly less than 2010's total of 3,308 charges. The vast majority of these complaints were based on employment discrimination (84%) followed by housing (9%), and public accommodation (6%) discrimination. Of all complaints filed in 2011, Disability, Race/Color and Sex were most frequently the basis of discrimination at 20.6%, 19.8%, and 17% respectively. The number of Investigative Dispositions completed by the Enforcement Division and issued by the three Commissioners increased substantially in 2011, from approximately 1,700 in 2010 to 2,055, an additional 355 cases. The Enforcement Division investigators completed an average of 171 Investigative Dispositions per month.

Of the 2,055 completed Investigative Dispositions, 25% (or 502) resulted in a Probable Cause determination and approximately 75% (1,553) were dismissed for Lack of Probable Cause. The number of Investigative Dispositions resulting in Probable Cause is an increase from 2010 and consistent with increases in the probable cause determination rates over the past three (3) years (22.3% in 2010 and 17.1% in 2009).

Pre-Determination Settlements & Lack of Jurisdiction Dismissals

The Enforcement Division staff was instrumental in settling 219 discrimination complaints prior to an Investigative Disposition being issued, an increase of 39 from 2010, thereby saving Commission resources and providing the parties a speedy resolution. In addition, the Enforcement Division recommended dismissals for lack of jurisdiction ("LOJ") on 88 complaints, which were allowed by the Investigating Commissioners. The Enforcement Division staff closed a total of 307 complaints through settlement or for LOJ.

Judicial Election Closures

The Commission closed 333 complaints following a complainant or respondent's election of a judicial remedy under § 5 of Chapter 151B in fair housing complaints or a complainant's withdrawal under § 9, to file a court action in all others discrimination complaints.

Withdrawals Following Settlement

The Commission closed 240 complaints following settlement by the parties and the Complainant's withdrawal of the complaint.

Satellite Offices

The Worcester and New Bedford offices continue to be vital resources for the citizens of central and southeastern Massachusetts, affording those communities MCAD services closer to home. Providing the full range of services from handling information calls, complaint intake, and investigations, the Worcester and New Bedford offices each averaged 20 new complaints filed every month in those offices through the intake process.

2011 ANNUAL REPORT STATISTICS

Cases Filed: 3,195

Investigative Dispositions - Completed

2011 - 2,055 total

2010 - 1,700 total

Investigative Dispositions - Findings

2011

Lack of Probable Cause (75%)

Probable Cause Finding (25 %)

2010

Lack of Probable Cause (77.7%)

Probable Cause Finding (22.3%)

2009

Lack of Probable Cause (82.9%)

Probable Cause Finding (17.1%)

Complaints Closed in 2011

Removal to Court 333

Withdrawn with Settlement 240

Pre-Disposition Settlement 219

Lack of Jurisdiction Dismissal 88

Withdrawn for Other Reasons 117

Total 997

Complaints Filed by Type of Discrimination

Employment 84% 2699

Housing 9% 293

Public

Accommodation 6% 182

Other 1% 21

Total 3195

All Complaints Filed by Protected Category

(Please note that the total number exceeds the 3,195 complaints filed in 2011 because a complainant may allege discrimination based on more than one protected category).

Disability	20.6%	1076
Race/Color	19.8%	1035
Sex	17.0%	889
Retaliation	16.2%	848
Age	10.5%	547
National Origin	8.0%	419
Sexual Orientation	2.5%	130
Other	2.4%	128
Religion (Creed)	1.7%	91
Children	1.2%	64

Housing Discrimination Complaints Filed By Protected Category

(Please note that the total number exceeds the 3,195 complaints filed in 2011 because a complainant may allege discrimination based on more than one protected category).

Disability	28.4%	114
Race, Color	15.4%	62
Lead Paint	9.7%	39
Children	13.4%	54
National Origin	8.5%	34
Public Assistance	8.2%	33
Other	4.2%	17
Sex	4.2%	17
Sexual Orientation	2.7%	11
Age	2.2%	9
Marital Status	1.5%	6
Religion (Creed)	1.0%	4
Veteran	0.5%	2

Number of Active Investigations

2011 - 4,996
2010 - 5,390
2009 - 4,783
2008 - 4,683
2007 - 3,928

Accomplishments

In January 2011, the Enforcement Division implemented a multi-pronged process to eliminate a backlog (those older than 3 years) of over 700 old active cases. A team of three investigators completed over 150 old cases during January to April. This accomplishment was equally and laterally supported during the entire year as investigators completed and closed old cases on their docket.

In April 2011, the MCAD reinstituted the automatic scheduling of Investigative Conference (the Conferences in most of its employment cases). These cases are automatically scheduled for an investigative conference to be held within 120 days of a complaint being filed, and serves as an investigative tool to aid investigators in obtaining the information necessary to clarify disputed issues or resolve questions necessary for the quicker completion of the investigation. In March 2011, the Enforcement division staff conducted a four day in-house training on the use of investigative conferences for all new investigators, enhancing the skills of all investigators. A welcome byproduct of the investigative conference is that the information may also assist the Commission in determining whether the complaint should be referred to mediation or other pre-determination settlement process.

Additionally, in response to the increased number of probable cause findings and in an effort to increase the Commission's capacity to hold statutorily-mandated Conciliations after a determination of probable cause, staff attorneys in the Enforcement Division have begun conducting conciliations.

On the housing front, the Enforcement Division housing investigators developed a closer joint working partnership with their federal counterparts in the U.S. Department of Housing and Urban Development. Working collaboratively on housing cases involving dual-agency jurisdiction both agencies share and leverage investigative resources and case information involving private or public entities that receive federal housing funds

Enforcement Outreach and External Training

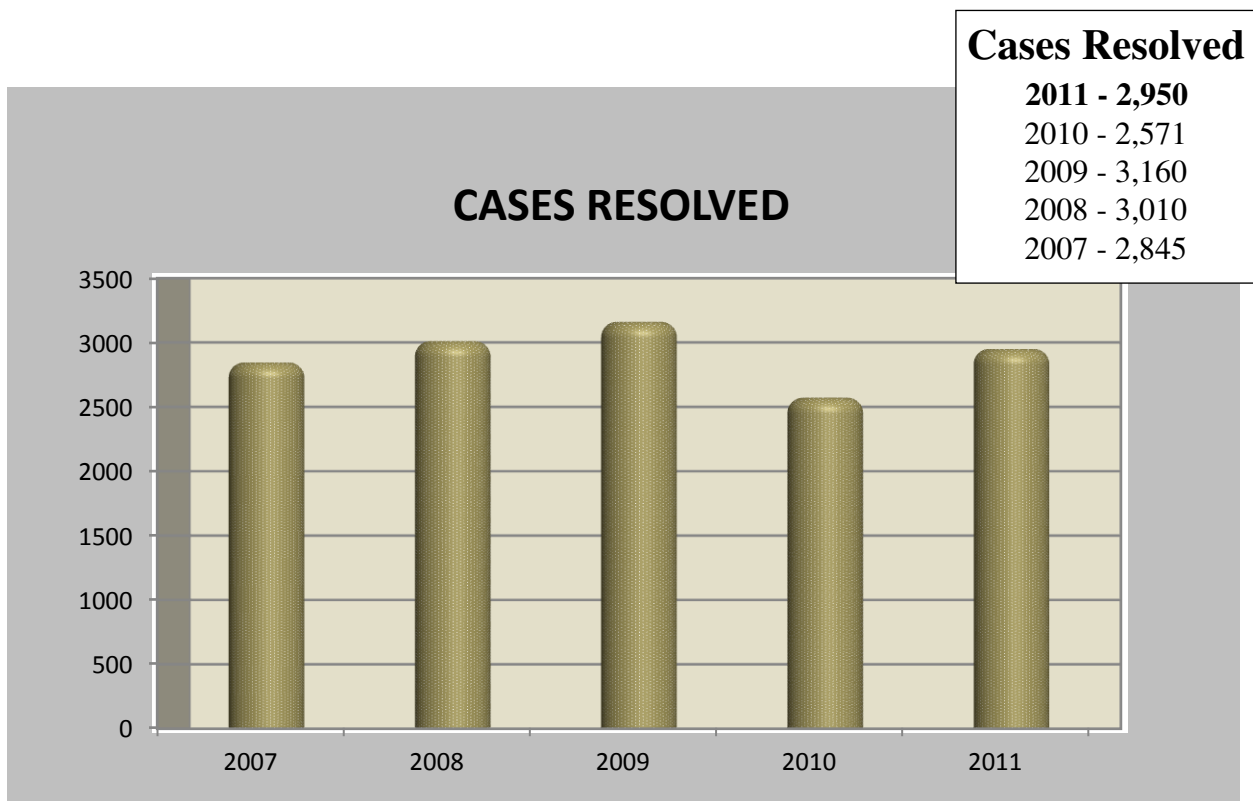
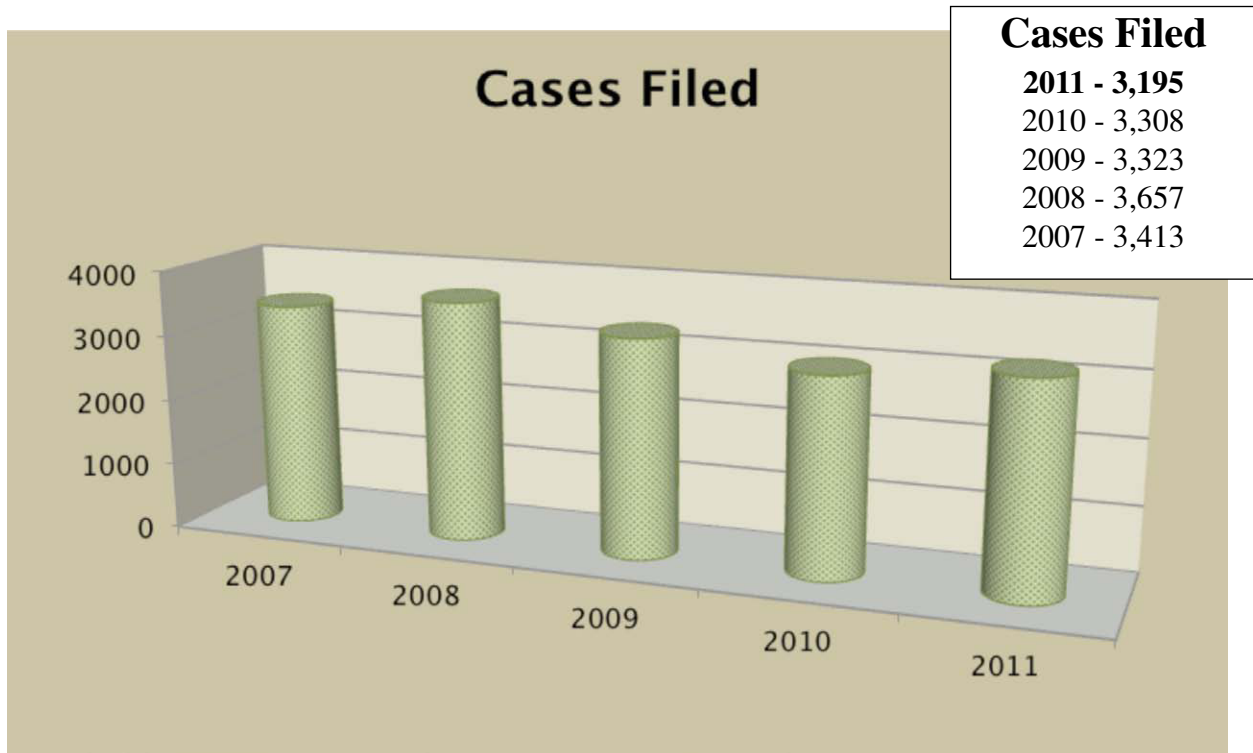
In support of the MCAD mission of eliminating and preventing discrimination policies or practices in employment, housing and public accommodation, the Enforcement Division housing and employment investigators participated in over fourteen educational outreach programs and sixteen training sessions to public and private organizations, employers, law firms, and civil associations throughout the Commonwealth. MCAD investigators provided education in all areas of discrimination in conjunction with community advocates, federal counterparts, and area businesses.

Professional Development

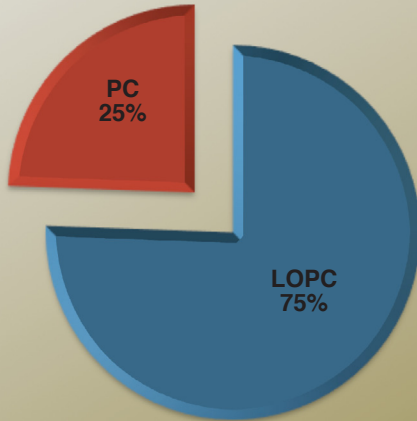
Throughout the year enforcement staff received trainings on new developments in the law and enhanced writing skills. Three housing unit investigators attended rigorous investigatory training at the National Fair Housing Training Academy, Washington, D.C., sponsored by the U.S. Department of Housing and Urban Development. Some of the enforcement supervisors completed the Commonwealth's Supervisory Certificate Program (a six month course). The Chief of Enforcement also completed the Commonwealth's Management Certificate Course Program (a full-year course).

2011 Annual Report

Cases Filed: 3,195 in 2011



Substantive Resolutions



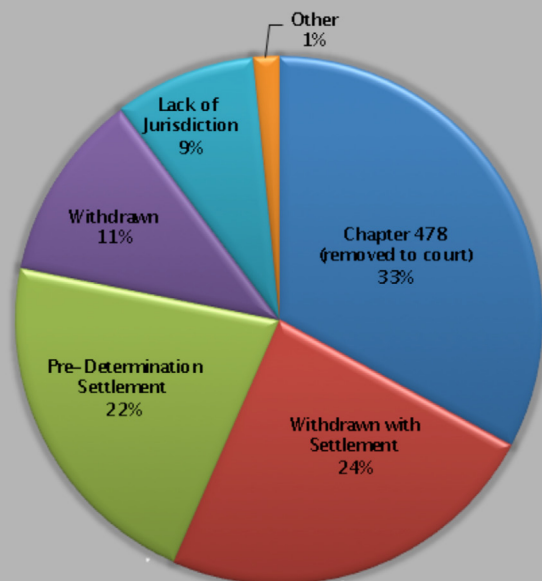
Substantive Resolutions

Lack of Probable Cause 1,553
 Probable Cause Finding 502

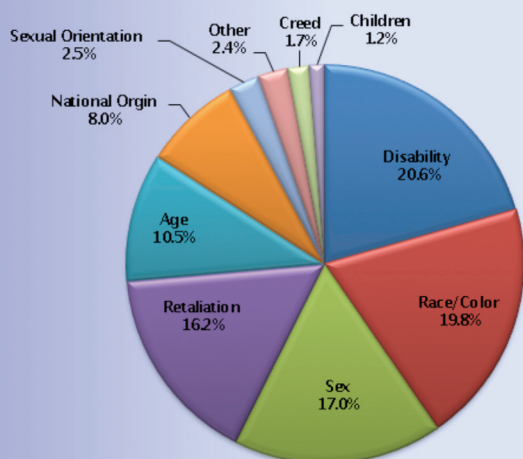
Administrative Resolutions

Chapter 478 (removed to court)	32.9%	333
Withdrawn with Settlement	23.7%	240
Pre-Determination Settlement	21.6%	219
Withdrawn	11.5%	117
Lack of Jurisdiction	8.7%	88
Other	1.6%	16
Total		1,013

Administrative Resolutions



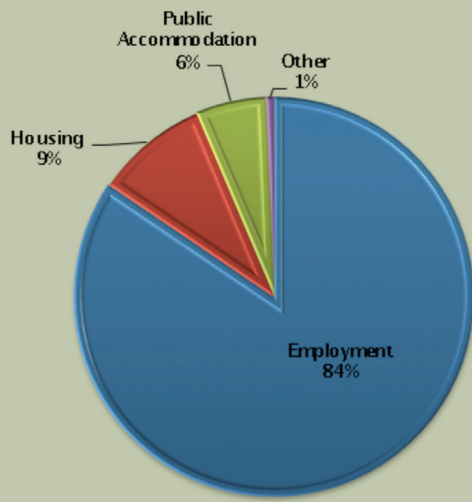
Complaints Filed by Protected Category



Complaints Filed by Protected Category

Disability	20.6%	1,076
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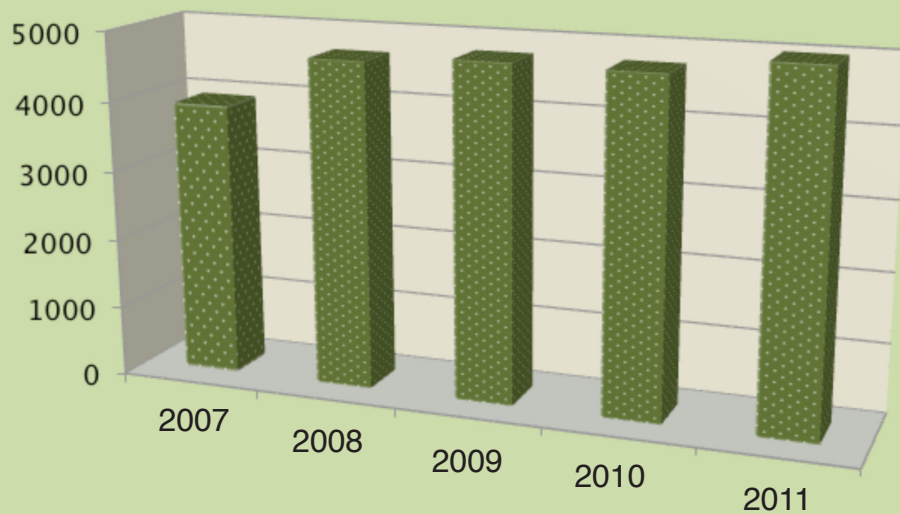
Complaints Filed by Jurisdiction



Complaints Filed by Jurisdiction

Employment	84%	2,699
Housing	9%	293
Public Accommodation	6%	182
Other	1%	21
		3,195

Inventory of Cases



Inventory of Cases

2011 - 4,996
 2010 - 4,766
 2009 - 4,783
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 2007 - 3,928

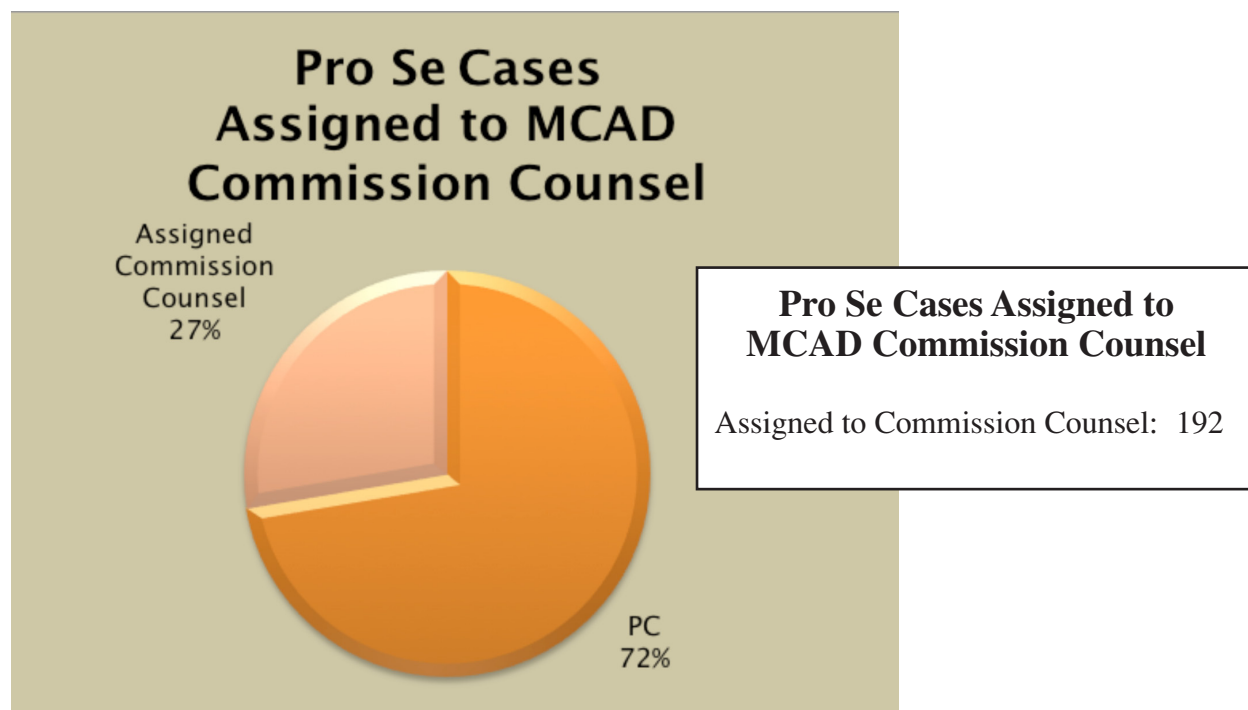
Legal

The MCAD's Legal Unit is responsible for enforcing and litigating the Commonwealth's anti-discrimination laws, including the Fair Employment, Education, and Housing Practices Acts, the Maternity Leave Act and the Public Accommodations laws. Following a finding of probable cause that a discriminatory act has occurred, Commission counsel are assigned cases and proceed in the public interest to eradicate discriminatory practices and to obtain victim specific relief for unrepresented complainants.

The Legal Unit defends all final agency decisions if judicial review is sought in Superior Court and/or the State's appellate courts pursuant to G.L. c. 30A, § 14(7). The unit also defends challenges to the Commission's jurisdiction, files enforcement actions seeking compliance with the Commission's final orders, and submits amicus briefs on important issues arising under the anti-discrimination laws in cases that are litigated in court under G.L. c. 151B, § 9.

Pro Se Cases

In 2011, the MCAD Legal Unit was assigned probable cause cases filed by pro se Complainants. Commission Counsel settled a total of 116 cases through conciliation efforts resulting in over One Million Seven Hundred and Seventy Eight Thousand Two Hundred and Fifty One Dollars (\$1,778,251.00) in monetary damages (lost wages, emotional distress or other compensable injury). A majority of these settlements contained provisions directed at preventing future violations of the anti-discrimination laws (mandatory training or policy development), making the complainant whole (re-instatement to a position or awarding a promotion) and oversight provisions (monitoring and reporting). In 2011, the average length of time it took to resolve a post-probable cause case was 16 months.



Noteworthy Settlements

- A complaint filed by an employee disabled by asthma who alleged that her employer refused to reasonably accommodate her and constructively discharged her, was settled for \$17,500.00. The corporate employer also agreed to conduct state-wide training on disability discrimination for approximately sixty-five store managers, district managers, directors, office managers, and human resources staff.
- A Cape Verdean customer's complaint alleging she was treated unfairly and differently than other customers at a national retail store was settled when the company agreed to train the store's staff on the anti-discrimination provisions of Massachusetts' public accommodation law, pay the customer \$10,000.00, and issue a written apology.
- A fair housing complaint alleging disability discrimination was settled when the housing provider agreed to adopt and disseminate to tenants a HUD-approved parking policy on providing reasonable accommodations for residents with disabilities and to train its staff on the policy and state and federal fair housing laws, with a focus on disability-related issues. Additionally, the housing provider agreed to give an assigned parking space and a nominal amount in monetary damages to the disabled tenant who filed the complaint.
- A disabled woman's complaint alleging that she was ejected from a nation-wide restaurant because she was accompanied by her service animal was settled when the restaurant agreed to provide specialized training on disability discrimination to its human resources staff, design and implement a disability training program for all restaurant staff in Massachusetts, and provide notice upon entry to the stores that service animals are welcome. Additionally, the respondent issued a written apology to the customer and made a charitable donation in her name.
- A public employer who was alleged to have subjected its employee to discrimination based on gender, race and color, and retaliation agreed to settle with the employee for \$140,000.00.
- A woman seeking housing on behalf of herself and her young children, some of whom were under the age of six, filed a complaint alleging violations of the lead paint and fair housing laws. She claimed her family was unlawfully refused a housing opportunity because the premises she sought to rent may have contained lead paint and her children's presence would have triggered the landlord's statutory duty to de-lead. The case settled when the landlord agreed to obtain lead paint testing of the subject unit and to undertake any lead paint remediation in accordance with state law and to undergo fair housing training. In addition, the landlord paid \$5,500 in monetary damages to the complainant.
- A disability discrimination complaint was settled with a non-profit organization that provides job training and placement services for individuals seeking employment. The complaint was filed by a sight-impaired individual who alleged that she was denied services. This case was resolved when the organization agreed to implement policies and procedures designed to ensure that disabled, and more specifically sight-impaired individuals, are provided equal access to the benefits, privileges, and services provided by it.

Commission-Initiated Complaints

The Commission may initiate a complaint whenever it believes that a person has been engaging in an unlawful practice under Chapter 151B or any of the other laws the Agency is responsible for enforcing. G.L. c. 151B, § 5, 804 CMR § 1.11. The Commission initiated a total of six complaints in 2011. Three of those complaints have resulted in seven settlements or consent decrees.

Racially-Restrictive Covenants

MCAD v. HARMON LAW OFFICES, P.C., U.S. BANK, N.A., HOME LOAN SERVICES & DOW JONES LOCAL MEDIA GROUP, MCAD DOCKET NUMBER 10BPR0128

The Commission initiated an enforcement action following a newspaper's publication of a foreclosure notice for a property in New Bedford that restricted the selling of the premises to persons of the "Caucasian" race. The language had been present in the deed for at least sixty years through various sales of the property. Massachusetts fair housing law forbids publication of discriminatory advertisements, bans racially-restrictive covenants, and makes it unlawful to sell any property containing a racially restrictive covenant. The Commission settled with four Respondents: the trustee for the mortgage holder, the mortgage servicer, foreclosure counsel, and the owner of the newspaper that printed the discriminatory language. The settlements resulted in a multiple-pronged proactive remedy that establishes mortgage banking and servicing practices that will lead to the identification and elimination of racially-restrictive covenants "from the books" in Massachusetts and nationwide. Terms of the settlement also include development of educational materials for the real estate bar, a model policy for eliminating discriminatory covenants for foreclosure counsel, community education on fair housing issues, anti-discrimination training, and installation of computer software for detecting discriminatory advertisements in four Massachusetts-based newspapers.

Equal Access to Places of Public Accommodation for Persons with Service Dog

MCAD v. MANDARIN DEDHAM, INC. & TOWN OF DEDHAM, MCAD DOCKET NUMBER 11BPA02046

The Commission initiated an enforcement action and entered into consent decrees with the Town of Dedham and the Bamboo Dedham Restaurant after restaurant employees refused to honor a dinner reservation of a party that included several persons with disabilities, some of whom were accompanied by service dogs. The restaurant cited various unlawful or unsubstantiated reasons, for its actions including possible customer allergies and claimed (wrongly) that the Town's Health Department barred the presence of service dogs at buffets. Under state law, persons with disabilities, including those accompanied by service dogs, have a right of equal access and treatment in places of public accommodation, such as restaurants. The complaint further alleged that police officers called to the scene failed to enforce a criminal law that requires places of public accommodations to admit disabled persons who are accompanied by service dogs.

The Commission entered into a consent decree with the Town of Dedham that requires the Town, working with the MCAD, to develop an anti-discrimination policy and training program for members of its police and fire departments that provides guidance on the rights of, and interactions with, disabled persons, including those accompanied by service animals. In addition, the Town was required to work with the MCAD in developing an anti-discrimination in public accommodations policy that will be made available as a model for police departments throughout the Commonwealth. The consent decree with Bamboo Dedham requires the restaurant to post and adhere to an MCAD-approved anti-discrimination policy, issue a public apology, and to train all restaurant employees, supervisors, and managers at the Dedham restaurant and four other restaurant locations, using a certified Mandarin translator.

Denial of Entry of Club Event Sponsored by Black Alumni
MCAD v. PAIGE HOSPITALITY, INC. D/B/A CURE LOUNGE,
MCAD DOCKET NUMBER 10BPA03143

The Commission initiated an investigation and complaint following allegations that Boston-based Cure Lounge's abrupt decision to shut down an organized event in November, 2010 (the weekend of the Harvard-Yale football game) was because a vast majority of the attendees were black. Harvard alumni, as well as graduate students from both Harvard and Yale, were invited to the event and approximately 400 people purchased advance tickets, but were told to leave soon after the event began. Some were told upon their arrival that the event had been cancelled. Under the terms of the consent judgment, Paige Hospitality must comply with state and federal public accommodations and consumer protection laws, send its staff to annual anti-discrimination training, issue a public apology, post and adhere to an approved anti-discrimination policy, and make a payment of \$30,000 to the Commonwealth to be distributed by the Attorney General to entities that provide support for African-American students seeking higher education opportunities.

Public Hearings

Commission counsel staff prosecuted multiple cases at public hearing on behalf of the Commission in 2011. The Commission prevailed in six of those hearings and Commission counsel obtained monetary awards on behalf of complainants in excess of \$530,000 and civil penalties in the amount of \$55,000 assessed against respondents, prohibitory and affirmative relief in the public interest.

MCAD AND JOHNSON v. BG NEW ENGLAND POWER SERVICES, INC., 33 MDLR 89 (2011)

The Hearing Officer found that Respondent discriminated based on age and gender when it failed to rehire Complainant as a laborer at its Mystic Power Plant, even though she had worked at the plant for over twenty years and had an excellent work history. Instead, Respondent hired a young male with no experience as a laborer in a utility power plant. The Hearing Officer ordered Respondent's successor entity to offer Complainant the next laborer position and to pay her \$75,000.00 in emotional distress damages and \$167,380.00 in lost wages.

MCAD AND TIM BARNES v. SLEEK, INC., 33 MDLR 30 (2011)

The Hearing Officer found that Respondent Sleek Medspa subjected a male employee to a sexually hostile work environment in violation of M.G.L. c. 151B §4 (16A) and retaliated against him by terminating his employment when he complained internally. Complainant was awarded \$41,641.67 in lost wages and \$150,000.00 in emotional distress damages. In addition, the Hearing Officer ordered the individually-named corporate officer of Sleek, Inc., to pay to the Commonwealth of Massachusetts a civil penalty in the amount of \$50,000.00.

MCAD AND KEISHA WILLIS v. ALFRED DEFAZIO, 33 MDLR 146 (2011)

The Hearing Officer found that Respondent, a Newton landlord who owned multiple properties, discriminated in housing on the basis of race against Complainant, an African-American real estate agent, when he informed her he would not rent to African-Americans. The landlord additionally told her that African-Americans were not welcome in his neighborhood and that while he would rent to her, she would have to put additional money up front. Complainant was awarded \$15,000 in emotional distress damages. Respondent has appealed to the Full Commission.

MCAD AND DAWN SAWYER V. WIMPY'S RESTAURANT, 33 MDLR 175 (2011)

The Full Commission issued a decision affirming the Hearing Officer's finding that an employer discriminated and retaliated against its disabled employee. The Full Commission affirmed the Hearing Officer's award of \$30,000.00 in emotional distress damages, \$10,469.00 in lost wages and of \$3,096.00 in increased medical insurance premiums.

MCAD & ANGEL GERALDINO V. THE MOBILE ALLIANCE, LLC., ET AL., 33 MDLR 142 (2011)

The Hearing Officer issued a decision on August 24, 2011 finding that Respondents, The Mobile Alliance LLC and co-owners Daniel Treitel and John Panzino were jointly and severally liable for race and color discrimination against a black sales employee who worked for Respondents for one month. The Complainant was awarded \$11,880.00 in lost wages and \$10,000.00 in emotional distress damages.

NICHOLSON V. BRIDGEWATER STATE COLLEGE ET AL., 33 MDLR 15 (2011)

The Hearing Officer found that Respondent Bridgewater State College did not engage in age discrimination against a senior professor but did unlawfully retaliate against him for filing charges of age discrimination and stating that he was going to file a lawsuit. The Hearing Officer ordered that Bridgewater State immediately cease and desist from engaging in unlawful retaliation against the Complainant; pay Complainant \$10,000.00 in damages for emotional distress and \$5,432.99 in lost wages. The Hearing Officer also ordered Respondent to pay to the Commonwealth a civil penalty in the amount of \$5,000.00.

Court Litigation

JOULE, INC. V. SIMMONS, 455 MASS. 88 (2011)

Joule brought an action against its former employee, Simmons, seeking a declaration that an arbitration agreement she was asked to sign after she was hired was valid and binding. Joule sought a court order directing Simmons to withdraw her MCAD discrimination complaint and instead submit the claims to arbitration and further, argued that Simmons was precluded from acting as a litigant or party in any MCAD proceeding against her former employer. The MCAD was allowed to intervene in the case and argued that the private agreement between the parties was not binding and the federal policy in favor of arbitration did not mean that a state agency was required to relinquish its statutory duty, here, the duty to eliminate discrimination. The Supreme Judicial Court concluded that even where an employee has signed a presumptively valid employment agreement requiring arbitration of any claim arising from the employee's employment, including a claim of discrimination, the MCAD has authority under G. L. c. 151B, § 5, to conduct its own independent proceeding in the public interest based on the employee's complaint, and that nothing in an arbitration provision can prohibit an employee from testifying or otherwise participating in an MCAD investigation or prosecution.

PELLETIER V. TOWN OF SOMERSET & ANOTHER, 458 MASS. 504 (2011)

The Commission filed a brief of amicus curiae in this case about the MCAD's "scope of the investigation" rule. Following a verdict in favor of a town employee for discrimination based on sexual orientation, the Town filed an appeal arguing that the Superior Court lacked jurisdiction over many of the claims that the plaintiff presented as part of her case at trial because they were not included in her charge filed with the MCAD, or within the resulting scope of the MCAD's actual investigation of the charge. The SJC held that the MCAD charge and potential investigation establish the scope of any subsequent filing in the Superior Court, and that a claim not explicitly stated in the administrative charge may be asserted in a subsequent Superior Court action only if it is based on acts of discrimination that the MCAD charge could reasonably be expected to uncover during the investigation or that were actually investigated. Whether elements of a claim fall within the scope of an MCAD investigation presents a question of law for judicial determination.

PSY-ED CORP., ET AL. V. KLEIN & SCHIVE V. HIRSCH, ET AL., 62 MASS. APP. CT. 110 (2011).

The MCAD filed a brief of amicus curiae in this case which involved the interpretation of provisions of G.L. c.151B, specifically, the so-called retaliation provisions, Sections 4(4) and (4A). The MCAD argued that these provisions, which prohibit retaliation and interference with a protected right under anti-discrimination law, apply to post-employment conduct and are not and should not be limited to current employees. The Massachusetts Supreme Judicial Court held that both present and former employees are protected from conduct by an employer or other person under the two provisions, even when it occurs after the employment relationship has terminated.

MCAD V. FATOU SY (APPEALS COURT), 79 MASS. APP. CT. (2011)

This was an Appeal under Chapter 30A of the Superior Court's reversal of the MCAD's finding that a landlord violated the Fair Housing Act when she refused to rent an apartment to a prospective tenant and her young children. The Superior Court vacated the MCAD decision after concluding that certain findings were based on unreasonable interpretations of the Fair Housing statute and unsupported by substantial evidence. The MCAD appealed and the Appeals Court reversed, reinstating the Hearing Officer's decision and award of \$10,000 in emotional distress damages. The Appeals Court concluded that the MCAD's interpretations were "reasonable and not in conflict with the governing legislation": specifically, an apartment is "available" for purposes of the Fair Housing law even when an existing tenants still occupies it since units are often shown before a current tenant's occupancy has ended and an advertisement for one unit that also brings possible tenants for other units is a "public offering" within the meaning of the fair housing law.

Hearings

The Hearings Unit is comprised of the three Commissioners and their designees: three full-time Hearing Officers, who conduct administrative hearings pursuant to M.G. L. c. 151 B § 5 of the statute on all claims of discrimination that are certified to public hearing, and render comprehensive written decisions with findings of fact and rulings of law. The Hearings Unit is also very active in conciliation efforts and the post-probable cause motion practice. The Hearings Unit held 60 prehearing conferences and 34 public hearings in 2011 and issued 31 decisions.

Significant MCAD and Court Decisions

MCAD Decisions by a Hearing Commissioner / Officer

THIBEAULT V. VERIZON NEW ENGLAND, INC., 33 MDLR 39 (DISABILITY)

Complainant brought a claim of disability discrimination alleging that her employer denied her a reasonable accommodation for her purported disability (migraine headaches, exacerbated by pregnancy) when it refused to grant her an extended leave of absence beyond four months. After granting Complainant a two-month medical leave for neck and back pain Respondent granted her an additional two months to provide medical justification supporting a further extended leave. Respondent asserted that Complainant did not provide objective medical evidence that she was suffering from debilitating migraines that prevented her from returning to work. The evidence showed that just prior to going out on a medical leave for neck and back pain, Complainant had been involuntarily transferred to a different job at a different location, for engaging in a sexual relationship with a subordinate. Per company rules, she could not continue to remain a supervisor of that crew. Complainant objected to and complained vociferously about the transfer, while denying the relationship. Upon receipt of medical clearance to return to work because her neck pain had resolved, Complainant discovered she was pregnant, and sought a further extended leave for migraine headaches. The Hearing Officer concluded that Complainant did not provide sufficient medical justification that she was so disabled by migraine headaches that she could not return to work, but that even if she were deemed disabled by extreme migraines, Respondent had accommodated her by providing a four month leave, and that a further extended leave was not reasonable given the circumstances. The Hearing Officer found that much of Complainant's testimony was not credible. The Hearing Officer did not conclude that an open-ended leave may never be a reasonable accommodation, but found that based on these facts, such a leave request was not reasonable. The Complaint was dismissed.

BARNES V. SLEEK, INC. ET AL., 33 MDLR 30 (SEXUAL HARASSMENT, RETALIATION)

Complainant was hired as a manager for one of a chain of Respondents' spas in the Boston area which provided cosmetic services such as hair removal. During his first week of employment, while he was being trained by another manager, Complainant witnessed and overheard inappropriate sexual gestures and comments by estheticians and a manager concerning their clients, which caused him to lodge a complaint with his managers about what he perceived as a hostile work environment. His employment was terminated the day after he complained. Because of sanctions imposed against the employer for failing to participate in the investigation of the case, it was prohibited from mounting a defense to the claim. The hearing officer found that Complainant was subjected to a sexually hostile work environment given that he was a new employee who had not yet assumed managerial duties, and that his termination was based on unlawful retaliation for opposing discriminatory practices. She awarded Complainant \$150,000 in damages for emotional distress and \$41,000 in lost wages, and assessed a civil penalty of \$50,000 against one of the individual spa owners, based on the fact that he had been successfully sued for discrimination on two prior occasions.

**CROKEN & TAMAYO V. HAGOPIAN HOTELS, ET AL.,
33 MDLR 61 (RACE & COLOR, RETALIATION)**

Complainants in this case filed claims of race and color discrimination and retaliation against Hagopian Hotels and their owner and proprietor, Nubar Hagopian. Tamayo, a hotel employee claimed that he was the victim of disparate treatment by Hagopian based on his race and color (Hispanic) and that he was ultimately terminated by Hagopian's son for opposing discriminatory practices. Croken, the General Manager of the Hotels, and Tamayo's boss, claimed unlawful retaliation when he was terminated for supporting Tamayo, refusing to transfer him, and protesting discrimination. The Hearing Officer found that Nubar Hagopian treated Tamayo adversely on account of his race and color and subjected him to a hostile work environment by repeatedly making false accusations against him, demanding that he be transferred, paying him a smaller bonus than his white European counterpart and referring to him as a "wetback." The Hearing Officer also found that Nubar Hagopian retaliated against Croken, who opposed the discriminatory treatment of Tamayo, by conducting an investigation into the owner's allegations against Tamayo and refusing to fire Tamayo. The Hearing Officer found that the General Manager complied with his obligations under the law and demonstrated great courage in opposing discriminatory conduct by his employer, thereby risking his job and his career. Tamayo's complaint of retaliatory discharge against the successor owner of the Harborside Inn, the son of the Respondent, was dismissed. Tamayo was awarded back pay of approximately \$112,000 and damages for emotional distress in the amount of \$50,000. Croken was awarded back pay of approximately \$195,000 and damages for emotional distress in the amount of \$80,000. The Hearing officer also assessed a civil penalty against Respondent in the amount of \$10,000.

LULU SUN V. UMASS DARTMOUTH, 33 MDLR 74 (NATIONAL ORIGIN)

Complainant, an Associate Professor of English at UMass Dartmouth filed a claim of discrimination based on her gender and race and Chinese ancestry, alleging denial of promotion. Complainant asserted that she was treated less favorably than other candidates for promotion to Full Professor within the University's Humanities Division. The Hearing Officer found that school administrators discriminated against Complainant in failing to promote her, and ignored Professor Sun's outstanding teaching evaluations and cutting-edge research, mischaracterized her dossier as an "embarrassment," and indulged in every presumption against her application for promotion while extending every benefit of the doubt to male candidates for promotion. After Professor Sun refused to withdraw her application in response to pressure from administrators, she was penalized by having her request for travel funding denied and her course releases withdrawn. As a result of school's discriminatory and retaliatory actions, the Hearing Officer assessed a \$10,000.00 civil penalty against Respondent. The hearing officer also ordered Respondent to promote Complainant to Full Professor as well as awarding her \$154,503 in lost wages and \$200,000.00 in damages for emotional distress.

JOHNSON V. BG NEW ENGLAND POWER SERVICES, INC., 33 MDLR 89 (AGE, GENDER)

Complainant filed a claim of age and gender discrimination against Respondent who refused to rehire her as a laborer at the Mystic Station Power Plant, following a lay-off from that site in 2004 and interim work at another site. The claims were against the bankrupt BG New England Power Services and its successors. In 2005, Complainant anticipated that she would be laid off from her laborer position at one of Respondent's electric-generating facilities scheduled for deactivation so she applied for a laborer vacancy at Mystic Station, also owned by Respondent. Complainant was

rejected in favor of a male applicant who had no prior experience in the field of electrical power generating and who was substantially younger. Complainant presented un rebutted evidence that she had worked for Respondent or its predecessors for nineteen years and had a satisfactory work record. Respondent sought a stay of the MCAD proceeding on the basis of filing a bankruptcy petition and declined to appear at the public hearing. The Hearing Officer determined that the stay provisions of the US Bankruptcy Code do not apply to MCAD proceedings and concluded that Respondent had discriminated against Complainant based on her age and gender. She assessed back pay damages in the amount of \$167,380, emotional distress damages in the amount of \$75,000, and ordered Respondent's current successor entity to offer Complainant the next Fossil Station Laborer position it seeks to fill at Mystic Station.

McSWEENEY V. TRIAL COURT OF MASSACHUSETTS, 33 MDLR 116 (GENDER)

Complainant, a well-regarded long-time Regional Facilities Manager of Respondent, unsuccessfully sought a promotion to a newly-created position of Operations and Maintenance Supervisor for a new, state of the art courthouse located in Plymouth, Massachusetts. At the time she was 61 and was the only woman applying for the position. Despite receiving the top score from an internal hiring panel, Chief Justice of Administration of the Trial Court, Robert Mulligan, rejected the panel's recommendation of Complainant, underwent a second review and interview of the top five candidates, and chose a younger male candidate over Complainant, ostensibly because the Complainant did not possess the technical knowledge required of the position and because the panel had favored Complainant because they worked with her and liked her. The hearing officer found Respondent's reasons to a pretext for gender discrimination, by comparing the increased scrutiny applied to Complainant to the hiring process for the same position at the Worcester courthouse months earlier. In that process, while skeptical, Respondent accepted the panel's recommendation of an internal candidate with similar qualifications to Complainant, without question. The Hearing Officer found that Respondent's increased scrutiny of Complainant's hiring process was based on unconscious bias concerning a women's ability to perform in a male-dominated profession. Complainant was awarded \$30,058.29 for back pay and \$126,469.07 for front pay and \$50,000.00 for emotional distress. (Complainant's age discrimination claim was dismissed)

**SUHRAWARDY V. KELLY HONDA, ET AL., 33 MDLR 189
(RELIGIOUS DISCRIMINATION, RETALIATION)**

Complainant filed a charge of religious discrimination, failure to accommodate his religion, national origin discrimination and retaliation against his employer who refused to allow him to wear a Muslim head covering while at work as a car salesman at a car dealership. After the Investigating Commissioner dismissed the claim of refusal to accommodate Complainant's religion, the Hearing Officer heard only claims that refusal to allow Complainant to wear the head covering was religious discrimination and that Complainant was fired for protesting his not being allowed to wear the head covering. The Hearing Officer found that Complainant was not treated differently on account of his religion, when he was told he could not wear the cap, because the employer's articulated policy allowed no one to wear head coverings while at work, and that Respondent knew Complainant was Muslim and Bangladeshi when he was hired and his supervisor was a Muslim. However the Hearing Officer went on to find that that Respondent's rigid policy was discriminatory because it refused to make exceptions for sincerely-held religious beliefs as required by the statute, absent a proven hardship to the employer. The Hearing Officer also found that Complainant's protestations about not being allowed to wear the head covering was

protected activity under c. 151B and that he was terminated for engaging in protected activity. She awarded the Complainant back pay damages in the amount of \$6,538 and damages for emotional distress in the amount of \$10,000 and ordered the Respondent to conduct training on the issue of the impact of a dress code on possible requests for religious accommodation.

BLAKE V. BRIGHTON GARDENS APTS. LLP, 33 MDLR 48
(DISABILITY DISCRIMINATION IN HOUSING)

Complainant suffers from HIV/AIDS and depression and anxiety. Upon advice from his physician and an opinion that it was medically warranted, Complainant sought permission from his landlords at Brighton Gardens to have an emotional support dog in residence as an accommodation to his disability. He was granted permission by the landlord to have a dog. Subsequently the landlord sent a “no pet” notice to all tenants and threatened Complainant with eviction if he did not give up his pet. The Hearing Officer found that there was no evidence the Complainant’s animal created any problems for other tenants or was in any way a hardship to the landlords. She found that Respondents denied Complainant the reasonable accommodation to his disability of having the support animal. Respondent was ordered to cease threats of eviction, grant Complainant an exception to the no-pet policy, and establish a policy for administering such requests for reasonable accommodation from disabled tenants. She also ordered Respondents to pay Complainant \$25,000 in damages for emotional distress and assessed a civil penalty against Respondents in the amount of \$5,000.

WILLIS V. DEFazio, 33 MDLR 146 (RACE DISCRIMINATION IN HOUSING)

Complainant is an African-American real estate broker who contacted Respondent inquiring if he would be willing to work with her to show his Newton property listed for rent on Craigslist. Respondent made discriminatory statements to Complainant telling her not to bring any Africans around to see the property because they were loud and it was difficult to get them out. Complainant confirmed that Respondent did not want her to show his property to prospective tenants who were black and when she identified herself as African-American and asked if he would refuse to rent to her, he stated that he would charge her more rent and require a down payment of first and last month’s rent and security deposit. Respondent admitted telling Complainant that he preferred not to rent to blacks because he had had a previous bad experience with them not paying rent and doing damage to his property. The Hearing Officer found that Complainant had standing to bring a complaint and was injured by Respondent’s discriminatory statements. She found that Respondent had violated the provisions of c. 151B s. 4(7B) that prohibit any person from making, printing or publishing any notice, statement or advertisement for housing that indicates any preference, limitation, or discrimination based on race. The Hearing Officer ordered the landlord to cease and desist from discriminatory statements or advertising in the rental of his property, and from quoting more restrictive terms for rental based on the race of a prospective tenant and ordered him to pay Complainant \$15,000 in damages for emotional distress.

Full Commission Decisions

The Full Commission issued ten decisions following an appeal by the Complainant or Respondent from the Hearing Officer's decision. Significant decisions are set forth below.

ST. MARIE V. ISO NEW ENGLAND, INC., 33 MDLR 178 (2011)

The Full Commission upheld the decision of the Hearing Officer that Complainant's termination from his position as Control Room Shift Supervisor at ISO New England, a power company, where the Complainant had worked for some twenty four years in various positions, was in retaliation for his having previously sued the company for age discrimination and retaliation, and for refusing to accept a global settlement offer, and continuing to pursue the matter for some two more years before reaching a settlement. His termination some three months after settlement was deemed to be retaliation for Complainant's prior protected activity. The Full Commission upheld the Hearing Officer's conclusions that disparate treatment of Complainant who was treated much more harshly than other co-workers, who were also derelict in their duties during a power emergency, including his own supervisor, was evidence of improper motive. The Hearing Officer's award of damages for back pay, lost pension benefits in excess of \$300,000 and reimbursement for living expenses in excess of \$88,000, incurred when he was compelled to accept employment in another state, plus a significant award of \$200,000 for emotional distress were upheld. There was also a substantial attorney's fee award in excess of \$264,300.

DIORIO V. WILLOWBEND COUNTRY CLUB, INC. ET AL., 33 MDLR 166 (2011)

The Full Commission upheld the decision of the Hearing Officer that Complainant's termination from her position as Vice President of sales at a residential resort community was based on unlawful age discrimination and that Respondent retaliated against Complainant by banning her and her husband from the golf club at the resort, subsequent to her filing a discrimination complaint. The Full Commission affirmed the Hearing Officer's use of the mixed motive analysis and her finding that the Complainant's termination was motivated primarily by an agenda to reach a younger clientele and to change the face of the marketing personnel. The Full Commission also ruled that the Hearing Officer did not err in comparing Complainant to younger employees outside the real estate department who were retained, where she specifically noted that two significantly younger sales associates were retained in that department and that other hires and terminations in the sales department supported a finding of age animus. The Full Commission also affirmed the award of damages for back pay and front pay for 5 years (base pay in the amount of \$310,000) and lost future commissions in the amount of \$139,470 and found the Hearing Officer properly considered the downward spiral in the real estate market in her estimate of lost future commissions. The failure to discount future earnings in the absence of expert testimony was also found not to be an error, however the award was modified to not include interest on front pay earnings. The Hearing Officer's award of \$200,000 for emotional distress was also affirmed. There was also a substantial attorney's fee award in excess of \$300,000.

**TATUM & HARRIS V. THE CITY OF WORCESTER POLICE DEPARTMENT,
33 MDLR 195 (2011)**

The Full Commission reversed the Hearing Officer's finding that the City of Worcester had not discriminated against two minority police officers who sought promotion to the position of sergeant. This matter came before the Full Commission on remand from the Worcester Superior Court following an appeal of the Hearing Officer's decision by the two officers. The Court ordered the Commission to weigh the evidence and find the "determinative cause" of the City's decision not to use Massachusetts Personnel Administration Rule.10 ("PAR.10") to promote the two eligible and qualified minority candidates (who had passed the sergeant's examination) to the position of sergeant in 1993, 1994, or 1995. The City promoted 30 white officers between 1993 and 1995, and no minorities, under its policy of promoting strictly according to highest score obtained on the 1992 and 1994 competitive civil service examinations for sergeant. During this time frame, the City of Worcester had a single minority officer in its supervisory ranks and no minority officers serving as a sergeant. Minority officers comprised at least 10 percent of the Worcester Police Department's non-superior officer staff and the minority population of the City of Worcester exceeded 14 percent in each of those years.

The Full Commission concluded that the reasons provided by the City and credited by the Hearing Officer for failing to invoke PAR.10, an alternative selection procedure, were not the real reasons, but a pretext for discrimination. It rejected the City's claim that it didn't know that PAR.10 could be used for promotion of minority officers noting that the explicit purpose of the rule was to allow appointing authorities the discretion to make affirmative action hires and promotions where the effects of past and current discriminatory employment practices have fallen more heavily on members of one or more protected classes and to address current disparities between promotion rates of white and minority officers. The Full Commission also found that the City breached an earlier agreement with the Commission that required it to use PAR.10, and that the appointing authority consistently favored the Department's white officers over its minority officers, including when it articulated as a reason for its refusal to apply for PAR.10, that it was concerned with the (hypothetical) morale of white officers should lower-scoring minority officers be promoted, but completely ignored the actual low morale of minority officers, including the complainants, over many years of almost virtual exclusion from the supervisory ranks. The Full Commission concluded that the appointing authority's conduct was motivated by impermissible racial bias and that had the City sought an alternative list under PAR.10, it would "likely" have led to the promotion of Harris, Tatum, and other eligible and qualified minority officers as early as 1993.

The Full Commission ordered that the two minority officers be promoted to the position of Sergeant in the Worcester Police Department, effective retroactive to November 23, 1993, and ordered all lost wages and other benefits, including but not limited to seniority, up to the date of promotion. Each police officer was also awarded \$25,000 in emotional distress damages. The Full Commission additionally ordered training, including on the use of PAR.10, and imposed reporting and monitoring requirements on past and future civil service examination results and promotion decisions.

Administration and Finance

The Administration and Finance Department is comprised of four units overseen by the Chief of Administration & Finance. The Business Office/MIS Unit is staffed by the Personnel Specialist III, and two part-time MIS contractors. This office handles all employee and budget issues, as well as all computer and communication issues for the MCAD. The Training Unit is comprised of the Director of Training, one half-time trainer, and a full-time Northeastern coop student. Other MCAD staff members who have completed the Commission's Train-The-Trainer program sometimes deliver internal and external training sessions; Commissioners, Counsel, and other staff members often conduct internal and external presentations. The Alternative Dispute Resolution Unit consists of two programs. The conciliation program which is managed by one full-time conciliator who is an attorney, and one half-time conciliator. On occasion, Commissioners, Hearing Officers, Enforcement Advisors and investigators also conduct conciliations. The Early Mediation Program is run by MCAD's contract mediator, who reaches out to all interested parties, schedules and mediates the cases, and one part-time mediator who is also a contractor. On an as-needed basis, the part-time conciliator as well as other MCAD staff members have also mediated cases for the agency. The Testing Unit is staffed by the Director of Testing, one full-time Northeastern coop student, and a part-time legal intern. The program also maintains a panel of testers, who are recruited and trained by MCAD staff.

Training

During 2011, the MCAD training unit and with help from staff and management conducted approximately 139 external employment and housing discrimination prevention training sessions and presentations, the most sessions in the history of the Commission. Our audiences included attorneys, human resources professionals, supervisors and managers, line staff, landlords, and realtors, and the sessions ranged from two hours to four days in length.

The MCAD's partnership with the Commonwealth's Office of Diversity and Equal Opportunity was among the highlights of this year's external training programs. In collaboration with Sandra Borders, Director, and Ronald Marlow, the Assistant Secretary for Access and Equal Opportunity in the Governor's Office, the Commission designed and delivered a series of four training sessions for the state's Diversity Officers. State agencies designate Diversity Officers to ensure equal employment opportunity, including conducting internal discrimination complaint investigations, responding to accommodation requests, and supporting inclusive hiring practices. The Commission's Director of Training, along with Ms. Borders, offered two sessions on "Legal Foundations and Policy Setting," and two sessions on "Conducting Internal Discrimination Complaint Investigations," attended by over fifty diversity officers.

The MCAD outreach program, "Spreading Education to End Discrimination" or "S.E.E.D." continued to expand this year. The S.E.E.D. program completed 120 presentations in 2011, reaching 2,495 individuals in a variety of settings, and nearly matching last year's record of 122 presentations. Spring, summer, and fall interns participated in intensive training, established statewide contacts at organizations that serve populations likely to experience discrimination, and scheduled and conducted free presentations on discrimination in employment, housing and public accommodations in English, Spanish, Mandarin Chinese, and Haitian Creole.

The Commission held its twelfth annual employment Discrimination Prevention course this year, including five half-day prerequisite sessions, two to three-day Train-the-Trainer modules, and two to three-day EEO practitioner modules. In addition, we held our fourth 3½-day train-the-trainer program for municipal personnel officers and other key managers in partnership with the Massachusetts Interposol Insurance Association.

The MCAD hosted two special public events at One Ashburton Place in Boston this year. In April, as part of the YWCA's national Stand against Racism, over seventy people attended, "Racism," an inspiring presentation by and conversation with The Reverend Cheryl Harris. In September, in partnership with the Boston Busing and Desegregation Project, over seventy people attended a film showing, "Can We Talk? Learning from Boston's Busing/Desegregation Crisis," followed by an engaging and emotional discussion.

The Training Unit designed, facilitated and/or managed numerous internal training sessions for the Commission's staff this year, including three three-day initial training sessions for new interns and employees held in January, June, and September. Other 2011 internal training programs included sessions on transgender issues in collaboration with the Massachusetts Transgender Political Coalition; how to conduct effective investigative conferences; the new law expanding protections from criminal records discrimination; and a brown bag lunch series held approximately monthly during the spring and fall, and weekly during the summer.

The MCAD's internship program has continued to expand, with over one hundred undergraduate, law student, and attorney volunteers working at the Commission during 2011, a record in the history of the Commission. Interns completed hundreds of dispositions, hundreds of intake meetings with complainants, and over a hundred outreach presentations. The Training Unit oversees the Commission's internship program, working closely with the Enforcement Advisor Supervisor and a team of intern supervisors across the agency.

As of the close of 2011, the Training Unit has monitored compliance in a total of 366 cases where the hearing decision or settlement included a training requirement. Of those, 293 cases are no longer active, generally because the training was completed and occasionally because the respondent organization no longer exists.

The training unit continues to support program development for the National Center on Race Amity, strategic planning and program development for the Union of Minority Neighborhoods' Boston Busing and Desegregation Project, and program development for the YWCA Boston's Community Dialogues on race.

Conciliation/Mediation

Agency-wide, the Conciliation Division scheduled 658 cases in 2011. This includes PC conciliations, some post-discovery mediation, and the cases in the voluntary pre-determination mediation project which have attorneys. Approximately, 77% of these conciliations were Boston cases and 23% were cases from the Springfield office. Of the 658 cases scheduled, 370 sessions were held with 210 settlements reached. This resulted in a 57% settlement rate, which is slightly higher than last year. Every case that settles, translates into one fewer case being advanced to the adjudication phase.

The mediation program continues to be a robustly utilized resource for parties and attorneys alike. Participants are provided administrative and mediation services from an experienced mediator and employment law practitioner. The program also provides college and law student interns valuable exposure to the mediation process. They are assigned cases to administrate, liaise with parties and their representatives, and attend mediations as observers (party acceptance permitting). In 2011, the program increased the number of parties electing to participate in the mediation process from 20% in 2010 to over 30% in 2011. Agency-wide, the early mediation program was offered to 681 parties, conducted 204 sessions, which is an increase over last year of 44 cases, and had 108 settlements. This resulted in a 53% settlement rate.

Participant feedback reflects that the ADR Programs are highly regarded for the neutrality and competence brought to the negotiation table, and are considered on par with services provided in private (non-MCAD) conciliations and mediations.

SUMMARY OF ADR SETTLEMENT RATES BY MONTH

EARLY MEDIATION PROGRAM													
	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Annual Totals
Parties Contacted	40	52	60	65	77	54	32	34	54	45	120	48	681
Mediations Scheduled	15	15	12	17	20	21	15	15	21	20	31	25	227
Mediations Held	13	11	12	16	17	20	13	14	18	19	27	24	204
Mediations Settled	7	5	4	9	8	9	9	6	10	9	18	14	108
Settlement Rate	54%	45%	33%	56%	47%	45%	69%	43%	56%	47%	67%	58%	53%

POST PROBABLE CAUSE CONCILIATION PROGRAM													
	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Annual Totals
Conciliations Scheduled	43	50	70	43	60	70	56	56	53	50	56	51	658
Conciliations Held	15	25	33	25	31	36	31	30	34	37	38	35	370
Conciliations Settled	14	12	25	16	22	20	19	14	20	17	21	10	210
Settlement Rate	93%	48%	76%	64%	71%	56%	61%	47%	59%	46%	55%	29%	57%

Testing

The goal of the MCAD's testing program is to identify barriers that contribute to discrimination in employment, housing, credit, mortgage lending, education, and public accommodations, and to explore strategies that will enable the Commission to improve the litigation of discrimination claims, and enhance public awareness of discrimination. The Testing Unit identifies, tests, and potentially initiates claims against entities in Massachusetts that engage in discriminatory practices.

The program utilizes a technique known as "Matched Pair Testing" whereby two or more similarly-situated individuals matched in areas such as qualifications, income, and appearance, but differing with respect to membership in a protected group such as race, sex, or age, apply for similar positions or services. The employer or service provider's response is then analyzed to determine if there was discriminatory treatment of the members of the protected class. This process assists victims of covert forms of discrimination while highlighting pervasive unlawful practices. Once the data is analyzed, the MCAD assesses whether or not the tests reveal discriminatory hiring practices or if further testing should be conducted. If discriminatory hiring patterns exist, the MCAD prosecutes the responsible parties and publicizes the result.

In 2011, the MCAD initiated investigations of 55 employers, employment agencies, and public accommodation providers finding significant evidence of discrimination with respect to 13 of these employers and providers so far. The MCAD brought five complaints for discrimination against employers based solely on evidence gathered by the testing department. One of these cases has settled while four others are pending. Another case against an employer has been referred to the Commissioners for issuance of a complaint.

While no new complaints based on public accommodation testing were brought in 2011, significant evidence of discrimination was found with respect to seven of the eight providers tested during the calendar year so that it is likely several complaints or other actions will be put forth in 2012 based on discrimination in public accommodations.

The testing program seeks to promote the goal of equal access to employment, housing, credit lenders, mortgages, education, and public accommodations or establishments, and permits a more responsive state governmental approach to systemic discrimination. Testers operate as the MCAD's eyes and ears allowing the MCAD to fight discrimination where it occurs rather than simply rely on individuals who come forward with complaints.

MCAD BUDGET FOR FISCAL YEAR 2011

OVERVIEW

July 1, 2010 - June 30, 2011

Budgetary Direct Appropriation

Line Item 0940-0100

State Appropriation **2,543,312**

Retained Revenues Collected

Line Item 0940-0101

HUD 589,921

EEOC 1,229,900

Trainings 75,345

Fees 2,791

Total 1,897,957

Train-The-Trainer

Line Item 0940-0102 *

Train the Trainer Program **78,155**

Total FY11 Budget 4,519,424

Total FY11 Expenses

Payroll 3,825,068

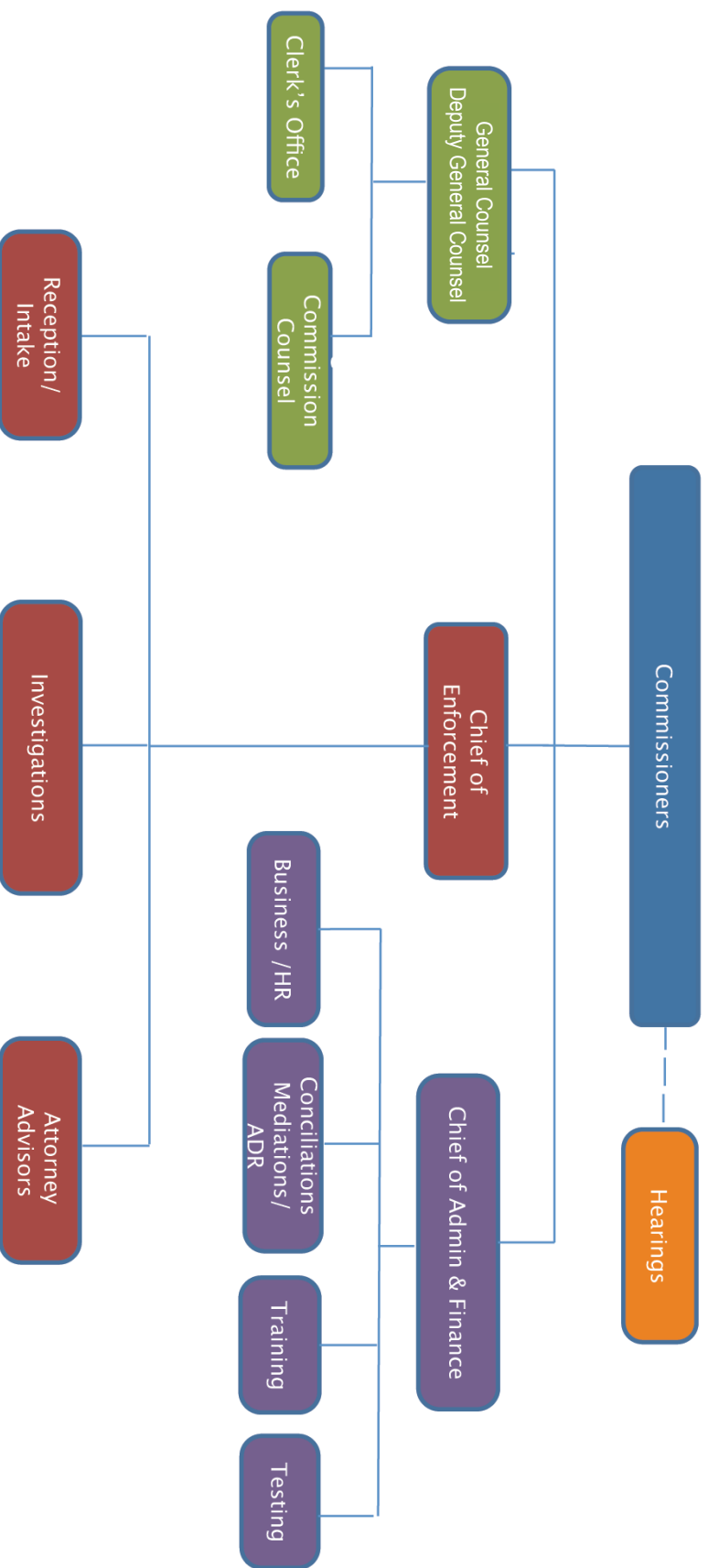
Rent 88,562

Administrative Costs 592,838

Total 4,506,468

** This retained revenue account allows the MCAD to retain and spend revenue from the MCAD Train the Trainer Program. However, the account is capped at \$70,000. Any revenue received in excess of that amount is deposited into the general fund. In FY 2011, revenues collected in that account exceeded the cap of \$70,000 and \$8,155 was deposited into the general fund.*

MCAD ORGANIZATIONAL STRUCTURE 2011



2011 MCAD Staff

Sabrina Acloque
Melvin Arocho*
Deborah A'Vant*
Joel Berner
Eric Bove
Kimberly Boyd*
Maryann Brunton*
Marlania Bugg*
Emily Caplan
Wendy Cassidy *
Jean Clanton*
Vanessa Davila *
Karen Erickson
Geraldine Fasnacht*
Lynn Goldsmith*
Barbara Green
William Green
Eugenia Guastaferrri *
Yaw Gyebi
Keith Healey
Elizabeth Hickey
Marzella Hightower*
June Hinds*
Judith Kaplan*
Theresa Kelly
Nomxolisi Khumalo
Cynthia Kopka
Johny Lainè
Jennifer Laverty
Shirley Lee*
Kris Librera
Simone Liebman*
Melanie Louie-Tso*
Katherine Martin*
Sheila Mathieu

Gilbert May*
Lynn Milinazzo-Gaudet*
Ying Mo
Carol Mosca
Carol Murchison*
Pamela Myers
Nicole Newman
Carolyn Packard *
Joshua Papapietro
Keith Parrett
Yudelka Peña*
Michelle Phillips
Victor Posada*
Marytsa Reyes*
Jeannine Rice*
Dan Richard
Lila Roberts
Caitlin Sheehan
Rebecca Shuster*
Andre Silva
Myrna Solod*
Abigail Soto Colon*
Ethel Stoute*
Tania Taveras
Sunila Thomas-George*
Nancy To*
Julian Tynes
Francisco Villalobos*
Beverly Ward*
Betty Waxman*
Jamie Williamson
Paul Witham*
Patty Woods
Carmen Zayas
Catherine Ziehl

*Asterisk identifies those individuals
with ten or more years of service with the Commission

2011 MCAD Interns & Volunteers

Pouyan Afshar
Asha Alex
Robert Alfred
Ana Alvarado
DJ Arnold
Lauren Bailey
Peter Bala
Phil Barber
Allison Berman
Rachel Bernfeld
Nadia Bhatti
Charlotte Bicking
Sarah Biglow
Andrea Birdsell
Ike Thomas Brochu
Tamar Brown
Margaret Capp
Lisa Carabello
Gabby Castellanos
Susana Cervantes
Amy Chmielewski
Kathleen Chung
Michael Curtis
Beneva Davies
Rachel Davis
Kalina Deng
Robert Doane
Andrew Egan
Grete Engel
Shawna English
Ranna Farzan
Victoria Giuliano
Natalia Gueorguieva
Grace Guichardo
Jacklyn Gurany
Emily Haigh
Sujin Han
Diana Hooley
Eanest Horn
Jeannette Huezo-Rosales
Hattie Huston
Celia Johnson
Byung Joo Keum
Rebecca Kimmel

Brittany Koffer
Avantika Kulkarni
Emily Landers
Kent Langloss
Amanda Lasprogato
Sharon Legall
Ken Leung
Lan Lieu
Tammy Mak
Miraix Marcolini
Bailey Marcus
Thanos Mattai
Juliette Miller
Mallory Morales
Sigourney Norman
Vaness Obei
Heidi Ohrt
Kara Parks
Paula Penariu
Joel Posner
Corinne Prosniewski
Eric Quinlan
Timothy Ramos
Swapna Reddy
Kate Sapirstein
Amy Schindelman
Deborah Shields
Meredith Shih
Andrew Sibley
Michelle Sisco
Shannon Slaughter
Caroline Standke
Tai Marie Stephens
Scott Suhoza
Petronie Ryan Sumait
Deren Temel
Laurie Teplow
Melinda Lim Veloso
Nathalie Vicenzio
Peter Vickery
Menglu Wang
Ayelet Weiss
Jaclyn Zawada
Henry Zhong

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Design Cover by Rebekah McKinney, Consultant
Graphic Layout and Printing by www.SterlingPrinting.com
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