

# Massachusetts Commission Against Discrimination

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*Annual Report 2012*



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



# MCAD Annual Report 2012

## Table of Contents

Letter from the Commissioners .....	1
Glossary of Terms .....	3
Flow Chart of MCAD Cases .....	4
Enforcement Division .....	6
Legal Division .....	14
Hearings Division .....	22
Full Commission Decisions .....	29
Administration and Finance Division .....	32
Training Unit.....	32
Conciliation/Mediation Unit .....	33
Testing Unit.....	34
Budget.....	37
Organizational Structure .....	38
In Memoriam .....	39
Staff.....	40
Interns .....	41
Advisory Board.....	42



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## Letter from the Commissioners



Sunila Thomas-George



Julian T. Tynes



Jamie R. Williamson

Governor Patrick, Members of the Legislature, and People of the Commonwealth:

It is our pleasure to submit the 2012 Annual Report of 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”). In 2012 the MCAD, the second oldest state civil rights agency in the nation, marked its sixty-sixth anniversary as the Commonwealth’s civil rights enforcement agency. Since its inception, the MCAD has been a national leader in its enforcement of the civil rights laws that protect persons from discrimination. The agency continues to serve the people of the Commonwealth by investigating, prosecuting, adjudicating, and resolving cases of discrimination in employment, housing, places of public accommodation, credit, and education. The Commonwealth’s anti-discrimination laws remain among the most progressive and far-reaching laws in the country.

### *Reflecting on 2012*

The year 2012 was a significant one for the MCAD under the current leadership team of Chairman Julian T. Tynes and Commissioners Sunila Thomas-George and Jamie R. Williamson. During 2012, the Commission:

- Realigned Commission personnel and services to improve efficiency of MCAD services delivered throughout the Commonwealth.
- Increased the MCAD’s outreach and services in the Central and South Coastal regions of the Commonwealth with the expansion of the Worcester and New Bedford Offices.
- Improved the investigation process through increased efficiencies, including the systematic use of the investigative conference.
- Co-Sponsored an all-New England Housing/Civil Rights Conference to promote innovative collaboration with other government and nonprofit organizations to identify and address fair housing and civil rights issues throughout the region.
- Participated in collaborative efforts with both state agencies and the MCAD’s federal partners on joint state and federal initiatives such as workforce and housing re-entry programs.
- Increased collaborative efforts with community groups, local Human Rights Commissions, immigrant communities, and various advocacy groups.
- Continued to strengthen relationships with the business community.
- Increased collaborative efforts with Commonwealth agencies to ensure the effective, cost-efficient delivery of services to the citizens of the Commonwealth.
- Increased collaborative efforts with the MCAD’s traditional federal partners, the Equal Employment Opportunity Commission (“EEOC”) and Housing and Urban Development (“HUD”), as well as other federal agencies such as the Department of Labor’s Office of Federal Contract Compliance Programs.

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- Addressed the Legislature on various pieces of proposed legislation to ensure equal civil rights protections under the law for all persons residing within the Commonwealth of Massachusetts.
  - Collaborated with members of the Bar on proposals to revise and improve the Commission's procedural regulations.

The Annual Report demonstrates that for the second consecutive year the MCAD has significantly increased the number of substantive case resolutions on an annual basis. The Commission has also successfully resolved more cases after a probable cause finding than at any other time in the last five (5) years. The MCAD, despite its large caseload, continues to serve and protect the public interest and to safeguard the rights of all residents of the Commonwealth to be free from unlawful discrimination. More than ever, the Commission is partnering with state and federal agencies, municipalities, community organizations, and advocacy groups on innovative solutions to address and eradicate discrimination in the Commonwealth.

### ***Looking Forward***

As the Commission looks toward 2013, its objectives include:

- Issuing revised sexual harassment, disability and parental leave regulations.
- Development of an online filing system for employment-related complaints.
- Strengthening collaborative efforts with community groups, immigrant communities, traditional civil rights groups such as local human rights commissions, and other advocacy groups.
- Continuing to enhance outreach and collaboration with municipal governments, the business community, and underserved communities.

In closing, the Commissioners would like to thank community group leaders, advocates for civil rights, municipalities, members of the business community, members of the Bar, the MCAD Advisory Board, and the Legislature who, along with Governor Patrick, continue to support the Commission's mandate of eradicating discrimination within the Commonwealth.

We thank our dedicated staff for the determination, drive, and tireless work ethic they exhibit on a daily basis.

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Sunila Thomas-George

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Julian T. Tynes

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Jamie Williamson

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## Glossary of Terms

**Alternative Dispute Resolution:** ADR is a process in which a third party neutral assists the disputants in reaching an amicable resolution through the use of various techniques. ADR describes a variety of approaches to resolve conflict which avoid the cost, delay, and unpredictability of the traditional adjudicatory process.

**Administrative Resolution:** A complaint that is resolved at the MCAD prior to the completion of the investigative process and issuance of an investigative disposition. Such cases may be resolved through the actions of the parties or because the case does not fall within the MCAD's jurisdiction.

**Chapter 30A Appeals:** State Administrative Procedure Act governing judicial review of a final agency action/full Commission decision of the MCAD.

**Chapter 478:** Case/Complaint has been removed to the Court and withdrawn from the MCAD.

**Conciliation:** Mandatory post-probable cause disposition process in which the Commission attempts to use an alternative dispute resolution process 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:** Investigating Commissioner's finding in regards to the allegations listed in a complaint.

**EEOC:** Equal Employment Opportunity Commission. The agency of the United States Government that enforces the federal employment discrimination laws.

**HUD:** 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 and establishes policies that make sure all Americans have equal access to the housing of their choice.

**Lack of Jurisdiction:** A complaint in which it is determined the MCAD lacks the statutory authority to investigate, adjudicate, or otherwise address the allegations listed.

**Lack of Probable Cause:** Complaint which the Investigating Commissioner concludes that there is insufficient evidence "upon which a fact-finder could form a reasonable belief that it is more probable than not that the Respondent committed an unlawful practice."

**Mediation:** Voluntary pre-disposition process in which the parties in the dispute attempt to resolve the outstanding issues and arrive at a settlement agreement with the assistance of MCAD personnel.

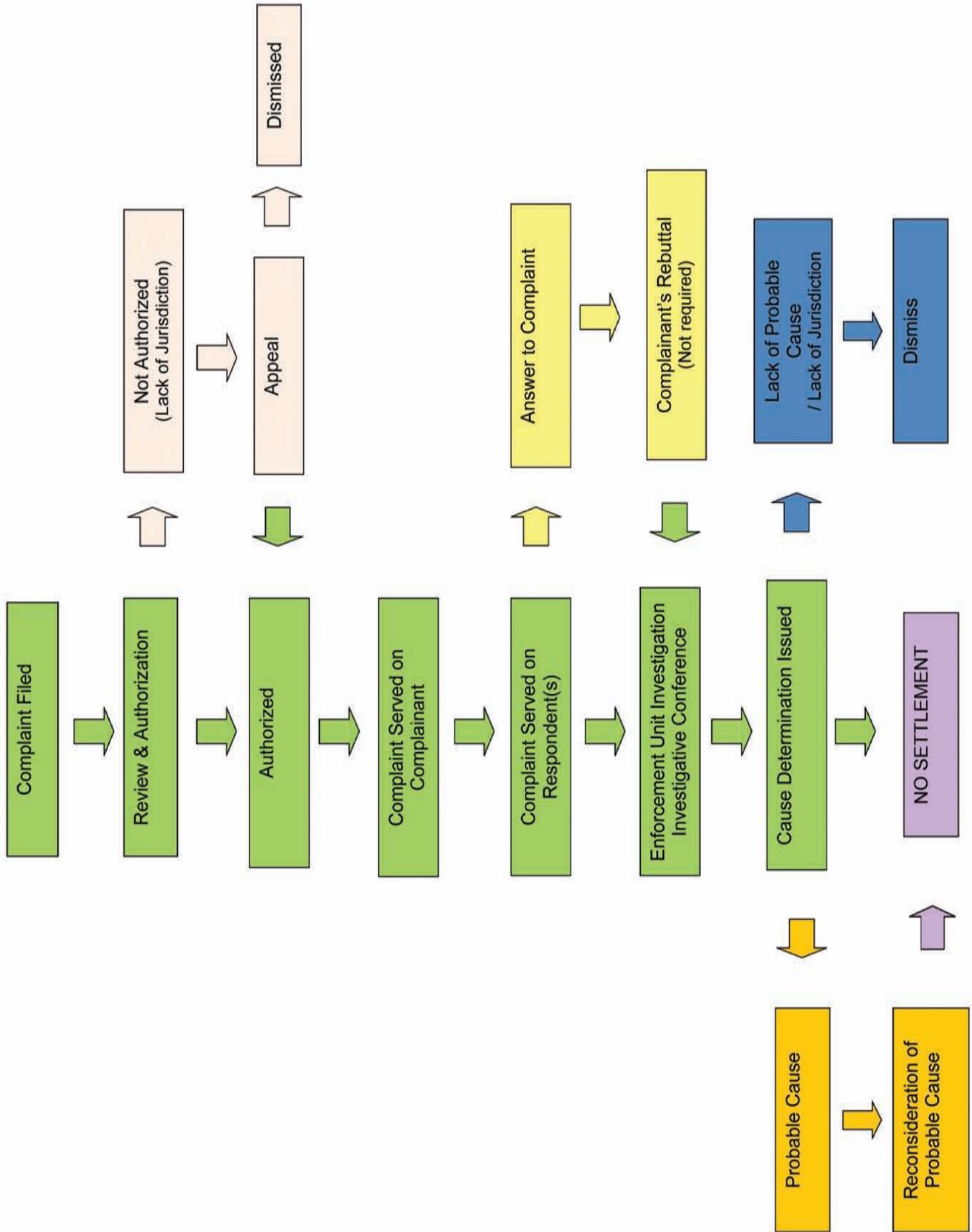
**Pre-Determination Settlement:** Settlement arrived at by the parties prior to the issuance of a disposition.

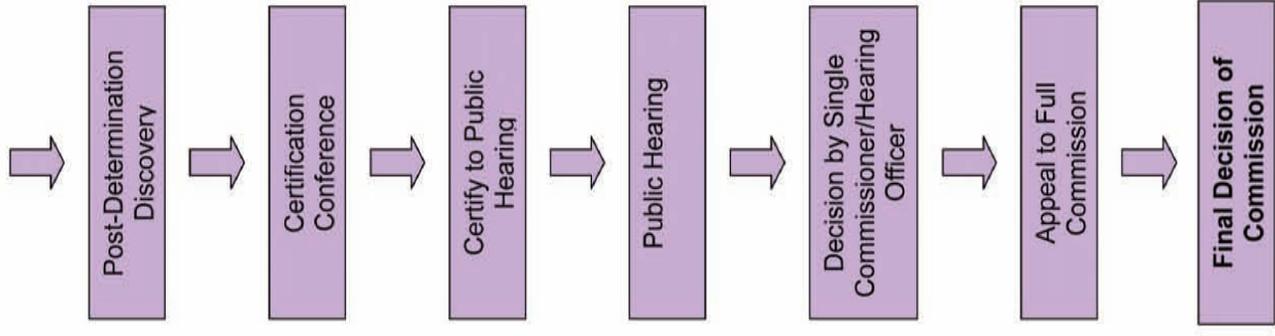
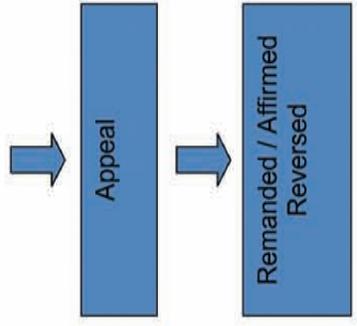
**Probable Cause:** Complaint in which "The Investigating Commissioner concludes that there is sufficient evidence upon which a fact-finder could form a reasonable belief that it is more probable than not that the Respondent committed an unlawful practice."

**Regulations:** Includes the whole or any part of every rule, regulation, standard or other requirement of general application and future effect, including the amendment or repeal thereof, adopted by an agency to implement or interpret the law enforced or administered by it. (M.G.L. Ch. 30A Sec., 1).

**Substantive resolution:** A complaint that is resolved at the investigative stage through the issuance of a disposition of the complaint of either "Probable Cause" or a "Lack of Probable Cause."

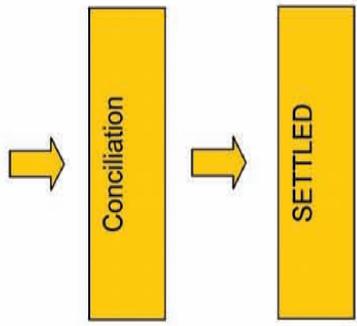
# Flow Chart of MCAD Cases





If No Appeal, Decision of Single Commissioner Stands

Judicial Review  
Mass. Gen. Laws c. 30A



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## **Enforcement Division**

The MCAD Enforcement Division had a productive year completing more investigations and resolving a greater number of complaints despite significant personnel changes. Long-time Enforcement Division employees Jean Clanton, Carolyn Packard, and Francisco Villalobos retired. We also said goodbye to investigators: Kris Librera, Cynthia Kopka, and Sabrina Acloque, all of whom left to pursue other career opportunities. We welcomed six new investigators: Sara Biglow and SuJin Han joined the Boston office, Jaclyn Zawada and Amy Chow joined the Worcester office, and Beth Tedeschi and Clare Horan joined the Springfield office. A testament to the success of the MCAD's strong internship and volunteer program is the fact that five of our new investigators were former Enforcement interns and/or volunteers. At the end of 2012 the Enforcement Division, with four geographic locations - Boston, New Bedford, Springfield and Worcester – was staffed by the Chief of Enforcement, 17 Investigators, 3 Supervising Unit Investigators, 4 Senior Supervisors, 5 attorney Advisors, and 6 Administrative Assistants.

### **Cases Processed in 2012**

In 2012, the Enforcement Division received 3,186 new complaint filings and at years end there were 4,450 open and active MCAD investigations. In total, 2,207 cases were investigated resulting in dispositions. Investigative dispositions included 569 Probable Cause findings.

With an average caseload of 250 cases per investigator, the MCAD's compliance officers have one of the highest active caseloads for a state agency conducting investigations. Each investigator is assigned approximately 206 new cases per year, or 17 per month. Notwithstanding, these formidable numbers and other duties, employment investigators completed and closed an average of 12 cases each per month for a division monthly average of 184 cases. The Worcester and New Bedford offices continue to be vital resources for the citizens of central and southeastern Massachusetts, providing a full range of services including responses to information calls, complaint intake and investigations, and community outreach. The Worcester office received an average of 32 new complaints monthly, and on average 49 individuals per month received an in-person consultation, and on average 108 calls for information were responded to. The New Bedford office received a monthly average of 21 new complaints, provided on average in-person consultations to 31 individuals each month, and responded to an average of 80 information calls per month.

### **Noteworthy Accomplishments**

In 2012 the Enforcement Division continued to utilize a process initiated by the Chief of Enforcement in 2011 to reduce the backlog of older cases. Investigations were completed in approximately 1000 cases that were filed in 2009 or earlier, while investigators simultaneously prioritized the completion of cases filed in 2010.

The reinstatement of automatic scheduling and convening of investigative conferences in cases filed after March 2011, continued to yield a more rapid case completion time of 7 months. The overall average case completion time dropped from 22 months in 2010 to 18.4 months in 2011, while 355 more cases were completed in 2011. This trend continued in 2012 with the average case completion time dropping below 18 months while the number of completed cases rose by 210.

Beginning in May, 2012, the New Bedford Office was staffed by an experienced housing investigator, one day per week. This provides residents of Southeastern Massachusetts residents an in-person consultation, and response to inquiries on a walk-in basis, facilitating the filing of any housing discrimination complaints. The New Bedford office is also working more collaboratively with other state and federal agencies.

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In the Springfield office, over 100 conciliations and/or mediations were conducted by the Senior Supervisor and two Enforcement Advisor attorneys. This outstanding effort in support of the MCAD's alternative dispute resolution programs resulted in 61 settlements providing a total of over \$720,000 to parties.

Advancing a goal set in 2011, Enforcement Division Investigators, Investigator Supervisors, and Enforcement Advisors, working in conjunction with the MCAD Director of Training, facilitated a robust volunteer/intern program in all four offices with students from undergraduate, graduate, and law schools across the Commonwealth. These interns were trained to perform administrative, intake, and investigative tasks. This highly successful internship program resulted in the completion of an additional 305 cases by the Enforcement Division. In return, students are provided with valuable educational and professional experience.

### **Enforcement Outreach and External Training**

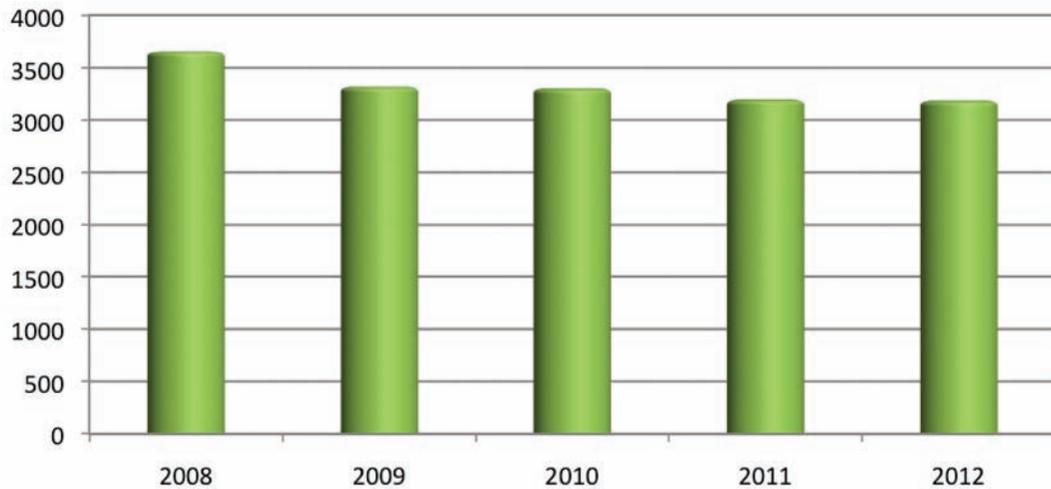
In support of MCAD's mission to prevent and eliminate discriminatory policies or practices in employment, housing, and public accommodation, Enforcement Unit personnel provided education and training to outside groups. In 2012 they participated in over fourteen educational outreach programs and sixteen training sessions to public and private organizations, employers, business organizations, law firms, and civic associations throughout the Commonwealth.

### **Enforcement Internal Training**

Throughout the year Enforcement staff received in-house training on topics such as new developments in Massachusetts law and witness interview techniques. Staff also attended civil rights symposiums and training seminars presented by the U.S. Department of Labor, U.S. Department of Justice, U.S. Department of Housing and Urban Development, and the Equal Employment Opportunity Commission. Two Housing Unit investigators attended comprehensive investigatory training at the National Fair Housing Training Academy, in Washington, D.C., sponsored by the U.S. Department of Housing and Urban Development. Two Senior Supervisors attended the Commonwealth's Supervisory Management training course, and the Chief of Enforcement graduated from the Commonwealth Management Certificate Program.

The Enforcement Division will continue to improve efficiency in case closure times and to resolve a greater number of cases through early mediation during the investigative process.

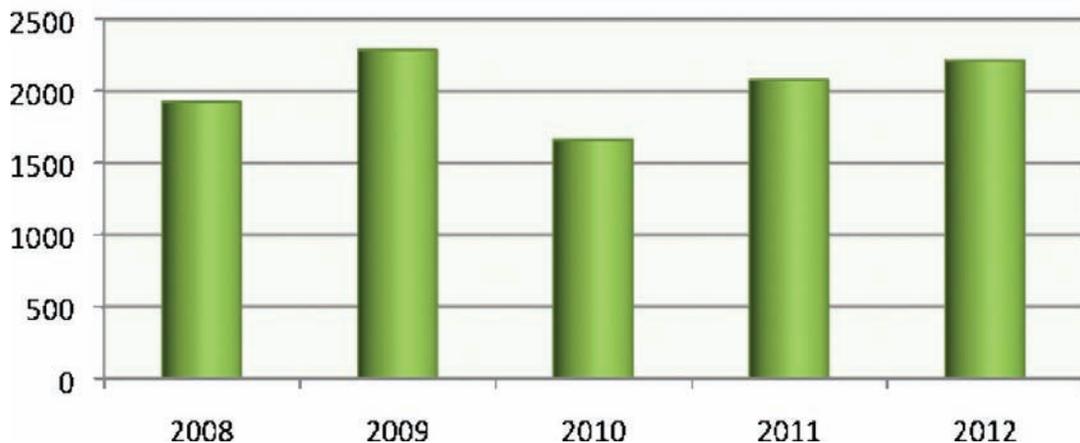
## All Cases Filed



This graph represents all employment, housing, education, and public accommodation complaints filed in 2012 and the preceding four years. The MCAD received 3,186 new complaints of discrimination in 2012, remaining steady with the number of new complaints filed in 2011 (3,195).

All Cases Filed	<b>2012 - 3,186</b>
	2011 - 3,195
	2010 - 3,808
	2009 - 3,323
	2008 - 3,657

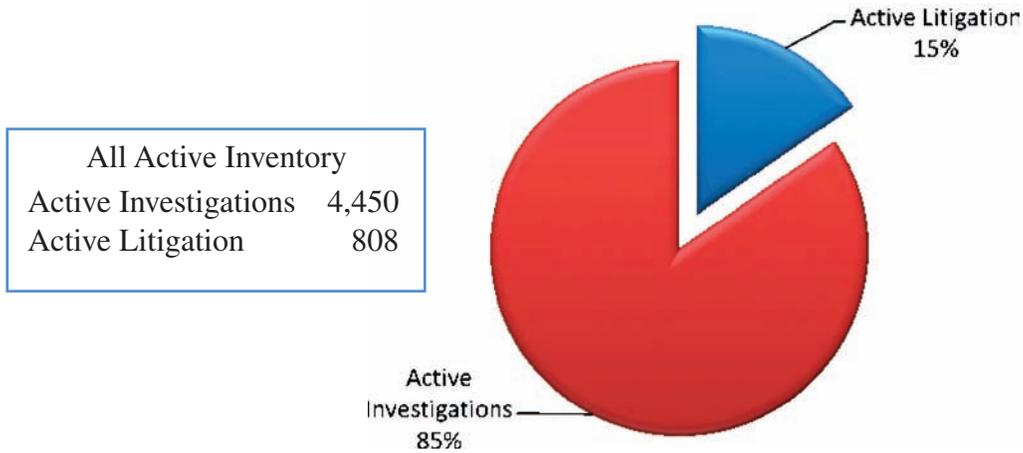
## All Substantive Dispositions Completed



This graph represents the total number of completed substantive investigations in 2012. This graph shows by comparison to the last five years, a slight uptick in number of investigations completed for the last three years.

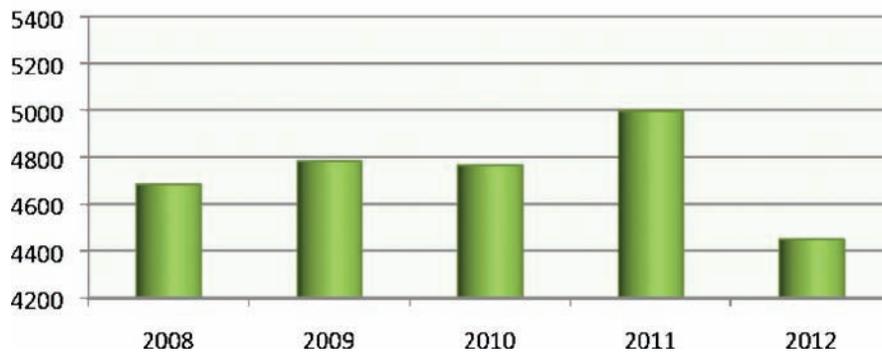
All Substantive Dispositions	<b>2012 - 2,207</b>
	2011 - 2,078
	2010 - 1,664
	2009 - 2,289
	2008 - 1,928

## All Active Inventory



For the first time, the MCAD is providing a pie chart that represents the total number of active cases at the Commission. Those that are being actively investigated (Active Investigations) in the Enforcement Division and those that have a probable cause finding and are being actively litigated (Active Litigation) at the Commission as of December 31, 2012. Case inventory in the enforcement division decreased to 4,450 cases in 2012, a significant decrease from 2011 (4,996) reflecting MCAD's commitment to timely resolution of cases. However, case inventory in active litigation has been rising in the past several years and is directly related to the rise in the probable cause rate.

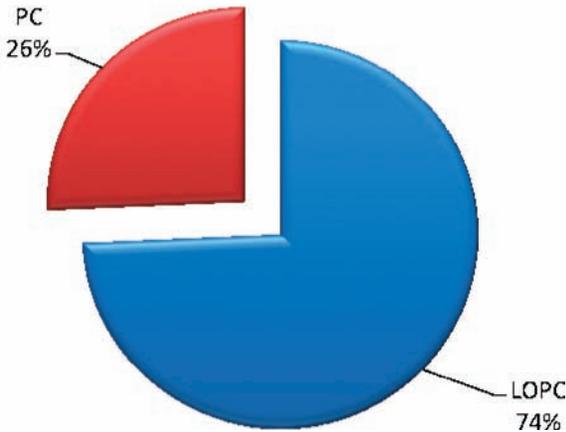
## Inventory of All Enforcement Cases



This graph represents the total number of active cases being investigated in the Enforcement Division as of December 31, 2012 and compares the 2012 end of the year inventory for the preceding four years. Case Inventory decreased to 4,450 cases in 2012, a significant decrease reflecting MCAD's commitment to timely resolution of cases.

	<b>2012</b>	<b>4,450</b>
	2011	4,996
Inventory of All	2010	4,766
Enforcement Cases	2009	4,783
	2008	4,683

## All Substantive Resolutions



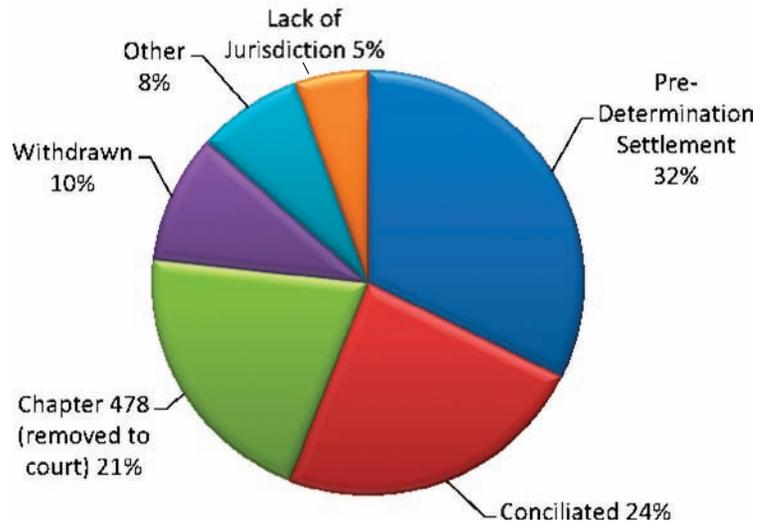
All Substantive Resolutions	
Lack of Probable Cause	1,646
Probable Cause Finding	569
<b>Totals</b>	<b>2,207</b>

The data shows the number of cases in which substantive findings (Probable Cause findings and Lack of Probable Cause findings) were issued in 2012 by the Enforcement Division. This pie chart represents and compares the percentage of Lack of Probable Cause findings (74% of substantive resolutions) and Probable Cause findings (26% of substantive resolutions) to the total number of cases (2,207) with substantive findings. The number of investigations completed rose to 2,207 in 2012, with 1,643 resulting in a finding of Lack of Probable Cause (74%) and 564 resulting in a finding of Probable Cause (26%), increase of 152 completed investigations over 2011.

## All Administrative Closures

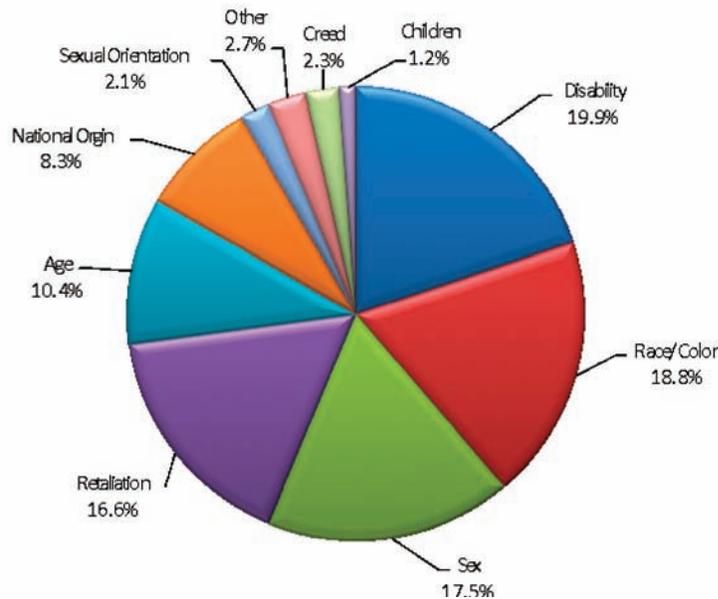
All Administrative Closures	
Pre-Determination Settlement	417
Conciliated	305
Chapter 478 (removed to court)	269
Withdrawn	127
Other*	102
Lack of Jurisdiction	71

*\*Bankruptcy, Compliance with Order, Dismissed, Failure to Cooperate, Investigation not Authorized, Judicial Review, No Violation, Unable to Locate Complainant, Violation/Enforcement.*



This data shows the total number of cases in 2012 that were administratively resolved after filing. The pie chart compares the percentage of each category to the total number of administrative resolutions (886). A total of 886 cases were closed administratively prior to a finding of Lack of Probable Cause or Probable Cause. The majority (47%) were resolved by settlement, a reflection of MCAD's strong early mediation efforts.

## Complaints Filed by Protected Category



### All Complaints Filed by Protected Category

Disability	1,079
Race/Color	1,022
Sex	951
Retaliation	902
Age	565
National Origin	452
Sexual Orientation	115
Other*	149
Creed	126
Children	63

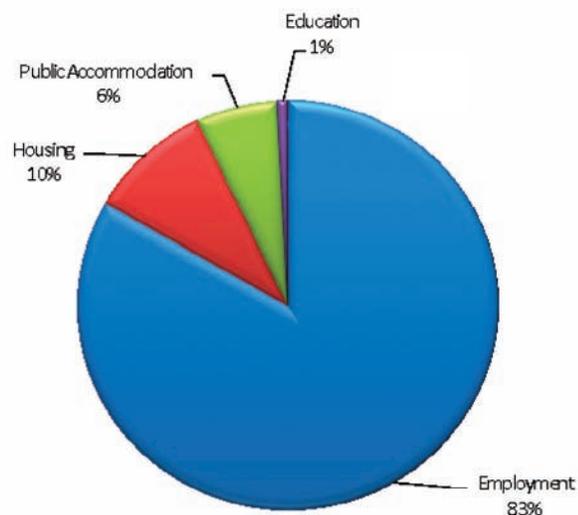
\*Arrest Record, Familial, Genetic Information, Lead Paint, Marital Status, Military Status, Public Assistance

This data shows the total number of cases filed in 2012 by protected category. The pie chart illustrates the percentage of each category to the total number of new complaints filed in 2012. In 2012, Disability (19.9%), Race/Color (18.8%) and Sex (17.5%) remained the most frequently cited categories of discrimination, followed closely by retaliation (16.6%). Retaliation claims went up once again in 2012, showing an uptick pattern in the last several years. Many of the cases filed assert more than one protected category.

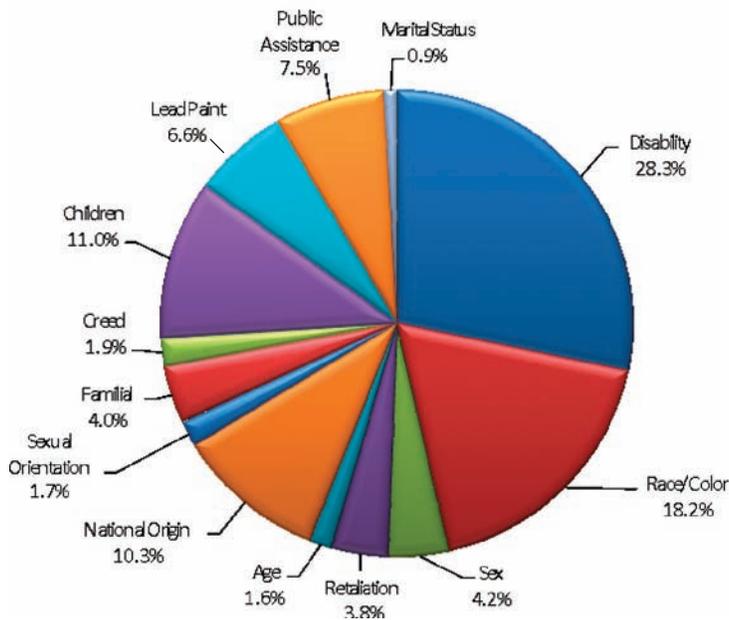
## All Complaints Filed by Jurisdiction

### All Complaints Filed by Jurisdiction

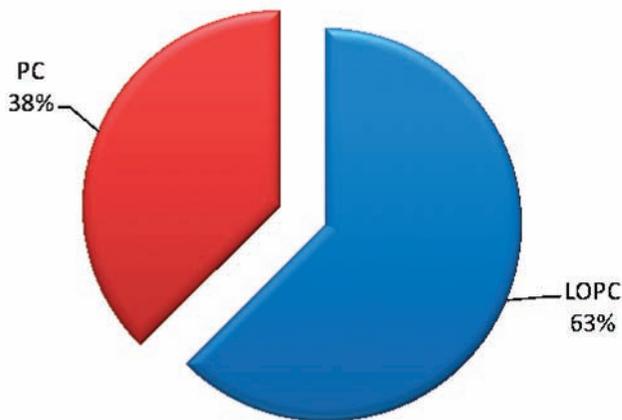
Employment	2,654
Housing	308
Public Accommodation	198
Education	26
Credit	0
<b>Total</b>	<b>3,186</b>



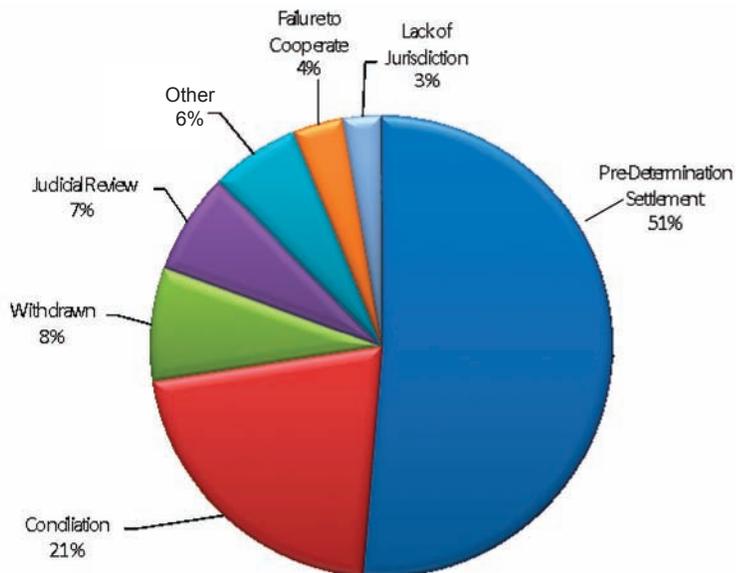
This data shows the total number of complaints for each jurisdictional category filed in 2012. The pie chart compares the percentage of each jurisdictional category to the total number of new complaints filed in 2012. In 2012, the vast majority of complaints filed were based on employment discrimination (83%), followed by Housing (10%) and Public Accommodation (6%).



Disability	162
Race/Color	104
Children	63
National Origin	59
Public Assistance	43
Lead Paint	38
Sex	24
Familial	23
Retaliation	22
Creed	11
Sexual Orientation	10
Age	9
Marital Status	5



Lack of Probable Cause	115
Probable Cause Finding	69



Pre-Determination Settlement	58
Conciliation	24
Withdrawn	9
Judicial Review	8
Other*	7
Failure to Cooperate	4
Lack of Jurisdiction	3

*\*Chapter 478 (removed to court), Dismissed, Investigation not Authorized, No Violation, Violation Enforcement*

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## 2012 EEOC Substantial Weight Cases

These cases are where original charge of discrimination was filed and investigated with the EEOC. After EEOC filing, a request to dual file with MCAD may be made by the EEOC whereby after the EEOC investigation is completed, the MCAD reviews for compliance with state law and may grant substantial weight in accordance with the EEOC's findings.

All EEOC Cases Filed:	199
All EEOC Substantive Completions:	224
All EEOC Active Inventory:	584

### Breakdown of EEOC Administrative Resolutions:

Dismissed	86
Withdrawn with Settlement	40
Chapter 478 (removed to Court)	29
Withdrawn	21
Lack of Jurisdiction	3
Unable to Locate Complainant	1
Other	1

### Breakdown of EEOC Complaints by Protected Category:

Sex	75
Disability	64
Retaliation	60
Age	55
Race/Color	41
National Origin	23
Creed	5
Children	1
Lead Paint	1
Sexual Orientation	1

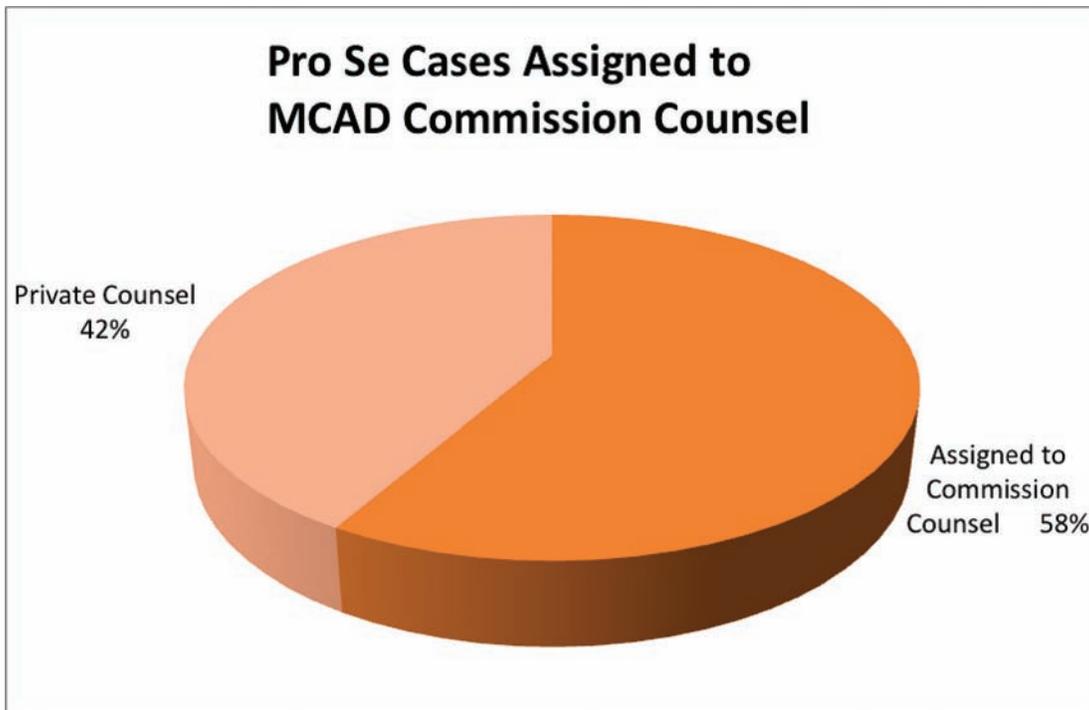
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## **LEGAL DIVISION**

The MCAD's Legal Division is responsible for enforcing the Commonwealth's anti-discrimination laws, primarily through litigation of individual complaints in which Probable Cause has been found, the prosecution of Commission-initiated complaints, and conciliation. After a finding of probable cause, the Legal Division proceeds in the public interest to eradicate discriminatory practices and to obtain victim-specific relief for pro se complainants.

Additionally, the Legal Division defends all final agency decisions where judicial review is sought in Superior Court and/or the State's appellate courts pursuant to G.L. c. 30A, § 14(7). The Legal Division also defends challenges to the Commission's jurisdiction, files enforcement actions seeking compliance with the Commission's final orders, works with Commissioners on public interest Commission-initiated complaints, and files Amicus briefs on important issues arising under the anti-discrimination laws in cases that have been litigated by private parties in court under G.L. c. 151B, § 9.

The Legal Division is comprised of the General Counsel, Deputy General Counsel, and six Commission Counsel. The Clerk's Office within the Legal Division consists of the Clerk of the Commission, Hearings Clerk, Appeals Clerk, Conciliation Clerk, and two Enforcement Clerks and in Springfield, an Assistant Clerk and First Assistant Clerk.



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## Case Assignments

In 2012, the Legal Unit was initially assigned to prosecute 332 cases filed by pro se Complainants.<sup>1</sup>

Commission Counsel settled 132 cases<sup>2</sup> through conciliation, resulting in awards of over \$1,739,665.00 in monetary damages to complainants in compensation for lost wages, emotional distress, or other compensable injury. Also, many of these settlements contained provisions directed at preventing future violations of the anti-discrimination laws (i.e., mandatory training or policy development) or other affirmative relief (i.e., re-instatement of Complainant to a position or awarding a promotion) .

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<sup>1</sup>This number was reduced to 274 throughout the year for a variety of reasons, including the appearance of private counsel, removal of a case to court, or due to administrative closure.

<sup>2</sup>This is an increase over the 116 cases conciliated in 2011

<sup>3</sup>This is an increase over the 116 cases conciliated in 2011

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## Noteworthy Settlements

### Fair Employment Act

- A complaint of disability discrimination by a long-term employee who had a number of disabilities, including mobility impairments, for which he had been provided the accommodation of handicapped parking was settled for \$100,000. Shortly after the employee suffered an on-the-job injury, the employer changed its policy, and allegedly refused to engage in an interactive dialogue regarding the employee's medical restrictions. In addition, the employer disciplined the employee for conduct directly related to side-effects of medication he took for one of his disabilities. (*Plymouth County*)
- A complaint of age discrimination brought by an employee of a major high tech corporation who alleged that he was selected for termination by a new supervisor, along with four others, because he was over the age of fifty was settled for \$108,500. (*Plymouth County*)
- A complaint alleging disability discrimination against an employer who ignored the recommendation of an employee's medical provider relating to the length of a medical leave of absence and instead improperly applied its own time standards was settled for \$40,000. The employer also agreed to policy changes and training of medical services employees on, among other things, the individualized assessment required when considering reasonable accommodation requests. (*Plymouth County*)
- A complaint based on transgender discrimination was filed alleging that a telephone service company refused to hire the Complainant for a sales job. The case settled for \$30,000. (*Plymouth County*)
- A complaint by a male employee, who alleged that he was verbally and physically sexually harassed by his male supervisor and terminated in retaliation for rebuffing his supervisor's advances, was settled for \$20,000 and anti-discrimination training for Respondent's supervisory, managerial, and corporate employees located in the Commonwealth. (*Suffolk County*)
- A complaint of national origin discrimination brought by a Moroccan parking garage valet against his employer based on his termination following a dispute with his supervisor about more favorable treatment of employees not of his national origin and an alleged ethnic slur settled for \$25,000 for Complainant and anti-discrimination training for the supervisor. (*Suffolk County*)
- A complaint of disability discrimination against a national retailer for allegedly terminating an employee on the basis of her disabilities, and for disclosing and posting the employee's highly confidential health information in a public area accessible to non-management personnel was settled for \$40,000 and disability discrimination training for all supervisors and managers in the corporate region. (*Norfolk County*)
- A complaint of gender discrimination against a franchise owner of more than twenty (20) stores in Massachusetts who substantially reduced a female employee's hours after she disclosed her pregnancy, was settled for \$15,000 and anti-discrimination training for all managers in the twenty (20) stores operated in Massachusetts. (*Norfolk County*)

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- A complaint of disability discrimination based on alcoholism alleging a failure to accommodate the employee's disability when it terminated him after his second admission for inpatient treatment was settled for \$25,000 and the employer's agreement to provide a 'written notice of rights' to employees seeking treatment for alcoholism. (*Bristol County*)
  - A complaint by a former state employee who is African-American against a public University alleging that she was subjected to racial harassment and unequal treatment, including denial of her request for bereavement leave to attend her father's funeral was settled for \$36,000. Additionally, all supervisory and managerial employees of the Respondent were required to undergo anti-discrimination training and Respondent agreed to submit to at least two years monitoring of its employment practices. (*Worcester County*)
  - A complaint of disability and sex discrimination by a police officer including alleged failure to reasonably accommodate a disability was settled for \$10,000. In addition, four Deputy Chiefs of the Police Department were required to attend anti-discrimination training. (*Hampden County*)

### **Fair Housing Act**

- A housing discrimination complaint filed by a tenant alleged discrimination on the basis of pregnancy (as a sex-linked characteristic) because of lead paint on the premises. The complaint charged the landlord with imposing disparate terms and conditions regarding her tenancy, significantly increasing her rent at the expiration of her lease, and ultimately refusing to renew the lease, after learning that she was pregnant. Complainant tenant later learned that the landlord advertised the premises at a significantly lower rent than was offered to her. The case settled for \$16,550. The landlord also agreed to test the premises at issue for the presence of lead paint, and to de-lead if necessary, to attend fair housing training, to include a commitment to fair housing in any advertisement, and to cease-and-desist from future discriminatory acts. (*Middlesex County*)
- A complaint from a single parent with children under age six who sought to rent a house that a realtor represented was not de-lead, signed a rental agreement for the home and sought a certificate of no lead paint, or alternately, offered to arrange for a lead paint inspection. The prospective tenant was thereafter informed that the house was to be taken off the market and offered for sale, but the property was never in fact put up for sale. The Complainant was awarded \$9,500, and the landlord agreed to have the house tested and de-lead, and to attend fair-housing training. (*Middlesex County*)
- A complaint of housing discrimination based on children was filed against a landlord who refused to lease a unit to a family with a three and a half year-old child because of the presence of lead. The case settled for \$8,000 to the prospective tenant and the landlord agreed to test and de-lead the apartment, and attend fair housing training. (*Norfolk County*)
- A complaint of national origin by a Ghanaian woman and her American husband against a privately-managed low-income housing complex in Worcester for seeking information about her citizenship status, was settled for \$10,000. Pursuant to the settlement, the housing complex agreed to participate in 18 months of tester training. (*Worcester County*)

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## Public Accommodations Act

- A complaint of disability discrimination against a restaurant alleging denial of service to a Complainant who was accompanied by a service animal, was settled, the restaurant agreeing to donate a sum of money to a non-profit organization that trains and donates service dogs to disabled individuals. The restaurant also agreed to institute a written policy barring discrimination in its place of public accommodation, to post a Notice to Customers welcoming service animals, and to send its employees to training on state and federal public accommodations laws. (*Essex County*)
- A complaint of disability discrimination by the mother of a minor disabled child against a state agency for failure to provide handicapped access to a playground was settled, with the agency agreeing to maintain a handicapped-accessible playground surface, submit quarterly park maintenance records to the MCAD Director of Training, install a beach wheelchair, and participate in a training session emphasizing discrimination prevention in places of public accommodation. The state agency also agreed to pay \$4,000 to the mother for the benefit of her son. (*Middlesex County*)
- A complaint brought on behalf of a disabled child who was denied access to transportation provided by a private transportation company was resolved with \$7,500 in charitable donations, the company's implementation of internal policies to assist disabled passengers, agreement to post signs stating the company's commitment to comply with the law, the appointment of a complaint officer to report discrimination, and a written apology to the family of the disabled child. (*Suffolk County*)
- A complaint of disability and national origin discrimination by a Vietnamese woman against a municipal skating rink alleging she and her learning disabled daughter had been discriminated against with respect to rink rules, that her daughter had been harassed, and that the rink failed to provide her (daughter) with a reasonable accommodation was settled for \$11,000 and significant affirmative relief, including a requirement that all rink supervisors, managers, and its Board of Directors, attend anti-discrimination training with a focus on reasonably accommodating disabilities. (*Berkshire County*)

## Significant MCAD and Court Decisions

### **Challenge to MCAD Jurisdiction: Temple Emanuel of Newton v. Massachusetts Commission Against Discrimination, 463 Mass. 472 (2012).**

The Supreme Judicial Court ("SJC") upheld the authority of the MCAD to investigate and adjudicate complaints of employment discrimination filed by current or former employees against religious institutions and organizations. Temple Emanuel sought declaratory relief in the Superior Court seeking to block the Commission from proceeding with the investigation of a charge of age discrimination filed by a former teacher in its religious school. Temple Emanuel alleged that the MCAD's investigation was a violation of the protections afforded by the First Amendment's religion clauses. The Superior Court agreed and issued a permanent injunction enjoining the Commission from proceeding with its administrative process and ordered the MCAD to dismiss the Complainant's discrimination charge. The MCAD appealed and the SJC took the case on direct appellate review.

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The Supreme Judicial Court concluded that the superior court’s action interfered with the MCAD’s administrative procedure, in violation of the Administrative Procedures Act (“APA”) and Chapter 151B. Under the APA, the Legislature has conferred jurisdiction on the Superior Court only when an aggrieved party requests judicial review of an agency’s final decision. The Supreme Judicial Court rejected the Superior Court’s conclusion that “extraordinary circumstances” justified its intervention in a pending MCAD matter. The Court cited to a prior decision of the U.S. Supreme Court, Ohio Civil Rights Comm’n v. Dayton Christian Schs., for the proposition that the MCAD’s investigation of a discrimination charge against Temple Emanuel does not itself cause constitutional harm. The Court further stated that the MCAD is competent and able to apply the “ministerial exception” adopted recently by the U.S. Supreme Court in Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC, an affirmative defense that encompasses a religious organization’s First Amendment rights. The Court confirmed that under Chapter 151B, the MCAD has subject matter jurisdiction over religious organizations and the authority to investigate and act on discrimination claims filed by current and former employees of such entities. Because the ministerial exception issue had been briefed, the SJC further concluded that the undisputed facts of the case demonstrated that as a matter of law, the religious school teacher was a “minister” for purposes of the “ministerial exception” because she taught only religious subjects in Temple Emanuel’s after-school and Sunday religious school program. The Court ordered the MCAD to dismiss the charge of discrimination.

**Amici Curiae Briefs.** The Commission submitted three briefs as Amici Curiae in the Supreme Judicial Court.

### **Currier v. National Board of Medical Examiners, 462 Mass. 1 (2012)**

The MCAD filed an Amicus Brief in the matter of Currier v. National Board of Medical Examiners, a case that raised several issues about the scope of the Massachusetts Public Accommodations Act (“PAA”), Chapter 272, § 98.

Sophie Currier, a medical student, filed a civil action against the National Board of Medical Examiners (“NBME”), a private, nonprofit corporation responsible for administering the medical licensing examination in Massachusetts, for declaratory relief seeking a determination that the board’s refusal to give her additional break time and a suitable environment during the exam in which to express breast milk for her infant, violated several laws including the PAA. The SJC held for the first time that lactation (nursing or pumping) “is inextricably linked to pregnancy and thus sex-linked,” and that protections under the PAA extend to lactating mothers.

The Court rejected NBME’s argument that because it did not maintain any physical presence in Massachusetts, it was not a “place of public accommodation.” The Court upheld for the first time the MCAD’s previous construction that the PAA’s declaration that “[a]ll persons shall have the right to the full and equal accommodations, advantages, facilities and privileges” applied not just to a person’s entrance into a physical structure but also to situations where services are provided that do not require a person to enter a physical structure. The Court held that “the active provision of testing services in Massachusetts, which services by their nature are mobile, is sufficient to bring the NBME within the reach of the statute.” Additionally, the Court determined that NBME could not be absolved of liability because it contracted with another company to provide the testing site where NBME “controls the conditions under which the exam is administered and whether accommodations may be granted to examinees.” Finally, the SJC accepted the MCAD’s

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argument that a case can be made under the PAA using a theory of discriminatory intent or discriminatory impact.

In this case, for the first time, the SJC acknowledged the MCAD's key role in interpreting the PAA. In addition to adopting the MCAD's interpretation of the statute as set forth in the MCAD's Amicus Brief, the Court held that the PAA is integrated into Chapter 151B, that the Commission has "authority in the first instance to interpret the statute and determine its scope" and that the PAA should be afforded a "broad, inclusive interpretation" to eliminate and prevent discrimination.

### **Chapter 30A Litigation.**

Commission counsel were assigned five Chapter 30A petitions for judicial review of the final decision of the Full Commission. Four of these cases were actively litigated in 2012 and one case (United Parcel Services Inc. v. MCAD) settled.

**YRC Inc. v. MCAD**, Suffolk County Civil Action No. 12-1699.

**Gilberto DaSilva d/b/a Samba Cleaning Service v. MCAD**, Suffolk County Civil Action No. 12-1750G.

**Sylvania Lighting Services v. MCAD**, Essex County Civil Action No. 12-796.

**Anthony Luster v. MCAD**, Worcester County Civil Action No. 12-0861D.

**United Parcel Services, Inc. v. MCAD**, Suffolk County Civil Action No. 12-2827E.

Commission Counsel also closed three older cases.

**Electro-Term v MCAD**, Hampden County Civil Action No. 10-00608. Plaintiff's Motion for Judgment on the Pleadings and Remittiter denied and granted in part. Closed following stipulation of dismissal.

**SPS New England v MCAD**, Essex County Civil Action No. 005-01807. Case settled following decision.

**Owen O'Leary's v. MCAD**, Middlesex County Civil Action No. 11-4111, Agreement for Judgment filed with Court.

Commission Counsel also actively litigated five Chapter 30A appeals from 2011. In addition to the four remaining Chapter 30A court cases assigned in 2012, Commission Counsel defend nine Chapter 30A appeals in superior court as of the end of 2012.

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**Costco Wholesale Corporation v. MCAD**, Suffolk County Civil Action No. 11-03170. The administrative record and briefs have been filed; Oral argument on Motion for Judgment on Pleadings scheduled.

**New England Clambake, Inc. d/b/a Wimpy's Restaurant v. MCAD**, Suffolk County Civil Action No. 11-4167-F: The administrative record and briefs have been filed; Oral argument on Motion for Judgment on Pleadings scheduled.

**City of Worcester v. MCAD**, Worcester County Civil Action No. 11-02500/11-02497. The administrative record has been filed.

**ISO New England v. MCAD**, Suffolk County Civil Action 11-04272. Served 12/6/11. The administrative record and briefs have been filed; Oral argument scheduled.

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## **HEARINGS DIVISION**

The Hearings Unit is comprised of 2 full-time and 1 part-time hearing officer and the 3 Commissioners. In 2012 Commissioner Thomas-George and the three hearing officers held hearings and issued decisions.

In 2012 the Hearings Unit scheduled 73 public hearings. In 40 of those cases hearings were held or the cases were settled at or prior to the hearing. (23 hearings held/ 17 settled)

The Hearings Unit scheduled 114 pre-hearing conferences. In 82 cases pre-hearing conferences were held on the cases settled prior to the conference. (71 held/ 11 settled)

Members of the Hearings Unit also conduct certification conferences on behalf of each Investigating Commissioner, rule on pre and post-certification discovery matters and Motions to Dismiss, issue Certification and Hearing orders, and conduct mediations.

In 2012 the Hearings Unit issued 23 hearing decisions. One decision each was issued by Commissioner Sunila Thomas-George and former Commissioners Malcolm Medley and Martin Ebel, as specially-designated hearings officers. Six decisions each were issued by Hearing Officers Eugenia Guastaferrri and Betty Waxman. Eight decisions were issued by Hearing Officer Judith Kaplan.

The vast majority of the decisions were in employment cases. One decision involved a claim of housing discrimination based upon deterring an applicant for rental housing based on a representation that a Section 8 Housing subsidy would not be accepted. One case involved a claim of public accommodation discrimination.

Eleven employment cases resulted in decisions in favor of Complainants. Ten decisions were in favor of Respondents and the complaints were dismissed.

Twelve employment decisions involved claims of gender/pregnancy/sexual harassment. Four involved claims of disability discrimination. The remainder of the cases alleged race, national origin, or age discrimination.

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 & Oscar Brookins v. Northeastern University, 34 MDLR 29 (2012)**

The Hearing Officer (a former MCAD Commissioner) rejected a claim of race discrimination by a tenured African-American Associate Professor of Economics at Northeastern University who claimed he was paid less than other Associate Professors in the Economics Department and some untenured Professors. The Hearing Officer scrutinized the University's Merit Increase review process which is conducted by a Salary Review Committee, comprised of randomly-selected tenured Professors and the Chair of the Department. The evaluation process is a standard process based on course load, research, and service activities, all of which receive a rating. Complainant complained that the low evaluation scores he received over a period of years were unjustified and translated into a significant and unsubstantiated salary disparity when compared to others not in his protected class. In a painstaking and detailed review of the process, and comparison of Complainant's and his comparators' performance and salaries (140 findings of fact), the Hearing Officer concluded that the University had articulated legitimate non-discriminatory reasons for

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the pay discrepancy and that the Complainant's service scores in 7 out of 10 years were lowest or second-to-lowest. He concluded that the degree of disparity was based upon the accumulation and progression of Complainant's lower merit increases due to his relatively lower performance ratings, and that Complainant's rating as compared to that of other professors justified the difference in salary.

**MCAD and Mark Kogut v. The Coca-Cola Company, 34 MDLR 43 (2012)**

The Hearing Commissioner found for the Complainant in a claim of disability discrimination for failure to accommodate his disability of being blind in one eye and for terminating his employment after a physical exam revealed his disability. The Complainant had worked for the Respondent in a temporary position as a Machine Operator in its Northampton bottling facility for approximately seven months and had no problems doing the job. The Complainant was solicited by his supervisor to apply for a full-time position as a Machine Operator. He applied and was offered the position conditioned upon his passing a physical examination. Subsequent to the physical exam, Representatives of Respondent's HR, Safety and Security, and Legal Departments determined the Complainant did not meet the Respondent's visual acuity requirements because being blind in one eye would disqualify him from operating a fork lift. The Respondent asserted that fork-lift operation was an essential function of the full-time Machine Operator job. The Complainant's offer of full-time employment was rescinded, and he was terminated from his temporary Machine Operator position. Based on the testimony of the facility's Production Manager, its Production Supervisor, and the Complainant, who all worked at the facility, the Hearing Officer concluded that the evidence did not support a finding that forklift operation was an essential function of the Machine Operator's job and determined that the Respondent had made no effort to engage in a dialogue with the Complainant to determine if a reasonable accommodation was feasible. The Complainant was awarded \$45,636 for lost wages and \$75,000 in damages for emotional distress. The Respondent was also ordered to conduct training of its supervisory and managerial staff, specifically those managers who have authority to hire and make determinations regarding requests for reasonable accommodation.

**MCAD & Joyce Graf v. West Bridgewater Police Dept. & Donald Clark, 34 MDLR 62 (2012)**

The Hearing Officer found for the Complainant on a claim of gender discrimination against the West Bridgewater Police Department. The Complainant, the only female officer on the force, alleged that the Department and its Chief treated her differently from male officers when they denied her Injured on Duty (IOD) status and Sick Leave Bank time (both bargained-for benefits) after she suffered a back injury while on duty. Despite medical evidence linking the Complainant's injury to the workplace, the Chief denied her IOD status, and placed her on "no-pay" status. The evidence was that no injured male police officers had ever been placed on no-pay status. The Chief likewise denied the Complainant Sick Bank Leave benefits after the Sick Bank Committee denied her request. The Complainant was the only police officer in 10 years to have been denied this benefit.

The Hearing Officer rejected the Chief's assertions that he denied the Complainant IOD status because her injury was close in time to a treatment (steroidal injection) for which he had denied Complainant IOD status, because Complainant had a history of back injuries, and because he did not believe Complainant's injury was work-related. The evidence established that the Chief had in the past hastily approved IOD status for several male officers with similar histories of prior injuries. In the Complainant's case the Chief rejected medical documentation that supported the

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Complainant's claim of a work-related injury, and denied her IOD status. It was not until after the Complainant filed a union grievance that the Chief arranged for her to submit to an independent medical examination after which she was granted leave benefits.

The Hearing Officer rejected the Chief's assertion that the Complainant was denied benefits from the Sick Leave Bank because he had concerns about her abusing sick time, absent evidence that Complainant had ever abused sick time. She also rejected the assertion that the Sick Leave Bank Committee was concerned that Complainant would not be able to repay the Sick Leave Bank pursuant to the CBA, because despite having used sick time for various injuries, Complainant had carried over sick leave time for a number of years. She also found that the Committee's decision was essentially a rubber stamp of the Chief's denial. The evidence was that the Complainant was the only person for whom Sick Leave Bank time was denied, leaving her with no income for a period of six weeks.

The Hearing Officer concluded that as the only female police officer, the Complainant had established that the Respondents' purported reasons for denying her IOD status and Sick Leave Bank benefits were a pretext for unlawful discrimination based on gender. The Complainant was ultimately awarded IOD and was made whole for her time out of work, but the Hearing Officer found she suffered unnecessarily during that time because of the Respondent's disparate treatment. Complainant was awarded \$35,000 in damages for emotional distress and \$6,078 for attorney's fees.

**MCAD & Luz Medina v. Baystate Health, 34 MDLR 79 (2012)**

The Hearing Officer rejected the Complainant's claims of race, national origin, and handicap discrimination. The Complainant is a Hispanic employee who was bypassed for promotion to a Residential Detox Counselor position. Even though the position description stated a "strong preference" for a Spanish-speaking individual, the Employer selected a non-Spanish speaker for promotion to the position. The Hearing Officer found that the Respondents had articulated legitimate reasons for not promoting the Complainant, and the Complainant had failed to prove that the Respondent's articulated reasons were a pretext for discrimination where there was no under-utilization of Hispanic employees within the workforce, supervisors credibly testified that reliable attendance was a critical factor for the position at issue (involving weekend coverage in a residential detox unit), and the evidence established that the Complainant had a poor attendance record in non-FMLA circumstances. Had the Complainant's attendance record involved absences only for approved FMLA reasons (such as her documented migraine condition), the attendance reasons might have not withstood scrutiny, but Complainant's poor attendance record revealed that she had missed numerous days at work for non-approved FMLA reasons as well.

**MCAD and Rebecca Andrews v. Mass Maritime Academy, 34 MDLR 95 (2012)**

The Hearing Officer found that a longstanding African-American employee of the Academy who served as an Administrative Assistant to the Faculty, was discriminated against based on her race, when the Academy failed to grant her a reallocation of her position from an Administrative Assistant I to an Administrative Assistant II. The Complainant was repeatedly told that her position did not warrant an upgrade because she did not supervise the requisite number of employees and because her duties had not changed significantly. However, the Complainant was able to demonstrate that the position of a white employee who supervised no one was upgraded, while the Administration simultaneously assigned the white employee to be the Complainant's supervisor solely for the purpose of monitoring the Complainant's time. The Hearing officer found that this

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was a pretense, because the “supervisor” did not assign, monitor, or review the Complainant’s work. The Hearing Officer found that the Administration ignored the advice of its Dean of Human Resources that both requests for reallocation be denied because neither employee supervised anyone. She found that the process of granting reallocations was inconsistent and arbitrary and probative of discriminatory intent. The Hearing Officer ordered the Complainant’s position upgraded with back pay and front pay until such time as her position was reallocated, and awarded the Complainant \$20,000 for emotional distress. The Academy was also ordered to implement a reallocation policy consistent with the goals of transparency and consistency in the process.

**MCAD & Cheryl Michaels-Iachetti v. Sleek, Incorporated, 34 MDLR 105 (2012)**

The Hearing Officer rejected the claims of a female employee that her job was changed and her employment terminated on account of her pregnancy, when she refused to accept a transfer. The evidence demonstrated that the Respondent, a purveyor of high-end spa services, had legitimate business reasons consistent with changes in the complainant’s personal life for offering her a transfer to a more high-profile position as the General Manager of its flagship New York City facility. The Complainant had responsibilities for the oversight of a number of Massachusetts facilities as the New England Area Director, and realized income from these facilities based on their sales. She had worked at the newly-opened New York City location for several months, where she met her future husband and became pregnant. Consistent with its belief that the Complainant wished to move to New York to be near her future husband and the Respondent’s business needs which required an immediate full-time General Manager for the New York facility, the Respondent offered the Complainant a transfer to the New York facility at virtually the same salary, with the potential for a substantial increase in income. The Hearing Officer found that negotiations over the Complainant’s compensation broke down because she declined to forgo bonus income from the Massachusetts facilities that she would no longer be overseeing. When a heated argument with the Respondent ensued, and the Complainant refused the Respondent’s final offer, the Respondent terminated the New England area position and the Complainant declined the New York offer, choosing to terminate her employment.

**MCAD & Donnalyn Sullivan v. Middlesex Sheriff’s Office, 34 MDLR 118( 2012)**

The Hearing Officer found for the Complainant on a claim of disability discrimination and retaliation, finding that the Respondent refused to grant the Complainant a reasonable accommodation. The Complainant, a Correction Officer with a documented history of asthma, was placed on involuntary disability retirement by the Respondent because she could not work one primarily-outdoor assignment during the winter months. The facts established that the Complainant had been a Correction Officer for 17 years despite having severe bouts of asthma; that she could not tolerate prolonged exposure to cold weather; that most Correction Officers were assigned to indoor or primarily-indoor assignments which the Complainant was capable of performing; that the Respondent insisted on assigning the Complainant to the only post she could not perform due to the prolonged exposure to cold; and that other Correction Officers had been reassigned from one post to another based on personal preferences. The evidence did not support the Respondent’s contention that the requirement of spending a majority of the day outside was an essential function of the Correction Officer position. The Respondent, moreover, refused to engage in an interactive dialogue with the Complainant when she sought a reassignment, and retaliated against her when she pursued reassignment by initiating her involuntary retirement. The Respondent was ordered to reinstate the Complainant to the position of Correction Officer at her option with

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reimbursement for lost seniority for job and retirement purposes. In addition to other benefits, the Complainant was awarded back pay damages in the amount of \$56,685 plus \$4,040 in annual training and educational incentives, lost overtime potential, and reimbursement for sick and vacation benefits, and out-of-pocket costs for health insurance. She was also awarded \$75,000 in damages for emotional distress. The Respondent was ordered to conduct training and assessed a \$10,000 civil penalty.

**MCAD & Janice Switzer v. Office Max, Inc., 34 MDLR 146 (2012)**

The Hearing Officer found for the Complainant on a claim of gender discrimination resulting from the elimination of the Complainant's position as a District Sales Manager ("DSM") for the Respondent. The Complainant was one of three District Sales Managers in the Boston region and was the only female. The Complainant had a successful sales history with the company, but demonstrated that she was denied many networking and advancement opportunities that the male District Sales Managers were afforded. After the Complainant repeatedly sought financial recognition for her significant role in securing a large account, the Respondent's General Manager treated her with increased hostility. Her position was chosen for elimination when the company determined to reduce the number of DSM's, for the reason that she had the lowest sales quota attainment of the three DSM's and did not adhere to the company values of teamwork and trust. The Hearing Officer found the former reason was a pretext for gender discrimination given a history of salary discrepancies dating back to 2001, the company's refusal to increase her compensation as a result of a significant account win, and the fact that her total sales volume in the two preceding years exceeded her peers. The Hearing Officer rejected the Respondent's assertion that the Complainant failed to adhere to the values of trust and teamwork as a rationale masking subtle discriminatory animus colored by unconscious stereotypes about what is deemed appropriate behavior for females in the workplace in promoting their achievements and seeking advancement. The Complainant was awarded back pay damages of \$546,283 and front pay damages of \$652,405 based on her age at the time of termination and her inability to secure comparable employment. She also received compensation for other lost benefits and damages for emotional distress in the amount of \$300,000. The Respondent was also ordered to provide to the Commission information based on gender of employees hired, promoted, laid-off or terminated in its DSM sales force in New England for a period of five years.

**MCAD & Elizabeth Casoni v. Edgewater Kitchen & Bath, et al., 34 MDLR 167 (2012)**

The Hearing Officer found for the Complainant, a Sales Representative for a kitchen design company that was one of several interrelated companies on a claim of sexual harassment. The Complainant alleged that the General Manager of all of the companies subjected her to a hostile work environment by engaging in unwelcome conduct of a sexual nature, such as sexually explicit comments, crude requests for sexual favors, and grabbing her breasts and buttocks. She alleged that the Manager's conduct caused her to feel so uncomfortable that she complained to the company owner and was subsequently ostracized and no longer permitted to attend meetings that were a part of her job. The Complainant felt compelled to resign, and alleged she was constructively discharged. The Hearing Officer credited the Complainant's testimony, and found the corporate Respondents liable for a hostile work environment, sexual harassment, unlawful retaliation, and constructive discharge. She also imposed individual liability on the named sexual harasser and a named company owner. The Hearing Officer found that while the Manager's conduct was unwelcome and offensive to the Complainant, she was not intimidated or devastated

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by his conduct, and her distress was of short duration. The Complainant obtained employment immediately after her constructive discharge, at a higher salary than she earned at the Respondent's; she went on to earn a college degree, and is successful in her current job. Given these circumstances, the hearing officer awarded Complainant damages for emotional distress in the amount of \$35,000 and imposed a civil penalty in the amount of \$10,000 against the manager for his egregious sexual harassment.

**MCAD & Maryalice Gary v. Little Creatures, Inc. and John Spodick, 34 MDLR 159 (2012)**

The Hearing Officer found for the Complainant, a Veterinary Technician on a claim of disparate treatment and a hostile work environment on the basis of her gender, and ruled that she was constructively discharged as a result of the hostile work environment. The Hearing Officer found that the Complainant was subjected to harassment by the owner and Manager of the veterinary clinic and a hostile work environment based on her gender. She was also relegated to performing primarily Secretarial/Receptionist duties and denied opportunities to utilize and enhance her skills as a Veterinary Technician. The Respondent addressed the Complainant and commented on her appearance in an insulting, demeaning, and sexist manner, and publicly humiliated the Complainant and other female employees for perceived errors. The Complainant and her female co-workers feared and were intimidated by these angry outbursts. The Respondent also openly displayed photos of naked or scantily-clad men on office computers and in the break room, played sexually suggestive music in the office, and displayed a mouse pad proclaiming, "The Internet is for porn." He commented on employees' breasts and a male employee's body. The Complainant was humiliated and embarrassed by these displays, the degrading comments, and the denigration of her work in the presence of clients. The Hearing Officer found that the atmosphere was both objectively hostile to women and subjectively hostile for the Complainant as described above.

Ultimately, the Complainant's working conditions were sufficiently hostile and so affected her confidence and self-esteem as to cause her to be constructively discharged. The Hearing Officer found the Complainant's working conditions had become so intolerable that she had no expectation of them improving and was justified in resigning from her job.

While there was ample evidence of other sources of the Complainant's depression, the Hearing Officer found that the Respondent's abusive treatment of the Complainant was a significant cause of her emotional distress during the events in question and for a period of time after her termination. The Complainant was awarded damages in the amount of \$35,000 for emotional distress and lost wages of \$18,939.94 for the six-month period when she was unable to work, and confined herself to her home with depression and anxiety resulting from her treatment by the Respondents. The Complainant did not seek employment thereafter and took no affirmative steps to mitigate her damages from lost wages. She ultimately was awarded Social Security Disability Benefits. The hearing officer also ordered the Respondents to conduct training on unlawful discrimination and harassment for all of their employees and Managers.

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## Damage Awards

For the most part, damage awards for emotional distress were low to moderate.

Awards for emotional distress were made in 12 cases as follows:

Award for \$ 500 (1) **DeRusha** (housing case)

Awards for \$ 20,000 (4) **Scaife, Andrews, Campbell, Coburn**

Awards for \$ 35,000 (3) **Graf, Gary, Casoni**

Awards for \$ 50,000 (1) **Henry**

Awards for \$ 75,000 (2) **Kogut, Sullivan**

Award for \$300,000 (1) **Switzer**

Front pay awards (2):

Amount undetermined (pending promotion) **Andrews**

Award for \$652,405 **Switzer**

Back pay awards (6):

Award for \$ 4,662 **Scaife**

Award for \$ 45,636 **Kogut**

Award to be computed according to CBA **Andrews**

Award for \$\$56,685 + \$14,173 reimbursement of sick leave and vacation benefits + \$4,040 lost training and educational incentives **Sullivan**

Award for \$\$546, 238 + reimbursement for other lost benefits **Switzer**

Award for \$18,940 **Gary**

Civil penalties (3):

Penalty of \$5, 000 **DeRusha** 2 Respondents (housing)

Penalty of \$10,000 **Sullivan**

Penalty of \$10,000 **Casoni**

Affirmative relief:

Training (4) **Kogut, Henry, Sullivan, Gary**

Reinstatement/promotion (2) **Sullivan, Andrews**

Monitor hiring practices (1) **Switzer**

Create and implement new policy (1) **Andrews**

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## Full Commission Decisions

### **MCAD & Renee McFail v. Sylvania Lighting Services, 34 MDLR 25 (2012)**

The Full Commission affirmed the Hearing Officer's conclusion that Respondent violated the Massachusetts Maternity Leave Act ("MMLA"), G.L. c. 149, § 105D, and discriminated against the Complainant on the basis of sex in violation of G.L. c.151B, 4(1), when it terminated her employment during the final weeks of her pregnancy. On appeal the Respondent first argued that the Hearing Officer erred as a matter of law when she concluded that a violation of the MMLA can also constitute sex discrimination under c. 151B. The Full Commission rejected this claim, citing MCAD precedent for the proposition that because pregnancy and childbirth are sex-linked characteristics, actions by an employer which unduly burden an employee because of pregnancy or childbirth may amount to sex discrimination under Chapter 151B.

The Full Commission affirmed the Hearing Officer's conclusion that Respondent applied its leave policies in a harsh, unduly inflexible manner and subjected the Complainant to disparate treatment when it failed to provide her with notice of the date her job retention rights would expire, despite numerous requests. As a result, the Complainant opted not to work the last two weeks of her pregnancy following a medical leave, and was terminated during that time because her retention rights had expired. The Full Commission agreed that Respondent's various leave policies (sick time, short-term leave) and method of crediting leave to part-time work were confusing and variable and as a result, agreed that it was incumbent upon Respondent to notify Complainant of this critical date. The Full Commission also concluded that Respondent disparately applied the job retention policy when it failed to tell Complainant that she could seek an exception to the leave policy, as it had advised other persons who were out on leave with disabilities unrelated to pregnancy. Finally, the Full Commission affirmed the Hearing Officer's finding that Respondent's termination of Complainant's employment during the final weeks of her pregnancy, which extinguished her right to maternity leave and job restoration under the MMLA, violated that statute as well. Substantial evidence supported the Hearing Officer's finding that Complainant had complied with her obligations under the statute. The Hearing Officer's award of \$25,000 in emotional distress damages to Complainant was affirmed.

### **MCAD & Anthony Luster v. Department of Corrections, 34 MDLR 71 (2012)**

The Full Commissioner reversed the Hearing Officer's decision that the Respondent Department of Corrections violated G.L. c. 151B, § 4(16), by failing to engage in an interactive process with its employee, a corrections officer at MCI-Shirley, about the availability of a reasonable accommodation of his disability. The Hearing Officer found that Complainant was disabled, suffering from chronic severe foot pain as a result of diabetic neuropathy complicated by other factors that compromised his ability to walk and work. Over a number of years, medical providers imposed work limits on the amount of time Complainant could stand at his job and limited his inmate contact as a result of his disability. Respondents' efforts to obtain information on an expected date of recovery went unanswered over several years. Nonetheless, Respondent repeatedly allowed Complainant to participate in a temporary work program designed to provide light duty for employees who are temporarily disabled and unable to perform an essential function(s) of the Correction Officer job. Under the program, the Complainant was limited to "incidental inmate contact."

The Full Commission held that before applying the reasonable accommodation analysis, the Hearing Officer should have determined whether the Complainant was a "qualified handicapped

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person” capable of performing the essential functions of his job. Based on the Hearing Officer’s factual findings, other record evidence and a related final agency decision recently upheld by the Superior Court (See Johansson, Superior Court C.A. 10-2589-H), the Full Commission concluded that inmate contact was an essential function of the Complainant’s job and that the prohibitions set out in various medical reports rendered Complainant an “unqualified handicapped person” because he could only have limited contact with inmates.

In reaching this decision, the Full Commission concluded that the Complainant was not entitled to a presumption that he was a “qualified handicapped” person under G.L. c. 152, § 75B (1), as a recipient of Worker’s Compensation payments. The statute requires an employee to show that he “is capable of performing the essential functions of a particular job” with or without a reasonable accommodation” before being deemed a “qualified handicapped person” under c. 151B. Additionally, the Full Commission concluded that Complainant’s participation in DOC’s light duty program, which employs staff who are temporarily restricted from performing the essential functions of their job, could not be construed as a basis for entering into an interactive conversation about a reasonable accommodation, because Complainant’s medical providers could not provide a date of recovery that would allow Complainant to return to his full duties which fundamentally require unrestricted inmate contact. Respondent’s decision to terminate the Complainant after his FMLA benefits ended did not run afoul of G.L. c. 151B, § 4(16).

**MCAD & Thomas Sobocinski v. United Parcel Service Inc., et al., 34 MDLR 109 (2012)**

The Hearing Officer issued a decision in favor of Complainant, finding the Respondents liable for allowing a sexually hostile work environment to exist at its Shrewsbury facility and for retaliation against the Complainant after he lodged an internal complaint in violation of G.L. c. 151B § 4. Two of Respondent’s managers were also found individually liable under G.L. c. 151B § 4 (4A), for having interfered with Complainant’s right to enjoyment of a workplace free of sexual harassment and/or retaliation. The Hearing Officer awarded damages for lost wages and emotional distress and issued a detailed training order, the scope of which was the sole issue raised on this appeal. The Respondents argued that the training order was overly broad, unsupported by the evidence and infringed upon the Company’s free speech rights by compelling anti-discrimination speech.

Specifically, the Hearing Officer ordered that United Parcel Service (“UPS”) conduct six hours of training on “unlawful discrimination, harassment and retaliation” for all managers and supervisors employed by UPS at any of its facilities in Massachusetts, including the Shrewsbury facility. She further ordered that the training be repeated once a year for the next five years so that newly hired or promoted supervisors could attend. The Full Commission rejected all of UPS’ arguments, including its claim that the training order must be specific to and address the precise violations found in a particular case (here, sexual harassment and retaliation) and geographically restricted to the Shrewsbury facility only, and affirmed the order in its entirety. In doing so, the Full Commission noted that the “primary purpose” of an MCAD proceeding is to “vindicate” the public’s interest in reducing discrimination in the workplace and that the Commission had been granted specific authority under § 5, “to take such affirmative action . . . as, in the judgment of Commission, will effectuate the purposes” of c. 151B..

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**MCAD & Delouris Cook v. James Miskel, 34 MDLR 143 (2012)**

In Cook, the Full Commission affirmed a finding of individual liability against a Court Officer at the Massachusetts House of Representatives who sexually assaulted an administrative aide in the workplace. The Full Commission affirmed the Hearing Officer's finding of liability for interfering with Cook's right to a workplace free of threats and sexual harassment. The Full Commission reversed, however, the Hearing Officer's award of lost wages concluding that Miskel could not be liable for lost wages when he had no control over Cook's employment and it was the employer's denial of Cook's accommodation request which resulted in the termination of her employment.

Following the assault in this case, Complainant returned to the State House to work but stopped after a few days and was treated for post-traumatic stress disorder and anxiety. When an independent medical examiner determined that she could return to work, the Complainant informed her employer that she would return only if she could work at an alternative location in the Representative's district instead of the State House, a request that was denied. The Full Commission concluded that while there may have been sufficient nexus between Respondent's sexual assault of Complainant in the workplace and her inability to return to work at that location due to the trauma she suffered, the Respondent had no control over Complainant's request to change her work location or whether that request was granted. Moreover, Complainant alleged in her complaint and testified at the hearing that it was her employer's failure to grant the request for a different work site that resulted in her decision to leave her employment. Absent causation, the individual Respondent was not personally liable for Complainant's lost income as a result of the Complainant's decision not to return to work. Because the Complainant waived emotional distress damages, no such award of was made by the Hearing Officer.

**Wash v. First Realty Associates, et al., 34 MDLR 139 (2012)**

Complainant alleged that the Respondents denied her the opportunity to view and rent an advertised apartment when the Respondents learned she intended to occupy the apartment with her unborn child. The Respondents allegedly told the Complainant the apartment was not deeded and the landlord did not want anyone under the age of six in the unit. The Hearing Officer ruled in favor of the Respondents, finding that the Complainant's demeanor, not that she intended to occupy the apartment with her unborn child, was the reason for the Respondent's denial of the unit. After appeal, the Full Commission reversed, finding that Respondents had discriminated against Complainant on the basis of children and lead paint, and remanding the case to the Hearing Officer for consideration of emotional distress damages.

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## **ADMINISTRATION AND FINANCE DIVISION**

The Administration and Finance Division 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 unit 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 in the Boston office 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. In the Springfield office the majority of conciliations are conducted by the Commissioner, and on occasion, similar to the Boston office, Enforcement Advisors and Investigators also conduct conciliations. The Early Mediation Program in Boston is managed by MCAD's contract mediator, who reaches out to all interested parties, schedules and mediates the cases. On an as-needed basis, the part-time conciliator (as well as other MCAD staff members) have also mediated cases for the agency. In the Springfield office the program is run by a the Senior Supervisor Investigator with the assistance of an Administrative Assistant. The Investigator conducts the majority of the mediation sessions, but the Springfield Commissioner also presides over mediation sessions.

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 Unit**

During 2012, the MCAD Training Unit and other staff conducted 141 external employment and housing discrimination prevention training sessions and presentations attended by 4,545 participants, the most sessions in the history of the Commission. Our audiences included human resources professionals, supervisors and managers, line staff, landlords, and realtors, and the sessions varied from two hours to four days in length.

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 a record 137 presentations in 2012, reaching 2,588 individuals in a variety of settings. Spring, summer, and fall interns established statewide contacts at organizations that serve populations likely to experience discrimination, and scheduled and conducted free presentations on discrimination in employment, housing, and public accommodations in English, Spanish, and Haitian Creole.

The Commission held its thirteenth annual Employment Discrimination Prevention course this year, including five half-day prerequisite sessions, 2 two- to three-day Train-The-Trainer modules, and 2 two- to three-day EEO practitioner modules. This year's courses were filled to capacity. In addition, we held our fifth three-and-a-half day Train-The-Trainer program for municipal personnel officers and other key managers in partnership with the Massachusetts Interlocal Insurance Association.

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The Training Unit designed, facilitated, and/or administered numerous internal training sessions for the Commission's staff this year, including 3 three-day initial training sessions for new interns and employees held in January, June, and September, supplemented with half-day sessions on fair housing, and on outreach and presentation skills training for S.E.E.D. interns. Other internal training sessions included effective strategies for working with persons with mental illness, cognitive disabilities or brain injury; transgender discrimination for new hires who had not attended in the past; informational sessions on collaborative law; and a brown bag lunch series held monthly during the spring and fall, and weekly during the summer.

The Training Unit oversees the MCAD's internship program which continues to flourish, with over one hundred undergraduate, law student, and attorney volunteers working at the Commission during 2012, matching the Commission's record year in 2011. Interns completed hundreds of dispositions, hundreds of intakes with complainants, and over one hundred outreach presentations.

As of the close of 2012, the Training Unit has monitored compliance in a total of 423 cases where the hearing decision or settlement included a training requirement. Of those, 340 cases are no longer active, generally because the training was completed or the respondent organization no longer exists or no longer conducts business.

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 Unit**

Agency-wide, the Conciliation program scheduled 660 cases in 2012. This includes Post-Probable Cause conciliations, some post-discovery mediation, and the cases in the voluntary pre-termination mediation project where parties are represented by counsel. Of the 660 cases scheduled, 379 sessions were held with 172 settlements reached. This results in a 45% settlement rate for conciliations scheduled in 2012. Also, the total amount of monies received in conciliation settlements in 2012 was approximately \$4,355,279.

The mediation program continues to be a frequently-utilized resource for parties and attorneys alike. Agency-wide, participants are provided administrative and mediation services from experienced mediators. The program also provides college and law student interns valuable exposure to the mediation process. They are assigned cases for which they oversee administration, are assigned as liaisons to the parties and their representatives, and attend mediations as observers (with permission of the parties). In 2012, the early mediation program was offered to over 530 parties and resulted in 261 scheduled mediations. Of the 261 mediations scheduled, 228 mediation sessions were conducted, which is an increase over last year of 24 cases, and 155 of the sessions held resulted in settlement. This results in a 68% settlement rate for mediations scheduled in 2012. Also, the total amount of monies received in mediation settlements in 2012 was approximately \$1,995,972.

Every case that settles results in one fewer case requiring the expense of time and resources spent on litigation.

SUMMARY OF ADR SETTLEMENT RATES BY MONTH

EARLY MEDIATION PROGRAM													
	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec	Annual Totals
<b>Parties Contacted</b>	42	28	62	60	38	54	36	30	46	42	66	26	530
<b>Mediations Scheduled</b>	21	25	24	26	23	18	25	25	23	21	20	10	261
<b>Mediations Held</b>	21	23	18	22	22	14	23	24	20	14	17	10	228
<b>Mediations Settled</b>	17	14	14	14	12	10	16	14	14	9	13	8	155
<b>Settlement Rate</b>	81%	61%	78%	64%	55%	71%	70%	58%	70%	64%	76%	80%	68%

POST PROBABLE CAUSE CONCILIATION PROGRAM													
	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec	Annual Totals
<b>Conciliations Scheduled</b>	48	33	30	44	50	73	81	57	48	70	69	57	660
<b>Conciliations Held</b>	31	19	20	24	38	33	50	32	31	31	44	26	379
<b>Conciliations Settled</b>	16	8	6	10	24	10	19	12	14	16	24	13	172
<b>Settlement Rate</b>	52%	42%	30%	42%	63%	30%	38%	38%	45%	52%	55%	50%	45%

## Testing Unit

The Testing program seeks to promote equal access to employment, housing, and public accommodations or establishments and permits a more responsive and comprehensive approach to detecting and resolving systemic discrimination. Testers operate as the MCAD's eyes and ears, allowing the MCAD to proactively combat discrimination rather than simply waiting for individuals to report complaints of discrimination.

The goals of the MCAD's testing program are to identify barriers that contribute to discrimination in employment, housing, and public accommodations, in order to develop strategies that will enable the Commission to improve the litigation of discrimination claims. The Testing Unit identifies potential areas of concern, tests, and initiates claims against Massachusetts employers, housing and public accommodations providers whose policies or practices appear to discriminate on the basis of "protected" status or characteristics protected by Massachusetts state law.

The program utilizes a technique known as "Matched Pair Testing" whereby two or more similarly situated individuals, similar in areas such as qualifications, income, and appearance, but different with respect to membership in a protected group such as race, sex, or age, apply for similar positions or services. The employer's or service provider's response to the Tester is then documented and analyzed in order to determine if the Tester experienced discrimination on the basis of protected class status. Once the data is retrieved from testing, the Testing program assesses whether the tests reveal discriminatory practices or recommends that further testing be conducted.

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If Testing finds probable cause for discrimination on the basis of one or more protected classes, the MCAD engages in conciliation to attempt to remedy any discriminatory practices, and to train and educate Respondents. If conciliation efforts prove unsuccessful, the Commission prosecutes the claims in the administrative adjudicatory forum and publicizes the result. The Testing process assists individual victims of employment and housing and public accommodations discrimination while combatting more systemic civil rights violations throughout the Commonwealth of Massachusetts.

In 2012, the Testing Unit made 129 inquiries with respect to 37 housing providers and found significant evidence of discrimination with respect to 18 of these housing providers. The MCAD brought 7 complaints for discrimination against housing providers based on evidence gathered through testing and the program's monitoring of advertising. One of these cases has already settled. The MCAD's Testing Unit has discovered patterns of discriminatory advertising consistent with discriminatory renting practices, and has sought to remedy those patterns.

In 2012, the MCAD Testing program made 144 inquiries with respect to 63 employers, employment agencies, and places of public accommodations, finding significant evidence of discrimination with respect to 12 of these employers and places of public accommodation to date. The MCAD brought three complaints for discrimination against employers and places of public accommodation based solely on evidence gathered by the Testing Unit. Cases against employers and places of public accommodation have been referred to the Commissioners for possible issuance of a complaint and/or other enforcement action. MCAD settled one employment case in 2012 prior to a Probable Cause decision and another settlement awaits final approval.

## **Commission-Initiated Complaints As A Result Of Testing**

### **MCAD v. LivHome et. al.**

Through linguistic profile testing, MCAD found the employer discriminating against two white men and an African-American man in favor of a white woman. The white woman was allowed to apply for a position, while the white men were turned away and told the employer was seeking a female. The African-American man was told there were no positions available. Given the employer's clear preference for hiring women and declining to even interview male candidates, the Investigating Commissioner approved the issuance of a complaint based on gender discrimination. Following an investigative conference on March 5, 2012, the parties agreed to settle the case. A settlement in which LivHome has agreed to undergo anti-discrimination training, and pay for costs related to testing and investigation is currently awaiting final approval.

### **MCAD v. College Pro (U.S.) Ltd., et. al.**

After receiving information from EEOC and an out-of-state agency that a painting company appeared to be discriminating based on age and potentially other protected categories, MCAD initiated an investigation of this employer for age, race, and ancestry discrimination. Matched testing demonstrated a clear preference by the employer for testers under the age of 40, with every tester under 40 who contacted the employer being encouraged to apply for management positions and some being offered positions as managers and some as painters. Testers over the age of 40 who were more qualified were not encouraged to apply for management position, nor were they offered painter's positions, and in most cases were not even invited to interview. The Commission initiated a complaint for age discrimination. Following a May 22, 2012 on-site visit to the employer's office in Woburn, MA and a July 31, 2012 investigative conference, the employer tentatively agreed to settle. MCAD is discussing settlement terms with the employer and has

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proposed that the employer make changes to its advertising practices, undergo antidiscrimination training, and pay for the testing costs.

**MCAD v. Susan and Robert Campbell**

MCAD viewed an advertisement for housing placed by the Respondents for a rental unit which stated “FSU [Fitchburg State University] students girls wanted.” MCAD conducted a series of cyber-tests, in which the provider refused to discuss rental with prospective applicants she did not believe to be female college students, explicitly telling male college students the apartment was for “girls only,” and advising a family with children that the apartment is for college students. MCAD initiated a complaint on the basis of age, gender, familial status, and marital status on November 19, 2012. The complaint has since been served and an investigative conference was held on January 11, 2013. The MCAD is seeking a variety of remedies.

**MCAD v. Galmike Corp. d/b/a Harp & Bard of Dorchester et. al.**

Testing of this employer for race, color, national origin, and gender discrimination began after a discriminatory advertisement based on gender appeared online. During the first round of testing, an African-American tester had a conversation with a manager, in which the manager seemed to be actively discouraging the tester from pursuing a position with the employer by telling her negative things about the owner and the employer’s clientele. A male tester was told on the phone that he could not get the position per the advertisement, which limited the position to women. A less-qualified white woman was not offered the position, but was encouraged by the manager to apply for another position with the employer at a later date. Subsequently, an African-American tester was told simply that nothing was available and no future openings were anticipated, while a white woman, although not hired, was told by a manager he would look at her resume. In the fourth quarter of 2010 another discriminatory advertisement based on gender was published by the employer. In testing during the first quarter of 2011, a white tester was chosen for a position over a more qualified African-American tester. A complaint for race, color, and gender discrimination was initiated in the second half of 2011, and an investigative conference was scheduled in March 2012. An additional complaint was filed by EEOC and referred to MCAD for age discrimination in advertising. The Respondent failed to attend the conference. A new conference was scheduled and took place on May 16, 2012, in which a tentative settlement was reached. On December 20, 2012 an Order of Final Judgment was signed by the Commissioner, in which the Respondents agreed to undergo training, submit applications and applicant information, its advertisements, and any job openings with job descriptions to the MCAD for review and monitoring. Respondents also agreed to provide the MCAD with compensation to cover the costs of testing.

**Grants Awarded**

In February, MCAD was awarded a Fair Housing Assistance Program grant for \$195,000 from the U.S. Department of Housing and Urban Development. The funds were used to develop a fair housing review panel to respond to the housing and redevelopment issues as a result of the June tornado in Springfield. The project also incorporated fair housing testing and education and outreach activities.

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**MCAD BUDGET FOR FISCAL YEAR  
2012  
OVERVIEW  
July 1, 2011 - June 30, 2012**

**Budgetary Direct Appropriation**

Line Item 0940-0100  
State Appropriation                   **2,543,312**

**Retained Revenues Collected**

Line Item 0940-0101  
HUD   633,027  
EEOC                                       1,311,150  
Trainings                                 66,470  
Testing                                     2,570  
Fees                                        23,051  
**Total                                       2,036,268**

**Train-The-Trainer**

Line Item 0940-0102 \*  
Train the Trainer Program           **75,980**

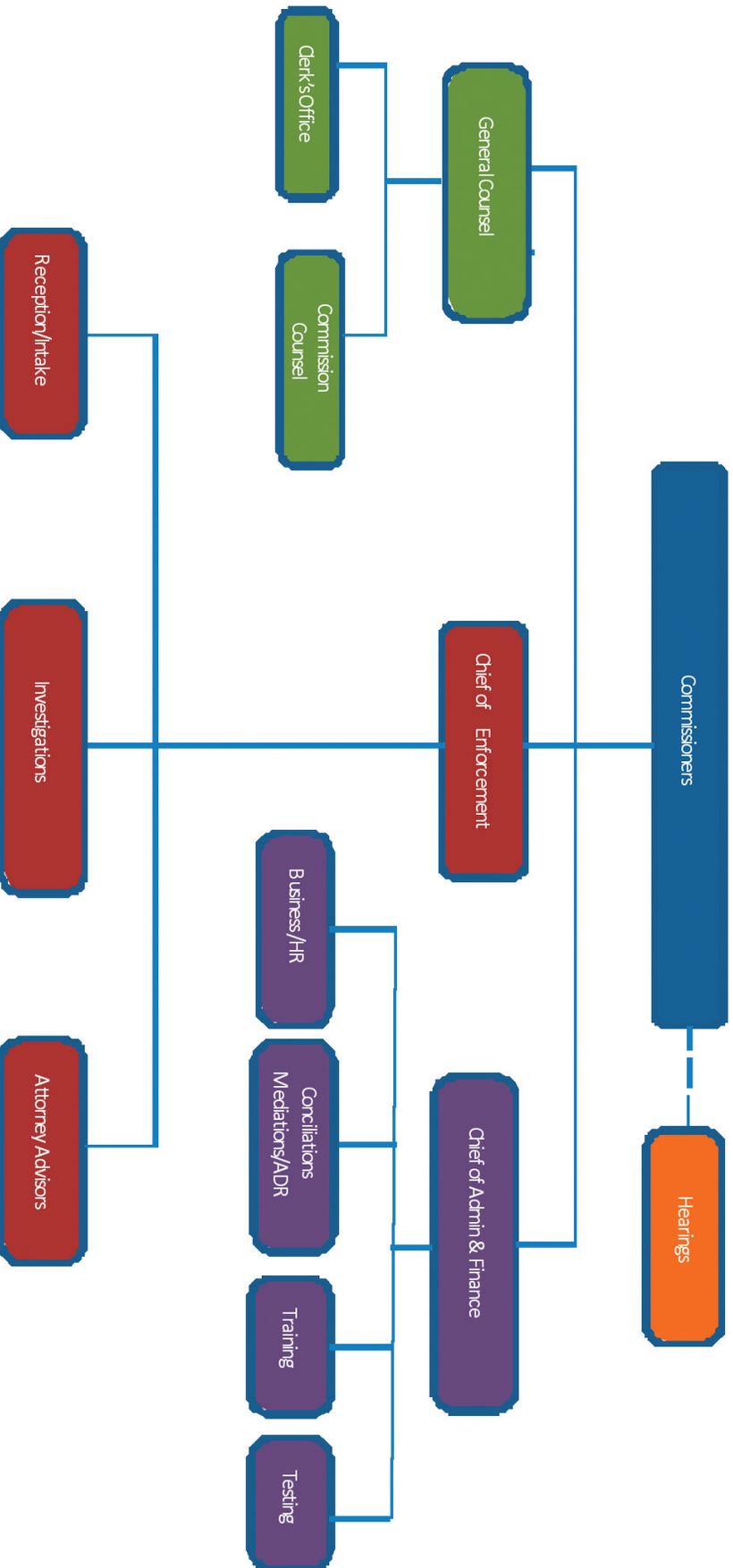
**Total FY12 Budget                   4,655,560**

**Total FY12 Expenses**

Payroll                                   3,966,957  
Rent                                       88,562  
Administrative Costs                 587,566  
**Total                                   4,643,085**

*\* 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 2012, revenues collected in that account exceeded the cap of \$70,000 and \$5,980 was deposited into the general fund.*

MCAD ORGANIZATIONAL STRUCTURE 2012



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## IN MEMORIAM



*Beverly I. Ward, Esq.*

Beverly Ward served as Commission Counsel at the Massachusetts Commission Against Discrimination for almost fifteen years, from 1998 until her passing on August 6, 2012. Bev (as we knew her) was a gifted attorney who was staunchly committed to the civil rights work of the MCAD, and an expert on the Commission's legislative history as well as a repository for institutional knowledge. As a senior appellate attorney she made a significant contribution to the body of law preserving the Commission's jurisdiction, authority, and ability to award damages. She demonstrated her unwavering support for the Commission's mission by working on a number of important briefs during the course of her illness.

Bev was on the front line of many major cases decided under Massachusetts' anti-discrimination laws and the MCAD's governing statute, writing briefs and often arguing on the Commission's behalf in the Massachusetts Appellate Courts. A review of the Appellate Court dockets demonstrates the significant role that Bev played in over forty appeals for the Commission – at least half in the Appeals Court and half in the Supreme Judicial Court. She was instrumental in developing the law on such important issues as emotional distress damages, joint employer liability, and forum selection. She played a substantial role in the Commission's successful defense of litigation in state court that sought to preclude the MCAD from investigating or processing complaints of discrimination filed by employees who had signed pre-dispute mandatory arbitration agreements with their employers. (*Joule, Inc. v. Randi Simmons*).

Attorney Ward received her law degree from Suffolk University in 1989. She earned an LL.M degree in 1997 from the University of San Diego School of Law with a concentration in labor and employment law. She also served as an Assistant Attorney General in the Office of Attorney General Scott Harshberger from 1992 to 1996, in the Civil Trial Division of the Government Bureau.

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## 2012 MCAD Staff

Sabrina Acloque	Elizabeth Hickey	Michelle Phillips
Lisa Adams	Marzella Hightower*	Victor Posada*
Melvin Arocho*	June Hinds*	Marytsa Reyes*
Deborah A'Vant*	Clare Horan	Jeannine Rice*
Joel Berner	Maria Joseph*	Amaad Rivera
Sarah Biglow	Judith Kaplan*	Lila Roberts
Eric Bove	Theresa Kelly	Caitlin Sheehan
Kimberly Boyd*	Nomxolisi Khumalo	Rebecca Shuster*
James Brislin	Cynthia Kopka	Andre Silva
MaryAnn Brunton*	Johny Lainé	Myrna Solod*
Marlania Bugg*	Jennifer Laverty	Abigail Soto-Colon*
Emily Caplan	Shirley Lee*	Ethel Stoute*
Wendy Cassidy*	Kris Librera	Tania Taveras
Amy Chow	Simone Liebman*	Beth Tedeschi
Kathleen Chung	Melanie Louie*	Sunila Thomas-George*
<b>Jean Clanton*</b>	Katherine Martin*	Nancy To*
Ellen Cobb	Sheila Mathieu	Jeffery Turner*
Vanessa Davila*	Gilbert May*	Julian Tynes
Karen Erickson	Lynn Milinazzo-Gaudet*	<b>Francisco Villalobos*</b>
Geri Fasnacht*	Ying Mo*	Beverly Ward*
Lynn Goldsmith*	Carol Mosca*	Betty Waxman*
Barbara Green	Carol Murchison*	Jamie Williamson
William Green	Pamela Myers	Paul Witham*
Eugenia Guastaferrri*	Nicole Newman	Patty Woods
Yaw Gyebi, Jr.	<b>Carolyn Packard*</b>	Jacklyn Zawada
SuJin Han	Joshua Papapietro	Carmen Zayas
Keith Healey	Yudelka Peña*	Catherine Ziehl

\* identifies employees who have ten or more years of service with the Commission

**Bold identifies employees who retired in 2012**

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## 2012 MCAD Interns

Dora Agyare	Nicole Hanson	Paula Penariu
Asha Alex	Megan Holton	John Preston
Robert Alfred	Samantha Hopkins	Casey Rider
Rob Arcangeli	Clare Horan	Daniel Ross
D. J. Arnold	Matt Houser	Angel Ruiz
Joshua Bearce	Esther Howe	Alexander Sage
Jennifer Bell	Rizwanul Huda	Harold Salinas
Nadia Bhatti	Emily Hughes	Pawl Samolewicz
Sarah Biglow	Nicholas Jacques	Alexandre Schaffer
Mairead Blue	Marc Kadushin	Douglas Scott
James Brislin	Sohum Karia	William Scott
Ike Thomas Brochu	Timothy Katz	Katie Selcraig
Katelynn Brown	Josh Kelly	Bryn Sfetsios
Chris Burnett	Morgan Kennedy	Sarah Shah
Julio Enrique Butter	Sarah Khatami	Tenzing Sherpa
Natasha Caldwell	Ju Myoung Kim	Deborah Shields
Diane Chang	Sol Kim	Alex Smith
Joseph Cohen	Avantika Kulkarni	Robert Max Soeldner
Devin Cowick	Jillian Lenson	Kelly Soltis
Elizabeth Davey	Caroline Leonard	Alex Sprague
Restilda Dhroso	Jessica Levy	Juliette Stancil
Lizbeth Diaz	Asher Lipsett	Matthew Steinberg
Alissa Doiron	Lauretta Lu	Jacob Stern
Alanna Driscott-Sbar	Melissa Maddox	Renee Stewart
Anthony Famigletti	Dorothy Manley	Matthew Szafranski
Natalie Festor	Patricia Mann	Beth Tedeschi
Zuleyka Figueroa	Elizabeth Mason	Alyssa Thibault
Michael Fink	Thanos Mattai	Christie Wentworth
Kelly Finn	Rachel Mayo	Sarah Wiles
Barbara Fiorda	Khadija Mboup	Candice Wilson
Priscilla Forrester	Michael McKinnon	Margaret Wiryaman
Reggie Galljour	Kelly McNamara	Jincy Yohannan
Stephanie Gildea	Carlos Monroy	Beryl Yu
Desilynn Gladden	Brigid Morris	Jaclyn Zawada
Natalia Gueorguieva	Melody Owens	Lucas Zullo
Grace Guichardo	Camille Patterson	

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## 2012 MCAD Advisory Board Members

Thomas Gallitano (Chair)

Tani Sapirstein (Vice-Chair)

Margarita E. Alago

Barbara Chandler

Nadine Cohen

Remona L. Davis

Joseph L. Edwards

Jacqueline P. Fields

Karla Fitch-Mitchell

Gail Goolkasian

Jeffrey L. Hirsch

Kimberly Y. Jones

Anne L. Josephson

Christopher P. Kauders

Steven S. Locke

Jonathan Mannina

Fran Manocchio

Roger Michel

William Moran

Habib Rahman

Lucinda Rivera

Thomas Saltonstall

Nancy Shilepsky

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# MCAD OFFICES

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