

# ANNUAL REPORT

## FISCAL YEAR 2020

(JULY 1, 2019 - JUNE 30, 2020)



**MASSACHUSETTS COMMISSION  
AGAINST DISCRIMINATION**

## About the MCAD

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

The people of Massachusetts, its workers, and visitors may file a Discrimination Complaint if they believe they were treated differently or unfairly in Massachusetts based on their identity as a member of a protected class. Complaints filed at the MCAD are investigated by an MCAD staff member to determine if there are sufficient facts to find that the treatment alleged constitutes unlawful discrimination. The MCAD conducts its investigation as a neutral entity. If it is more probable than not that there was an unlawful practice, the complaint may move forward to prosecution and adjudication.

The MCAD has four offices, Boston, New Bedford, Springfield, and Worcester, where one can meet with an intake specialist for a free consultation and file a Complaint.

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

## Main Contact Numbers

### Boston Headquarters Reception

Front Desk Reception	<a href="mailto:mcad@mass.gov">mcad@mass.gov</a>	617-994-6000
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### Office of the Commissioners & Press Office

H Harrison, Assistant to Commissioners	<a href="mailto:h.harrison@mass.gov">h.harrison@mass.gov</a>	617-994-6147
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### Investigations Division

Heather Hall, Chief of Investigations	<a href="mailto:heather.hall@mass.gov">heather.hall@mass.gov</a>	617-994-6102
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### Legal Division

Connie McGrane, General Counsel	<a href="mailto:connie.mcgrane@mass.gov">connie.mcgrane@mass.gov</a>	617-994-6020
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### Training Unit

Jeremy Scheiner, Director of Training	<a href="mailto:training.assistant@mass.gov">training.assistant@mass.gov</a>	617-994-6072
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### Clerk's Office

Myrna Solod, Clerk of the Commission	<a href="mailto:myrna.solod@mass.gov">myrna.solod@mass.gov</a>	617-994-6034
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### Public Records Requests

Theresa Lepore, Records Access Officer	<a href="mailto:cadrao@mass.gov">cadrao@mass.gov</a>	617-994-6124
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### Alternative Dispute Resolution Unit

Michael Zeytoonian, Director of ADR	<a href="mailto:michael.zeytoonian@mass.gov">michael.zeytoonian@mass.gov</a>	617-994-6055
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### Operations and Finance Division

Michael Memmolo, Chief of Operations	<a href="mailto:michael.memmolo@mass.gov">michael.memmolo@mass.gov</a>	617-994-6124
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## Commissioners

**Sunila Thomas George**  
Chairwoman

**Monserate Quiñones**

**Neldy Jean-Francois**

## MCAD Locations

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

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

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

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

TTY      617.994.6196

**[www.mass.gov/mcad](http://www.mass.gov/mcad)**



## Letter from the Commissioners

Dear Governor Baker, Lieutenant Governor Polito, Speaker DeLeo, Senate President Spilka and Members of the General Court: In accordance with Chapter 151B, §3 (10) of the Massachusetts General Laws, we hereby submit the Fiscal Year 2020 (FY20) Annual Report of the Massachusetts Commission Against Discrimination (MCAD).

We are pleased to present the fiscal year publication, which encompasses the agency's progress towards eradicating discrimination between July 1, 2019 and June 30, 2020. The FY20 achievements detailed in this report incorporate areas of Administration and Finance, outcomes on Investigations, Training sessions, Mediations and Conciliations, Public Hearings, court activity, and other initiatives, as well as the agency's approach to addressing the COVID-19 health crisis.

Fiscal year 2020 ("FY20") started strong. The agency's FY20 state appropriation and federal funding levels were the highest amounts in the Commission's history. The increased funds allowed the MCAD to continue hiring new employees and backfilling decades-old vacancies, as well as invest in significant operational improvements to boost productivity and streamline agency processes. At the beginning of the fiscal year, during the summer of 2019, the Commission ran its first Public Awareness Campaign on the regional transit systems in Boston, Worcester and Springfield. The campaign reached an estimated 2,000,000 commuters, and had a measurable increase in complaint filings over the first half of FY20, reversing a downward trend seen over the past few years.

Additionally, in the second half of 2019, the Commission solicited feedback from the legal community, and the public on revised procedural regulations (804 CMR 1.00 (2020)), and the MCAD launched the new rules in January 2020. This multi-year effort was spearheaded by the MCAD's General Counsel and staff. Their thoughtful deliberations resulted in a reconceptualization and reorganization of the MCAD Rules of Procedure that conform to our modern practices; and they expertly executed the monumental task of preparing the regulations for publication.

Thus, Calendar year 2020 began with the Commission poised to outperform the prior year's benchmarks in every department. The revised Rules of Procedure codified internal practices that promoted efficiency and embraced electronic processes. For the first time in recent memory, the Investigations Division had no vacant positions thanks to the industrious efforts of our recruitment team. The MCAD hired several new positions: a new director of IT and a Director of Alternative Dispute Resolution, along with two law clerks, and an Intake Supervisor. Additionally, the MCAD saw a record number of promotions—more than 30% of staff received a promotion or started in a new role at the Commission in FY20.

Then, on March 10, 2020, Governor Baker declared a State of Emergency to Support the Commonwealth's Response to the Coronavirus. In accordance with the State of Emergency, the MCAD closed all four of its offices starting March 16, 2020, and the offices have remained closed to the public to this day.

Immediately, the MCAD staff and managers developed new protocols and processes in order to transition to conducting business practices and proceedings virtually: fielding inquiries, conducting intakes, holding investigative conferences, mediations, conciliations, trainings, and LOPC appeals. The newly hired Director of IT deftly assisted nearly 100 MCAD staff members with their transition to working from home.

Concurrently, in order to continue to provide the agency's vital services while the offices remain closed to the public, the MCAD Commissioners issued temporary emergency changes to its processes and procedures and launched the MCAD COVID-19 Information &

Resource Center website. The Commission created and launched the MCAD eComplaint filing portal for attorneys to submit new complaints electronically on behalf of their clients, and we published a Guidance for Attorneys practicing before the Commission during the COVID-19 health crisis. The Commissioners agreed to temporarily waive the original signature requirement on new Complaints, and within a few weeks of the office closures, the Commission began serving documents electronically. These steps allowed the Commission to perform its investigative, conciliatory, and adjudicatory activities without the need to send or receive postal mail while employees worked from home. The Commission then secured video conferencing licenses and began utilizing staff to hold proceedings virtually: trainings sessions, mediations and conciliations, investigative conferences, certification conferences, Preliminary Hearings (appeals), and internal Division and Unit staff meetings.

Amidst the upheaval caused by COVID-19, the MCAD continued to address its budgetary and legislative directives. The Commission delivered its FY21 Budget testimony, along with a series of letters concerning pending legislation that pertained to the work of the Commission. However, it became clear to the management that staff productivity had suffered due in part to the lack of access to postal mail during the second half of FY20 and the burdens placed on the Commonwealth's network infrastructure.

In the agency's FY21 Budget Testimony, the Commission cautioned the Legislature of the possibility of funding reductions from our federal partners. Unfortunately, those cuts became a reality. The MCAD received notice that its contract with the U.S. Equal Employment Opportunity Commission (EEOC) was reduced by 15%; and, based on production deficiencies, the Commission anticipated a reduction to our federal contract with the U.S. Department of Housing and Urban Development (HUD). These two federal contracts make up 50% of the agency's operating budget, and these losses are likely to substantially impact MCAD's operations, possibly resulting in future staffing reductions.

In May, the senior leadership team developed a phased MCAD Return to Work Plan akin to the Governor's Reopening Massachusetts Plan, which implemented physical distancing and safety precautions to minimize the risk to the staff while allowing the agency to fulfill its statutory mandates. The MCAD is providing personal protective equipment (PPE) for every office including facemasks, hand sanitizer, disinfectant wipes and spray, and gloves, and we have installed partitions in the reception areas for the eventual reopening to the public. In June, the MCAD began Phase I of the MCAD Return to Work Plan, with MCAD staff returning to the office one day per week while the offices remained closed to the public.

By the close of the reporting period (June 30, 2020), the Legislature and Governor had not passed a full FY21 budget. Once approved, the MCAD will assess its appropriation and earned revenue, in order to prioritize hiring and backfilling vacancies, in the hopes of relieving some of the pressures on the agency and staff.

In closing, the hardships we have endured during FY20 are a testament to the resolve and perseverance of our dedicated senior managers and staff, who, with scarce resources, continue to comply with our expanding legislative mandate amid a national pandemic, for a truly unparalleled year. We extend a special thanks to Governor Baker, Lt. Governor Polito, members of the Legislature, the Executive Branch, the MCAD Advisory Board and our federal partners who continue to steadfastly champion and support the Commission's central role in civil rights law enforcement and eradicating discrimination in the Commonwealth.

Respectfully submitted,

**Sunila Thomas George**  
Chairwoman

**Monserate Quiñones**  
Commissioner

**Neldy Jean-Francois**  
Commissioner

## Operations and Finance Report

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

### Operations

The Unit manages the operations of the Commission's four office locations, and oversees lease management for the Commission's New Bedford, Springfield, and Worcester offices. The Unit is responsible for day-to-day operations of all locations including, but not limited to, maintenance, security, ID access, and asset inventory. The Unit was integral in creating and implementing the MCAD's phased reopening plan as well as securing the personal protective equipment necessary to ensure the safety of the staff returning to the office.

### Fiscal/Budget

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

### Office of Human Resources

The Unit provides all aspects of personnel administration and human resource direction and support for the employees of MCAD. These services include payroll administration, benefits and leave administration, labor and employee relations, handling of all Americans with Disabilities Act requests, accommodations, and processing, and approving all Family and Medical Leave Act requests. The Unit is also responsible for all posting, hiring, and recruiting (in collaboration with the Commission's Training Unit) of MCAD positions. The COF, as the designated Diversity Officer, oversees all diversity considerations and professional development opportunities. Additionally, the Unit recommends and implements agency-wide personnel policies and procedures.

### Information Technology

The Unit oversees all of the Commission's IT and telephony functions including desktop and application support for all of the Commission's offices. The Unit also procures and supports all of the Commission's hardware and software needs. This year, due to the state of emergency, it provided significant support to the Commission. The COVID-19 pandemic severely impacted operations towards the end of the fiscal year (March - June), and the Commission was forced to provide its services by remote means. The Director of IT Services was integral in providing remote access to the agency's critical applications and files and supporting staff remotely.

### Funding/Personnel

In FY20, the Governor and Legislature continued to demonstrate their support for the MCAD and its mission. In FY20, the Commission was funded at historic levels for its state appropriation, and the agency won its highest workshare contracts with our federal partners, the U.S. Department of Housing and Urban Development (HUD) and the U.S. Equal Employment Opportunity Commission (EEOC). FY20 brought unprecedented challenges and tested the agency's Operational and IT functions. Further, the fiscal management of the Commission was paramount during these unprecedented times. Despite these unforeseen challenges, the Unit positioned the agency to mitigate the fallout from budgetary cuts resulting from the pandemic in FY20 through FY22, if necessary.

## MCAD Budget for FY20

July 1, 2019 – June 30, 2020

### Direct State Appropriation

(Line Item 0940-0100)

State Appropriation Total ..... \$ 4,047,794

### Retained Revenue Collected

(Line Item 0940-0101)

HUD ..... \$ 1,040,590

EEOC ..... \$ 2,062,800

Audit/Copying fees ..... \$ 437

Attorneys' Fees ..... \$ 26,661

PAC from FY19 ..... \$ 150,000

Retained Revenue Total ..... \$ 3,280,488

### Training Program

(Line Item 0940-0102)

Training Program Total ..... \$ 238,785

### Total FY20 Appropriated Funds & Collected Retained Revenue

\$ 7,567,067

### Expenses

Payroll ..... ( \$ 6,274,305)

Rent ..... ( \$ 134,233)

Administrative Overhead ..... ( \$ 809,931)

Total FY20 Expenses ..... (\$ 7,218,469)

Reversion to General Fund<sup>1</sup> ..... (\$ 198,598)

Requested PAC to FY21 ..... (\$ 150,000)

## MCAD Proposed Budget for FY21

July 1, 2020 – June 30, 2021

State Appropriation (Line Item 0940-0100) ..... \$ 4,169,189

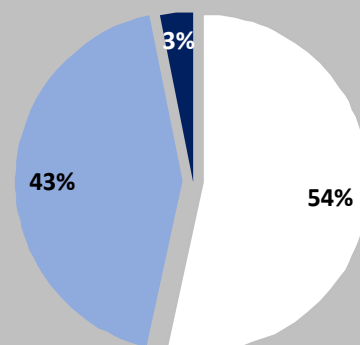
Retained Revenue (Line Item 0940-0101) ..... \$ 1,100,000

Training Program (Line Item 0940-0102) ..... \$ 410,000

Retained Revenue (Line Item 0940-0103) ..... \$ 2,520,000

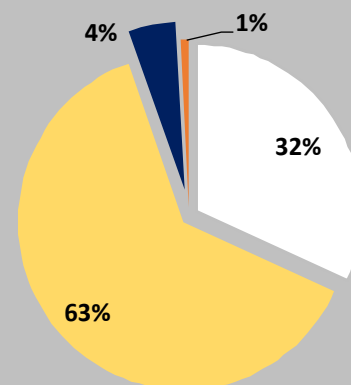
Total FY21 Budget<sup>2</sup> ..... \$ 8,199,189

### FY19 Funding & Revenue



State Appropriation	.....	\$4,047,794
Retained Revenue	.....	\$3,280,488
Training	.....	\$238,785
<b>Total</b>		<b>\$7,567,067</b>

### Retained Revenue Sources

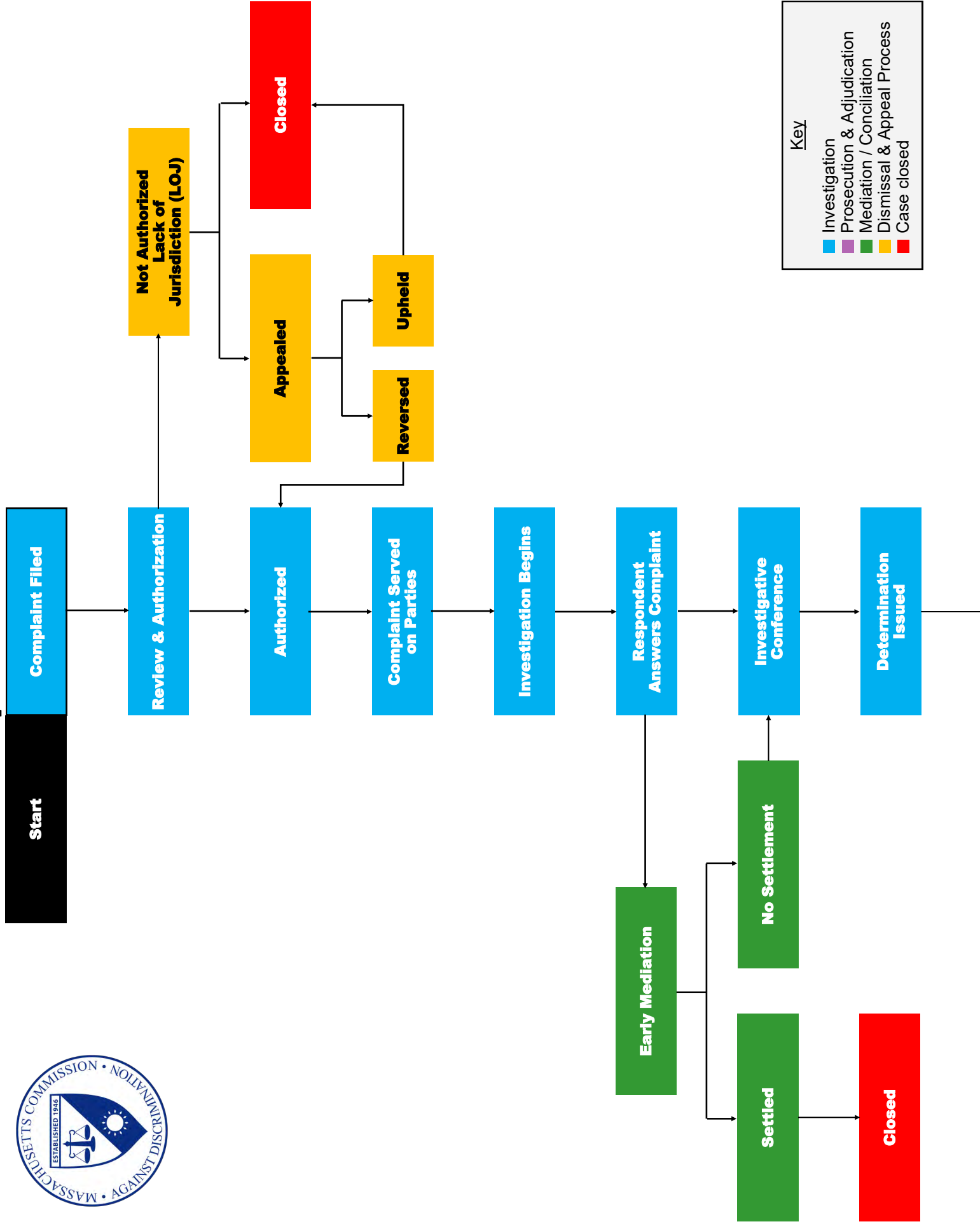


HUD	.....	\$1,040,590
EEOC	.....	\$2,062,800
PAC from FY19	.....	\$150,000
Fees	.....	\$27,098
<b>Total</b>		<b>\$3,280,488</b>

1. Funds earned in excess of the retained revenue caps as well as unspent funds are reverted back to the General Fund. This reversion occurred due to delays in hiring, which are not expected to reoccur in FY21.
2. The FY21 Budget includes all funds and retained revenue allocated in the FY20 Final Budget and all supplemental appropriations.

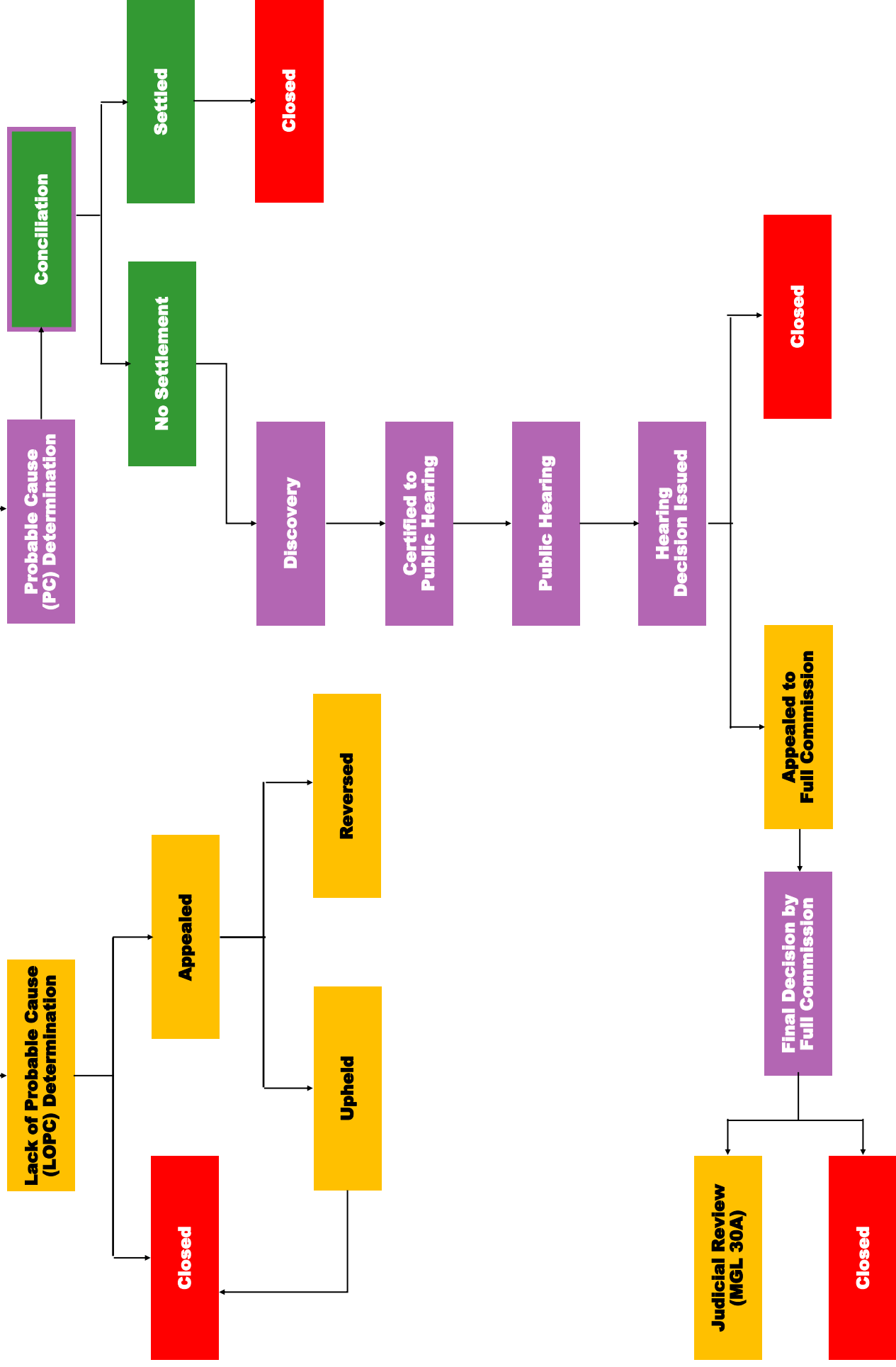


# MCAD Complaint Process Flowchart





*(Continued from previous page)*



## FY20 At a Glance



**5,500**  
Information Calls



**4,500**  
Consultations



**2,778**  
New Complaints



**557**  
Public Records  
Requests



**245**  
Trainings



**528**  
Mediations &  
Conciliations

## Website Traffic

Top 10 MCAD webpages  
(average visitors per fiscal year)

MCAD Homepage	79,153
Parental Leave in MA	62,048
Hearing Decisions	22,412
COVID Resource Page	22,224
File a Complaint	17,959
Overview of Types of Discrimination	13,615
Sexual Harassment	13,134
MCAD Rules, Laws, Decisions, & Reports	11,014
Guidance on Pregnant Workers Fairness Act	10,749
Guide to the MCAD Complaint Process	10,294

## Training and Outreach Unit

The MCAD Training, Education, and Community Outreach Unit provides internal and external discrimination prevention trainings, oversees recruitment and onboarding of new agency staff and interns, and coordinates the Commission's legislative affairs program.

This fiscal year, the Training Unit conducted and attended approximately 245 external discrimination prevention training sessions, community events, and career fairs across the state impacting roughly 5,867 participants. The Training Unit offers anti-discrimination training in the subjects of employment, housing, sexual harassment, disability and religious accommodations, and conducting internal investigations. The Commission also held its 20<sup>th</sup> annual Courses for Equal Employment Opportunity Professionals. This multi-day training includes three popular courses: Train-the-Trainer, Responding to Accommodation Requests, and Conducting Internal Discrimination Complaint Investigations. New offerings this year include Bystander Intervention training, and review courses for organizations who attend MCAD's workplace or sexual harassment trainings annually. Due to in-person gathering restrictions, all trainings were moved to a virtual platform with a live trainer beginning in April.

The Training Unit continued to support the recruitment and hiring of staff members and interns at the Commission. The Unit's work includes recruitment strategy design, managing interview and selection processes for all vacancies, creating on-boarding plans for all new staff, and running new employee/intern training.

Additionally, in FY20, the Unit continued to manage the Commission's legislative affairs program, tracking all legislation impacting the work of the Commission, which included coordinating and attending meetings with legislators and interest groups about pending legislation, attending public hearings, and coordinating written and oral testimony.

## Investigations Division Report

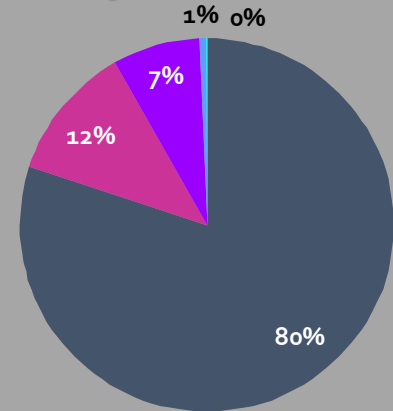
The MCAD's Investigations Division is overseen by the Chief of Investigations and primarily investigates complaints of discrimination in employment, housing, and public accommodations. If the MCAD determines that it lacks jurisdiction or an investigation is not authorized, the complaint is dismissed. Otherwise, the MCAD proceeds with a formal investigation.

The Investigations Division is comprised of nine units with approximately 50 people, including Administrative staff, who assist with document organization and processing; Investigators and Investigative Supervisors, who conduct the investigations; Attorney Advisors, who provide legal guidance and support to the investigative staff; and the Deputy Chief and Chief of Investigations, who manage the personnel and operations of the Division. The MCAD processes approximately 3000 complaints each year.

At the beginning of 2020, MCAD staff worked in four offices, in Boston, Springfield, Worcester, and New Bedford, and were beginning to acclimate to the updated regulations, which were substantially revised on January 24, 2020 after a lengthy public hearing processing. Due to the COVID-19 public health crisis, during the week of March 16, 2020, MCAD staff began telecommuting. Over the course of the telecommuting period, the MCAD adjusted various processes in order to continue the majority of its operations. In early June 2020, the MCAD began the process of phasing staff back into the offices. At the time of this report, most of the employees work at least one day per week in the offices, with administrative staff working in the offices at least two days per week.

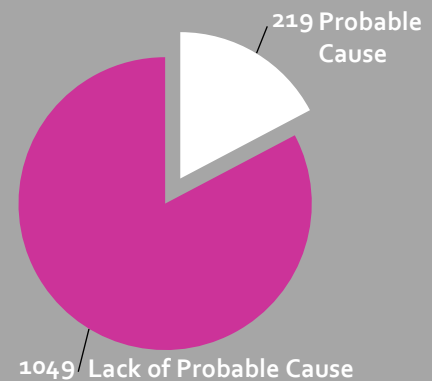
The MCAD has currently suspended in-person services and is conducting the following services and proceedings via telephone: complaint intake for pro-se complainants; investigative conferences; and hearings on appeals of investigative dispositions. Mediation services are being conducted via video, or telephonically if a party's available technology is limited to telephone conferencing.

### New Complaints by Jurisdiction

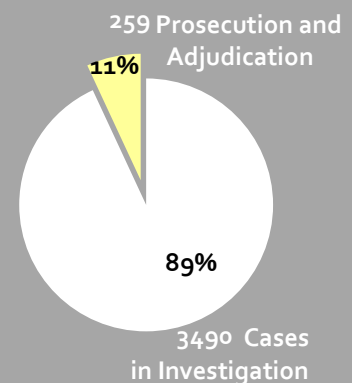


■ Employment . . . .	2,223
■ Housing . . . . .	329
■ Public Places . . . .	209
■ Education . . . . .	15
■ Credit . . . . .	2

### Substantive Determinations

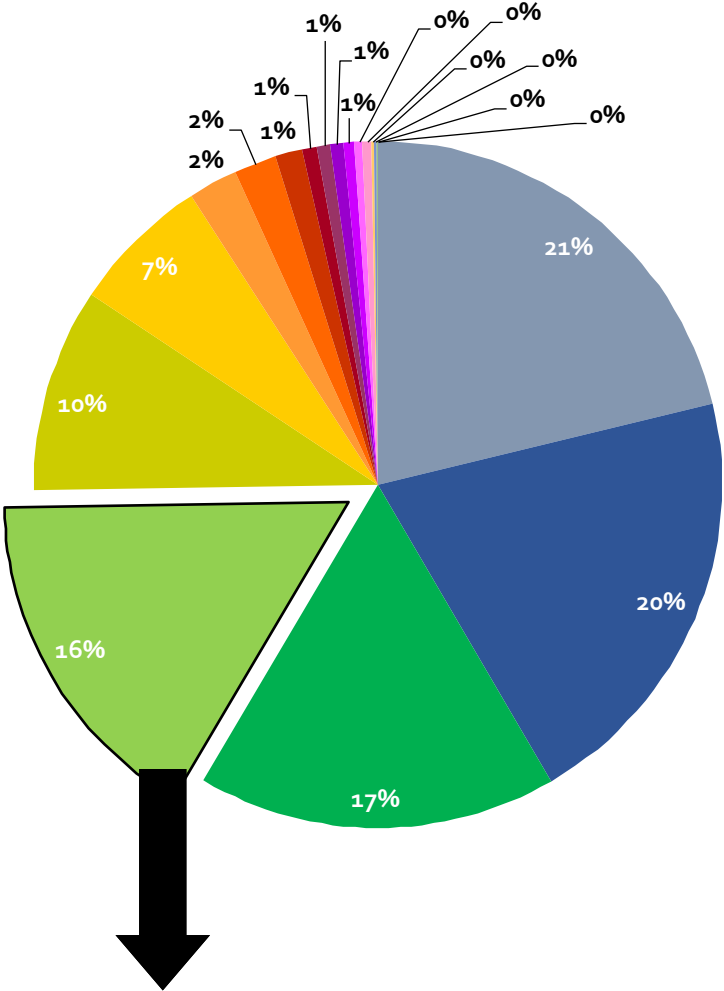


### Active Cases



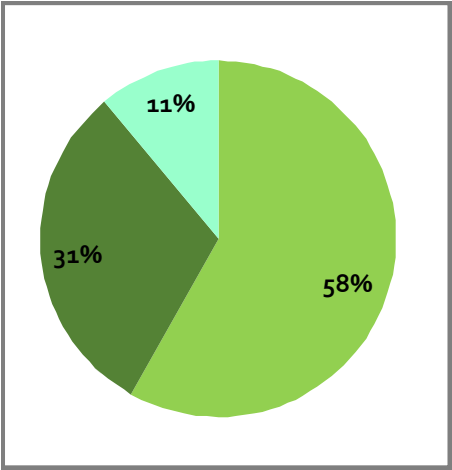
Complaints by Protected Category	
Retaliation	1,126
Disability	1,083
Race	894
Sex	866
Age	509
National Origin	347
Religion	121
Sexual Orientation	107
Public Assistance	68
Children	37
Family Status	34
Criminal Record	30
Gender Identity	28
Lead Paint	21
Military Status	20
Marital Status	7
No Basis	5
Veterans Status	4
Genetics	1

Breakdown of Complaints by Protected Category



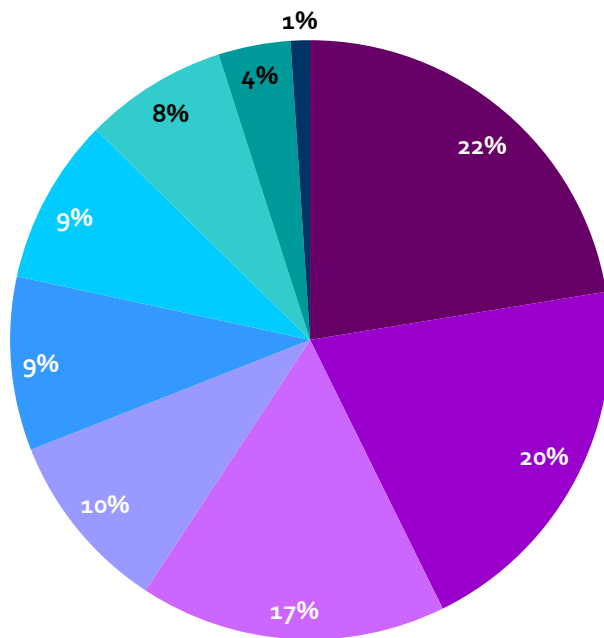
Spotlight on Sex Discrimination Complaints

Sex Discrimination Breakdown	
Sex Discrimination	505
Sexual Harassment	268
Parental Leave / Pregnancy	96





## Administrative Closures

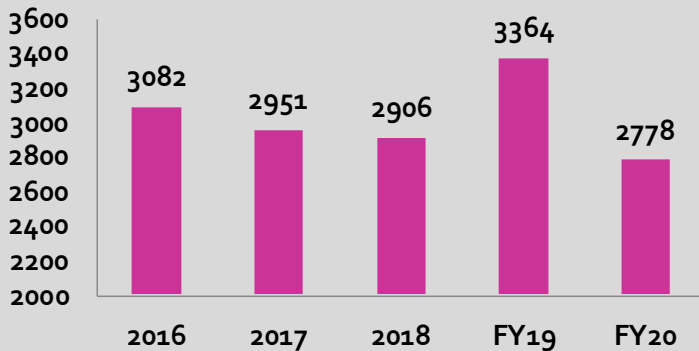


## Administrative Closures

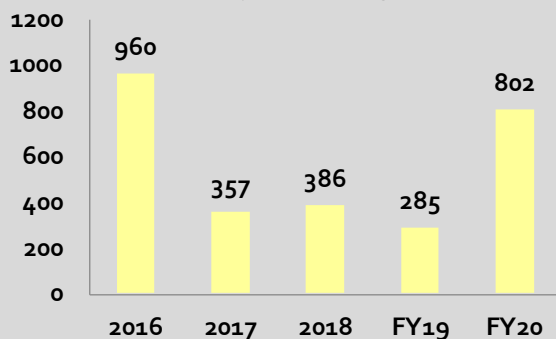
Settled Outside MCAD	323
Removed to Court	290
Conciliated	238
Withdrawn	141
Settled (Pre-determination)	135
Dismissed	129
Lack of Jurisdiction	111
Other*	56
Failure to Cooperate	15

\* Bankruptcy, cases removed to the Attorney General's office, Unable to locate Complainant, Settled at Hearing, Compliance with Order, Investigation not Authorized, No Violation, and Housing cases removed to the Attorney General's Office after Probable Cause.

## Complaints Filed Annually



## Inventory of Backlog Cases



## Alternative Dispute Resolution Unit Report

This year, the ADR Unit set and worked on a few goals: maintaining and improving the quality of our work as mediators, productive communications and coordinating between our mediators, developing consistency in our practices and processes across the regional offices, educating those attorneys who practice at the MCAD on mediations and conciliations at the MCAD and encouraging and nurturing an ongoing dialogue between lawyers who practices at the MCAD and the ADR Unit.

We accomplished these through regular ADR Unit meetings, reviewing, streamlining and standardizing materials and forms, developing internal guidelines for the ADR Unit, initiating “best practices” discussions at our monthly meetings to exchange and share ideas and experiences across the Boston and regional offices and inviting experienced mediators to join us in these discussions. We initiated a series of “Roundtable Meetings” in the fall of 2019 inviting lawyers who practice at the MCAD to educate lawyers about our practices and procedures and encourage the exchange of ideas and feedback. The response was positive as we hosted three full sessions with waiting lists and will continue to offer these each year. We continued to maintain quantitative data to measure the volume of cases handled and our success rate at settling cases through mediation and conciliation.

With the challenges from the onset of the COVID-19 situation in March, 2020, we worked to transition from in-person mediations and conciliations to telephonic sessions without any interruption in offering our dispute resolution services. We then transitioned to video sessions, training our mediators and commissioners in using Zoom for video mediations and conciliations and completely transitioned to video sessions early in FY 2021.

## Noteworthy Settlements from the ADR Unit

- Complainant revealed to her employer that she had a disability, but the extent of the symptoms were unclear at the time of the disclosure. Respondent company later became more aware of the nature of Complainant’s disability when her erratic behavior led her to purchase a new car on the way to a client meeting, and then disappear and abandon her colleague in the middle of an important client presentation. Complainant was subsequently hospitalized, apologized, and asked for the accommodation of taking a month long medical leave due to her disability. Complainant’s employer terminated her alleging it would be an undue hardship to hold her position open for another month. The matter was settled through the conciliation for **\$75,000** and Respondent agreed that its **managers would attend anti-discrimination training** as affirmative relief.
- Complainant alleged disability discrimination and retaliation. Complainant’s disability required temporary use of a wheelchair following corrective surgery. Complainant requested to work remotely for approximately 3 months as a reasonable accommodation. Respondent engaged in the interactive process and were open to allowing remote work for some period of time, but alleged it would be an undue hardship because the work that could be done remotely did not extend to include all types of work that constituted Complainant’s job duties. Once it was clear that Complainant could not return to work sooner, Respondent terminated employment. The parties settled the matter for **\$100,000**.
- Complainant had a disability which resulted in her requesting FMLA leave from her employer. While on leave, Complainant was informed she did not qualify for FMLA as she did not meet the 1,250 hours necessary for FMLA to apply. Respondent then informed Complainant she would be terminated for having unexcused absences. Complainant asked

if she could use her vacation days to cover the days she had missed as part of a reasonable accommodation. When Respondent refused and terminated her, Complainant filed this charge and alleged discrimination on the basis of disability, failure to provide reasonable accommodation and retaliation. The parties agreed to settle for **\$165,000. Respondent also agreed to attend Anti-discrimination training, and submitted to a review of Respondent's reasonable accommodation policies.**

- Complainant was a Human Resources Manager for Respondent and earned approximately \$100,000 per year. Complainant's claims included hostile environment based on sexual harassment and retaliation. She alleged that a female employee informed her that she was being sexually harassed by the CEO for Respondent. Complainant spoke with the CEO about the alleged incidents and he became angry and started making personal and unkind remarks to her and yelling at her in her office. Complainant had a panic attack while on the way to work because she was afraid the CEO would abuse her. Complainant decided to resign and when the CEO received her resignation letter, he allegedly went in front of the other employees, stated that she was a "blackmailing b\*\*\*\*" and made other disparaging comments about her. The case settled through mediation for **\$81,000.**
- Complainant, an account executive in the hospitality/tourism industry, brought claims alleging sexual harassment in the form of ongoing physical touching by a high level executive. She also alleged that Respondent failed to sufficiently investigate her internal complaints and claimed retaliation based on the adverse treatment after making an internal complaint, ultimately resulting in her termination. Complainant was a few months away from earning a two week trip for two to the Far East. The parties settled for **\$70,000** (of which \$23,000 was for emotional distress) and the two-week trip for two (valued at approximately \$14,000).
- Complainant in an age and disability discrimination case was a 61 year old sales representative. He planned to retire in under three years when he was placed on a Performance Improvement Plan (PIP) and subsequently terminated. Complainant alleged that three other sales representatives who were in their 30s and 40s were not terminated. Complainant's termination also came less than two weeks after he told the Respondent that he would need to take leave for hip surgery. As a result of his termination and lost health insurance benefits, Complainant had to postpone the hip surgery and physical therapy for over a year. The case settled at conciliation for **\$230,000, \$115,000** of which for emotional distress.
- Complainant in an age discrimination case was a long time municipal employee. Her contract for another term of employment was not renewed, and this was allegedly done in a humiliating fashion. She was replaced by a person who was 14 years younger and who allegedly had less experience and was less qualified than the Complainant. The case was settled at conciliation for **\$119,500**, all of which was designated as for emotional distress. **Respondent also agreed to attend discrimination prevention training for its managers and supervisory staff.**

## Legal Division Report

The Legal Division provides legal services and support to the Commission to achieve its goal of eradicating discrimination in Massachusetts. The Legal Division includes the General Counsel, Deputy General Counsel, eight Commission Counsel, the Clerk's Office, and the Full Commission Law Clerk. The Legal Division prosecute complaints, oversees the Full Commission review process, defends the agency, provides draft decisions, and submits recommendations on post-probable cause motions to the Commissioners. The Legal Division also provides legal and procedural advice concerning matters affecting the Commission, including ethical issues, personnel, investigations, public records requests, and proposed legislation.

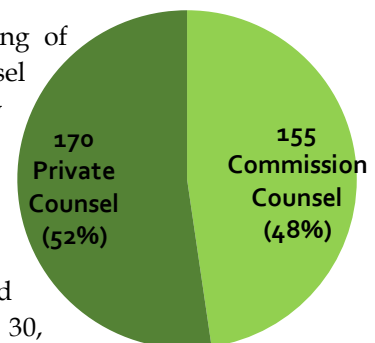
The Clerk's Office within the Legal Division consists of the Clerk of the Commission, Deputy Clerk/Records Access Officer, Hearings Clerk, Conciliation Clerk, and Appeals Clerk. The Clerk's Office is responsible for overseeing Commission Public Hearings and Full Commission filings, assignment of motions to Hearing Commissioners and Officers, issuing Commission decisions and responding to public inquiries. In fiscal year 2020, the Records Access Officer responded to 557 public records requests. The Clerk's Office in Springfield is staffed by an Assistant Clerk and First Assistant Clerk.

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

This fiscal year the Commonwealth, Commission and Legal Division were challenged by the Covid-19 pandemic. In March of 2020, state offices were closed to stem the spread of the virus. With the assistance of technology support, personnel in the Legal Division transitioned to performing most of their work on a remote basis. In order to maintain physical distancing requirements when permitted to return to the office, the Legal Division developed a rotating schedule so that few employees were in the office at one time. The Legal Division also assisted in performing administrative functions otherwise performed by the Investigations Unit to address the backlog of complaints received when the physical office was closed, including the input of complaints into the Commission's computer management system and service of investigative dispositions. The Legal Division conducted depositions and attended court hearings on a remote basis, which required learning new techniques for conducting depositions and advocating before a judge via Zoom and WebEx. It also conducted its meetings on a remote basis, through telephone conferences and WebEx. We endeavored to maintain the same level and volume of quality work, despite these challenges. The following report includes some of that work.

### Cases Assigned to MCAD Commission Counsel

Commission Counsel prosecute cases at Public Hearings after a finding of Probable Cause by the Investigating Commissioner. Commission Counsel proceed in the public interest to eradicate discriminatory practices by obtaining affirmative relief and victim-specific relief for Complainants, particularly those who are not represented by private legal counsel (pro se complainants). Of the 219 cases with a Probable Cause determination in fiscal year 2020, the Legal Division was assigned to prosecute 117 new cases filed by pro se complainants. Commission Counsel remained assigned to prosecute the caseload of 142 cases which existed as of June 30, 2019 (the end of fiscal year 2019).





## Noteworthy Settlements by Commission Counsel

Commission Counsel resolved a total of 102 discrimination cases through conciliation and negotiation, recovering \$2,246,810 in victim specific relief. In addition, the agency secured affirmative relief in the form of anti-discrimination training and policy reviews. The following is a description of some representative matters which were resolved by settlement during the 2020 fiscal year, classified by the type of alleged discrimination.

### *Public Accommodations Cases*

- A woman who identified as lesbian filed a Complaint of discrimination in a place of public accommodation based on sexual orientation. She alleged that, in the course of having an accessory installed on her motor vehicle, she was victimized by Respondent's employee, who called her a "man," and denied her service after a profanity-laced tirade, in full view of other patrons and employees. Complainant's humiliating spectacle was captured on video. Respondent later apologized. The matter was resolved by the Respondent paying Complainant \$6,000. [Suffolk County]
- Complainant alleges that while shopping at a major department store, a sales associate referred to her as "it," repeatedly inquired about Complainant's gender identity in an offensive and discriminatory manner, and refused to process a sale for the Complainant. The Complainant believes that her reports to management about the discrimination were not taken seriously. Respondent agreed to provide \$3,000 in compensation for emotional distress and to obtain MCAD-approved anti-discrimination training for all employees of that store branch. [Hampden County]
- Complainant alleges that she went to a local restaurant with her service dog on two occasions. On both occasions, one of the owners of the restaurant made improper inquiries into Complainant's medical conditions and need for the service dog. During the second visit, one of the owners told Complainant to leave the property because another patron had an allergy to dog hair. Respondent agreed to obtain MCAD-approved anti-discrimination training for the owners and managers of the restaurant and to provide Complainant with \$10,000 as compensation for emotional distress. [Hampshire County]
- Complainant alleged that the Respondent ejected her from its store and prohibited her from returning based on her disabling condition (prosthetic leg). The Respondent agreed to training offered by the Commission, to provide an apology directly to the Complainant, to assure the Complainant she is welcome at their stores, and \$1,000 in emotional distress damages. [Worcester County]
- Complainant filed a Complaint on behalf of her minor daughter alleging that she was subjected to discrimination in the form of racial comments and a physical altercation when she visited Respondent's hair salon. Respondent agreed to a payment of \$10,000 to Complainant as well as a written apology and Respondent's staff's participation in an anti-discrimination training. [Suffolk County]
- A pro se litigant with agoraphobia requested that a trial court accommodate him by allowing his appearance at a court hearing through remote technology. The Complainant alleged that the clerk of the court refused to provide him with this accommodation and made derogatory remarks to him related to his inability to appear in person. The matter was resolved with a \$5,000 payment to the Complainant, and state-wide anti-discrimination training for trial court staff. [Bristol County]

### *Housing Cases*

- The complainant, a commercial condominium owner, filed a complaint alleging that the condominium's board of trustees refused to accommodate her disability when she was told to remove her service animals from the premise, and threatened with monetary fines. Complainant further alleged that the condominium's property manager harassed her in an attempt to have the animals expelled. In satisfaction of the claims, the board of trustees agreed to implement a policy addressing service animal accommodation in the commercial condominium context. Complainant also received a settlement payment of \$140,000. [Middlesex County]
- Complainant brought this complaint against her Landlord when her youngest child was found to have slightly elevated blood lead levels. Complainant contends that the Landlord knew that young children lived with her in the unit and that he falsely reported that the property was lead-free. Respondent agreed to obtain MCAD-approved anti-discrimination training and provided Complainant with \$2,500 in compensation for emotional distress. [Hamden County]
- Complainant, who had a debilitating seizure disorder, alleged that the Respondent landlord prohibited a service animal from the premises by relying on a "No Pets Allowed" provision in the lease. Although the Complainant told the Respondent that she needed the service animal to help her through her frequent seizures, the Respondent refused to consider any accommodation. The Respondent agreed to training offered by the Commission and a review of his policies concerning reasonable accommodations to prospective tenants. The Respondent also agreed to pay the Complainant \$4,150 in emotional distress damages and forego any right to recover \$845 worth of alleged damage to the property. [Worcester County]
- Complainant alleged discrimination in his attempts to receive Section 8 assistance. The Complainant, who owned his own mobile unit, sought Section 8 assistance through a voucher provider to help cover the rent for the site property. The Complainant alleged that the Respondent site owner failed to cooperate with the Section 8 provider and thus discriminated against him. To resolve this matter, the Respondent completed and submitted all necessary Section 8 documentation at the Conciliation conference and agreed to work cooperatively with both the provider and the Complainant moving forward. [Worcester County]
- Complainant alleged discrimination when a provider of Section 8 assistance failed to provide a reasonable accommodation. The Complainant alleged that she requested a voucher to cover the rent of her three-bedroom apartment in order to accommodate her disabled children. She alleged that the Respondent failed to engage her in an interactive dialogue when it failed to respond and otherwise unreasonably delayed the processing of her request for several months. Although the provider eventually accommodated her, the delay caused the Complainant undue stress, anxiety and embarrassment because she could not meet her rent obligations on her own. The Respondent agreed to pay the Complainant \$7,000 in emotional distress damages and training as provided by the Commission. [Norfolk County]
- Complainant alleged that she was subjected to discrimination and discriminatory statements based on her disability, which required her to use an oxygen tank, when Respondents, a real estate agency and the property's owner refused to rent an available apartment to Complainant or to consider her application based on her disability, Respondents agreed to resolve the matter for a payment of \$10,000 to Complainant and participation in an MCAD anti-discrimination training. [Essex County]
- Complainant alleged she was subjected to discrimination based on her receipt of public assistance (Section 8 Voucher) when she viewed an advertisement for an available apartment which was

posted on Craigslist.com stating “No Section 8.” Respondent agreed to resolve the matter for a payment of \$1,000 to Complainant and to participate in MCAD’s anti-discrimination training. [Suffolk County]

- Complainant alleged that she was subjected to discrimination based on her marital status and race, color (Black) when Respondent refused to add her husband to her lease and refused to allow her husband to reside with her in the unit that she rents from Respondent through Respondent’s program, while another resident, who is White was allowed to reside at the property with her significant other. Respondent agreed to resolve the matter for a payment of \$2,100 to Complainant, six (6) months free rent, and its supervisory staff’s participation in an anti-discrimination training. [Suffolk County]
- In this disability discrimination case, Complainant, a tenant of Respondent with a mobility impairment, alleged that Respondent denied him a reasonable accommodation by declining to allow him to transfer to an available unit on a lower floor which would be easier for Complainant to enter and exit. Respondent agreed to pay Complainant \$3,000, and to obtain fair housing training for the owner and property manager of the property. [Norfolk County]
- In this disability discrimination case, Complainant, who had a service dog for a mental health condition, alleged that she viewed a rental cottage owned by Respondent. Respondent was initially enthusiastic about renting Complainant the property. However, after she notified him she had a service animal, Respondent declined to rent Complainant the housing unit. Respondent agreed to pay Complainant \$3,800 and to obtain fair housing training. [Barnstable County]
- In this disability discrimination case, Complainant, an existing tenant of Respondent, alleged that he had a live-in aide due to his mobility impairment. Complainant’s housing program required “re-certification” for continued occupancy on an annual basis. However, when the time came for Complainant to be recertified, Respondent denied him the reasonable accommodation of the live-in aide. Respondent agreed to pay Complainant \$5,000, to provide fair housing training for its managers, and to provide MCAD a copy of its reasonable accommodation policy for review. [Norfolk County]
- In this disability discrimination case, Complainant, the mother of a minor child with cerebral palsy who required the use of a wheelchair, applied for an apartment for herself and her two children. Complainant alleged that, after initially encouraging her to rent the apartment, Respondents refused to rent it to her after she advised the Respondents that she would need to install a wheelchair ramp and stair lift to accommodate her child’s disability. Respondents agreed to pay Complainant \$12,500, to receive training on the fair housing laws of the Commonwealth, and to adopt and disseminate a reasonable accommodation policy to all incoming tenants at Respondent’s properties in Massachusetts. [Plymouth County]
- In a case alleging that Complainant, his wife and seven (7) month old daughter were denied an apartment rental by the property’s owners because of the presence of known lead paint hazards, Respondents agreed to resolve the matter for a payment of \$5,000, participation in an MCAD anti-discrimination training, and an agreement that all subsequent advertisements for rental units at the subject property for the next three (3) years would include the statement, “We do not discriminate against applicants or tenants with children of any age, or based on familial status or any other class protected by law. This property may contain lead paint, but this shall not be a factor in an applicant's eligibility or rental decisions.” [Worcester County]

*Employment Cases*

- In this sexual harassment case, a single-mother who had been hired as a receptionist was repeatedly sent unwelcome, sexually-explicit movies, photos and “jokes” on her company-issued cell phone by her supervisor over the course of about eighteen months. Despite voicing her dismay at receiving them, the offensive texts continued. Ultimately, Complainant felt she had no choice but to quit her job. The matter was resolved with the former employee agreeing to undergo sexual harassment training at the MCAD and paying Complainant the sum of \$7,900. [Plymouth County]
- In this sex discrimination case, a female security guard alleged that her male Supervisor terminated her on the basis of her sex. The company agreed to pay her \$25,000 and to send the Supervisor to anti-discrimination training. [Suffolk County]
- A female employee alleged that her Supervisor had subjected her to sexual harassment. She further claimed that when she complained about the harassment, the company took no action against the male Supervisor, retaliated against her and subsequently, terminated her employment. The company agreed to pay the employee \$25,000. [Worcester County]
- Complainant, a woman working in the construction industry, alleged that she was subjected to sex-based discrimination, including verbal and physical sexual harassment, by colleagues and managers. After reporting the discrimination, Respondent Company failed to take meaningful action and Complainant was ostracized and mocked by her male colleagues. Complainant felt she had no choice but to resign. Respondent underwent discrimination prevention training, which was reviewed by the MCAD. Complainant recovered \$29,000 as compensation for emotional distress. [Hamden County]
- In an employment discrimination complaint filed against a restaurant, Complainant alleged that her colleagues and a supervisor treated her differently because of her disability (a pervasive developmental disorder) and how it impacted her social skills. The Complainant alleged that she was denied the opportunity to work in the front of the house with patrons and was taunted for how she acted in social situations. Respondent agreed to provide compensation for lost wages and emotional distress in the amount of \$17,000. Respondent also submitted its internal managerial anti-discrimination training program to the MCAD for review, and agreed to obtain additional training for managers if deemed necessary. [Hampden County]
- In this employment discrimination case, the Complainant, who is legally blind, applied for a seasonal position. The Complainant alleged the Respondent refused to provide him with a reasonable accommodation that would have allowed him to take a pre-employment exam, and thus effectively denied him the position. The Respondent agreed to pay the Complainant \$12,200 in emotional distress damages and to undergo training offered by the Commission. [Worcester County]
- Complainant alleged the Respondent harassed and then terminated him because he is gay. The Respondent agreed to training provided by the Commission and to pay the Complainant \$20,360 for lost wages and emotional distress. [Worcester County]
- In this employment discrimination case, the Complainant alleged national origin discrimination (Albanian) when the Respondent harassed him for speaking his native language in the workplace and then terminated his employment. The Respondent agreed to pay the Complainant \$3,000 for alleged emotional distress, to training provided by the Commission, and to a policy review. [Worcester County]
- In this employment discrimination complaint, the Complainant alleged discrimination on the basis of race when Respondent harassed her and then terminated her employment. The Respondent agreed to pay \$15,000 in emotional distress damages and to training provided by a Commission-certified trainer. [Worcester County]



- Complainant alleged a male co-worker made frequent, unwelcome sexual comments and innuendos. The Complainant also alleged that the co-worker texted him doctored photographs of the Complainant in sexually compromising positions, and then showed those pictures to the supervisor. Shortly after complaining to the supervisor about the co-worker's conduct, the Complainant alleged the Respondent terminated his employment. The Respondent agreed to pay \$16,750 in emotional distress damages and to training provided by the Commission. [Worcester County]
- Complainant alleged discrimination on the basis of race when Respondent harassed her and then terminated her employment. The Respondent agreed to pay a total of \$30,000 in compensation for emotional distress damages and lost wages. The Respondent also agreed to training provided by the Commission. [Worcester County]
- Complainant, who had told her supervisors that she had a learning disorder, alleged discrimination on the basis of disability when Respondent terminated her after three days of training without warning because the manager believed she "would just not get it." Respondent agreed to pay the Complainant a total of \$10,000 in compensation for emotional distress and lost wages. [Worcester County]
- Complainant alleged discrimination when Respondent gave her a lower pay raise while providing higher pay raises to her non-pregnant comparators. The Complainant alleged the Respondent penalized her for taking parental-leave related absences. The Respondent agreed to pay \$13,000 in emotional distress damages and to training provided by the Commission. [Worcester County]
- Complainant alleged the Respondent harassed her and then terminated her employment based on her sexual orientation and in retaliation for reporting the harassment. The Respondent agreed to pay the Complainant \$15,000 in emotional distress damages, provide her with an employment reference, remove "do not rehire" references from the Respondent's records, and convert her separation to a resignation. [Worcester County]
- Complainant alleged that her supervisor created a hostile work environment which Respondent failed to remedy. Complainant's supervisor repeatedly made unwelcome sexual and racial comments about a co-worker, displayed sexualized hand gestures in reference to the co-worker, and ignored the Complainant's objections. The Respondent's efforts to address the supervisor's conduct were ineffective, as the supervisor continued to make these comments to her after she reported the conduct. Complainant endured this work environment while she was several months pregnant. The Respondent terminated her employment one week after she returned from parental leave. Respondent based the termination on alleged misconduct uncovered while Complainant was on parental leave. The Respondent agreed to pay Complainant \$42,000 in compensatory damages and training for the supervisor. [Worcester County]
- Complainant alleged that her supervisor repeatedly made unwanted sexual advances. The supervisor further conditioned a raise on the Complainant performing a sexual act. After Complainant complained about the supervisor's conduct, Respondent reduced her hours, denied her sick leave, and otherwise ignored her complaint. The Respondent agreed to pay Complainant \$17,500 for emotional distress damages, and attend anti-discrimination training with a focus on sexual harassment and retaliation. [Worcester County]
- Complainant, an engineering manager, filed a Complaint alleging that she was subjected to termination based on her gender and in retaliation for complaining about Respondent's discriminatory practices. Respondent agreed to resolve the matter for a payment of \$40,000 to Complainant and the participation of two of its Human Resources or Management employees in an anti-discrimination training. [Middlesex County]

- In a case alleging that Complainant was subjected to sexual harassment by her supervisor, as well as discriminatory retaliation for reporting the sexual harassment and for requesting a religious accommodation, Respondent agreed to resolve the matter for a payment of \$9,000 to Complainant and its Director of Field Operation's participation in an anti-discrimination training. [Worcester County]
- In this case the Complainant, a school bus driver, was subjected to discrimination based on disability when Respondent discontinued his previously approved reasonable accommodation and subsequently terminated his employment. Respondent agreed to resolve the matter for a payment of \$27,500 to Complainant and its supervisory staff's participation in an anti-discrimination training. [Plymouth County]
- Complainant, a pizza delivery driver, was subjected to harassment based on his sex and sexual orientation in the form of homophobic comments, and retaliation in the form of reduced hours, Respondent agreed to resolve the matter for a payment of \$3,000 to Complainant and its owners' participation in an anti-discrimination training. [Hampshire County]
- Complainant, a hairstylist, was subjected to harassment by her coworkers based on her sex, sexual orientation, disabilities, and sexual harassment, and alleged that she was later terminated in retaliation for opposing the harassment, Respondent agreed to resolve the matter for a payment of \$5,000 and its owner's participation in an anti-discrimination training. [Berkshire County]
- Complainant, a Hispanic male from Puerto Rico, alleged that during the course of his employment Respondent subjected him to a hostile work environment which included yelling, screaming and profanity when he made mistakes, while similarly situated Caucasian co-workers were addressed in a supportive and professional manner. Complainant also alleged that he was told by Respondent that he could not speak Spanish even when not in the presence of customers. Respondent agreed to resolve the matter for a payment of \$12,500 and participation in an anti-discrimination training. [Hampden County]
- In a case alleging that Complainant was terminated from her employment as a clerk at a gas station based on her gender and role in providing custodial care for two young children, Respondent agreed to resolve the matter for a payment of \$2,500 to Complainant, a charitable donation to a charity of Complainant's choice that supports families in need, and Respondent's owner's participation in an anti-discrimination training. [Essex County]
- Complainant alleged that his application for a Maintenance Technician position that had lower pay, but a preferable schedule, was rejected based on his race and color (Black). Respondent agreed to resolve the matter for a payment of \$5,000 to Complainant. [Bristol County]
- Complaint alleged that he was subjected to harassment based on his race and color (Black) when his coworkers uttered racial comments and slurs, and that he was subsequently terminated from his employment based on his race and color and in retaliation for opposing Respondent's discriminatory practices. Respondent agreed to resolve the matter for a payment of \$12,000 to Complainant and Respondent's Massachusetts-based managerial staff's participation in anti-discrimination training. [Hampden County]
- Complainant, a Latino Police Officer from Puerto Rico, alleged that he was discriminatorily terminated during his probationary period and subsequently subjected to post-employment retaliation in the form of a negative reference. Respondent agreed to resolve the matters for a payment of \$15,000 to Complainant and Respondent's Deputies and Personnel Managers' participation in an anti-discrimination training. [Hampden County]
- Complainant, a teacher, filed a complaint of discrimination alleging that she was subjected to discrimination based on her race and color (Black) in the form of undue scrutiny by her supervisors,

unwarranted negative reviews of her performance, and solicited complaints from parents, while White teachers, who were hired at the same time as Complainant, were not subjected to similar treatment. Complainant also alleged that Respondent subsequently terminated her employment at the end of the school year based on discriminatory animus. Respondent agreed to resolve the matter for a payment of \$85,000 and attendance by its Director of Diversity, Principals, and Assistant Principals in anti-discrimination training. [Middlesex County]

- In a case alleging that Complainant was subjected to harassing comments based on her gender, race and color (Black), and sexual harassment by her supervisor, Respondent agreed to resolve the matter for a payment of \$5,000 to Complainant and Respondent's owner and the supervisor's participation in anti-discrimination training. [Worcester County]
- Complainant filed a Complaint alleging that she was subjected to discriminatory treatment, which included undue scrutiny of her work and less favorable treatment based on her race and color (Black). Complainant also alleged that she was afforded fewer opportunities to work overtime hours in retaliation for complaining about the discriminatory treatment. Respondent agreed to resolve the matter for a payment of \$11,250 to Complainant and Respondent's Managerial staff's participation in anti-discrimination training. [Hampden County]
- An executive assistant filed a complaint of disability discrimination against an investment services company alleging that she was denied a reasonable accommodation. Complainant further alleged that she was harassed by her supervisor for making the accommodation request. In resolution of the matter, the company agreed to training for offending supervisor, the continuation of the complainant's insurance coverages, and a payment of \$100,000 representing lost wages and emotional distress damages. [Suffolk County]
- A former police dispatcher received a settlement payment of \$135,000 after she was denied a reasonable accommodation and terminated from employment. It was undisputed that the complainant had a known disability, had been accommodated in the past, and requested only that her earlier accommodation be extended. Without consideration of G.L. c. 151B, the respondent cited FMLA requirements in the denial of the accommodation. In addition to the settlement payment, respondent agreed to training and the issuance of an advisory, notifying current and future employees of their rights under Massachusetts law. [Suffolk County]
- A business manager for a healthcare facility filed a complaint alleging discrimination based on race and color when she was subjected to disparate terms and conditions of employment and a hostile work environment. The complaint was later amended to include a claim of retaliation. Specifically, the complainant alleged that her employer engaged in conduct designed to erode her managerial authority and job responsibilities. The complainant further alleged that after complaining to upper management about racial harassment she became the subject of investigation, discipline, and a poor performance evaluation. The matter resolved for \$47,900 representing lost wages and emotional distress damages. [Norfolk County]
- A restaurant worker, employed at a fast-food establishment located in a rest area along the Massachusetts Turnpike, alleged that her supervisor subjected to a sexually hostile work environment. The complainant alleged that after rebuffing the sexual advances, she was initially ignored by her supervisor, and her employment was ultimately terminated. In settlement, the respondent agreed to training of its supervisory staff and payment to the complainant for \$22,000. [Middlesex County]
- An African American employee of a regional transit authority alleged he had been subjected to racially harassing statements by his employer and after he complained internally, a discriminatory and retaliatory termination. The case was resolved with a settlement of \$23,750 and

antidiscrimination training for all managers, team leaders, supervisors, and non-management staff. [Franklin County]

- Three employees of a large operator of gasoline stations and convenience stores filed sexual harassment and retaliation claims. One of the three employees complained internally of sexual harassment by an assistant manager at the store. When the company initiated an investigation and the victim of sexual harassment and two employees became involved as witnesses, the employer suddenly transferred the three employees to other less conveniently located gas stations. The employer permitted the alleged harasser to remain at the gas station where the harassment occurred. The cases resolved for a global amount of \$110,000, and the payment of all translation costs incurred during the prosecution of this action. [Middlesex County]
- Employee at a cleaning company suffered an on-the-job, disabling injury and was subsequently terminated. She filed a disability discrimination claim which was resolved for \$13,500 and training for the supervisor and co-owner of the cleaning company. [Middlesex County]
- A seasoned financial officer at a used car company alleged that he was discriminated against on the basis of his race (Black), disabilities, veteran status, and national origin (Cape Verdean). In addition, he alleged he was retaliated against when he was terminated from his employment. He alleged that a manager at the company regularly subjected him to highly offensive comments based on his race, disabilities, and veteran status. The case was resolved for \$127,500 and anti-discrimination training for the manager who was alleged to have made the discriminatory comments. [Plymouth County]
- An older, long-term employee of a company suffered a disabling injury on the job. Shortly thereafter, he was terminated from his employment. Complainant alleged that he had been subjected to age-related comments. In addition, he alleged that he suffered a previous on-the-job injury, and that his employer encouraged him to indicate that he had suffered the injury off-site, so as to avoid a workers' compensation claim. He further alleged that the employer had encouraged him to obtain health insurance through his wife's employer rather than the company. The Commission found probable cause to support his claims of age discrimination, disability discrimination and retaliation. The matter was resolved for \$15,000 and general anti-discrimination training for the president of the company. [Plymouth County]
- An employee with a life-threatening allergy filed a disability discrimination complaint against his employer, a non-profit educational organization. He alleged that he was not reasonably accommodated when he notified the organization's president that he had a life-threatening allergy and required accommodations. The case was resolved with a monetary settlement of \$1,500 and anti-discrimination training for the organization's leadership team, with an emphasis on the duty to reasonably accommodate and the interactive process. [Suffolk County]
- An employee who had worked at a nursing center for nine (9) years was terminated shortly after she suffered a disabling injury which limited her ability to lift. The nursing center terminated the employee without engaging in an interactive dialogue to identify potential accommodations. The matter settled for \$35,000 and a comprehensive three-day training focused on responding to accommodation requests for the nursing center's human resources director. [Suffolk County]
- An African American employee worked for a small company and alleged that he was subjected to racial harassment and a retaliatory termination after approximately six months of employment. The MCAD denied the company's motion to dismiss on the grounds that it did not employ the requisite six employees to be considered an "employer" under M.G.L. c. 151B, as the Investigating Commissioner determined that there were the requisite number of employees. The matter was resolved for \$3,000 and anti-discrimination training for the owner and human resources director of the company [Suffolk County].



- An employee of a transportation-related company alleged that his employer discriminated against him on the basis of his race (African-American) and perceived sexual orientation. Additionally, he claimed that his employer terminated him in retaliation for complaining of discriminatory conduct. The matter was resolved for \$7,500. [Suffolk County]
- In this case alleging disability discrimination and retaliation, Complainant, a sales specialist, alleged that she informed her employer of a mental health condition prior to her employment. Initially, she received a reasonable accommodation for her mental health condition. After Complainant was hospitalized due to her mental health condition, she requested medical leave. However, Respondent denied her leave on undue hardship grounds and ultimately terminated her employment. Respondent agreed to pay Complainant \$75,000 and to provide fair employment training for its managers in Massachusetts. [Middlesex County]
- In this disability discrimination case, Complainant, a mental health specialist at a health care facility who worked overnight shifts, alleged that he requested FMLA leave due to a mental health condition, and ultimately resigned for health reasons. After his health improved, he informed Respondent he was available to work per diem on day shifts. Respondent declined to rehire Complainant due to his health problems while working the overnight shift. Respondent agreed to pay Complainant \$40,000, to provide disability discrimination training for the managers on Complainant's former unit, to provide Complainant with a positive letter of recommendation, and to provide MCAD with a copy of its reasonable accommodation policy for review by the agency. [Middlesex County]
- In case alleging disability discrimination and retaliation, Complainant, a housekeeper, injured her knee at work. However, she was able to continue working for a period of time thereafter. After Complainant needed knee surgery for the injury and took a leave of absence, Respondent subsequently terminated her employment during her leave period. Respondent agreed to pay Complainant \$55,000, to provide fair employment training for its managers, and to provide MCAD with a copy of its reasonable accommodation policy. [Suffolk County]

## Noteworthy Public Hearings Prosecuted by Commission Counsel

Commission Counsel prepare and prosecute cases at public hearings through discovery, motion practice, argument, witness preparation and examination. Commission Counsel also prepare proposed findings and conclusions of law following the public hearing. Decisions issued in certain cases tried at prior public hearings by Commission Counsel are described below.

MCAD and Dauwer v. Coca-Cola Refreshments USA, Inc., formerly d/b/a Coca-Cola Bottling Company of New England, et. al, MCAD Docket 11-BEM-02659. The Complainant alleged that he was discriminated against by his employer based on his association with his disabled spouse. There was evidence that Complainant was adequately performing his job and was a good employee with some attendance issues resulting from his wife's repeated hospitalizations. Coca-Cola defended its decision to terminate Complainant's employment relying on the progressive discipline in its Collective Bargaining Agreement (CBA). The Hearing Officer issued a decision finding Coca-Cola liable for disability discrimination on November 21, 2019. The Hearing Officer concluded that Coca-Cola acted discriminatorily based on its inconsistent application of the CBA resulting in less harsh treatment of similarly situated employees who did not have a severely disabled spouse; evidence that some of the attendance-related disciplinary actions issued to the Complainant were fabricated, exaggerated or otherwise not consistent with the CBA; and Coca-Cola's punitive response to Complainant's workplace injury and need for workers compensation insurance. Coca-Cola was self-insured and paid considerable health care costs due to Complainant's wife's repeated hospitalizations and medical procedures. The Hearing Officer found evidence of pretext in the comments of Complainant's manager that

Complainant's wife was the reason for increased health care premiums and the timing of Coca-Cola's termination of Complainant's wife's health insurance which was contrary to its policy. Complainant was awarded \$91,373.38 in damages for lost wages and \$ 500,000 in emotional distress damages.

MCAD and William Roch v. MA - Department of Corrections, MCAD Docket 09-BEM-01945. This is a race discrimination case alleging that when Mr. Roch was demoted from a COII to a COI, he was subjected to harsher discipline than similarly situated white corrections officers. A four-day public hearing was held in October and November 2019. On June 17, 2020, the Hearing Officer found the Massachusetts Department of Corrections liable for race discrimination and awarded Complainant \$75,000 in emotional distress damages as well as lost back pay in the amount of \$67,761.

## Massachusetts Superior Court Activity

The Legal Division defends the Commission's decisions and procedures in the Massachusetts courts. These cases include M.G.L. 30A administrative appeals and challenges to the Commission's investigative and enforcement authority. During fiscal year 2020, Commission Counsel were assigned ten new Superior Court cases to defend. The Legal Division and Commission Counsel remained responsible during fiscal year 2020 for eleven cases which were pending as of June 30, 2019. The following report describes some of the activity in cases against the Commission being defended in the Massachusetts Superior Courts.

Paolo Rodrigues v. MCAD, Suffolk County Superior Court Civil Action No. 1984CV03228-D. The Commission issued an LOPC determination in this housing discrimination matter. Complainant appealed the LOPC determination in a written preliminary hearing. The MCAD affirmed the LOPC and the pro se Complainant sought relief in Superior Court. The Complainant argued that he was entitled to relief pursuant to G.L. c. 30A. The MCAD's motion to dismiss for lack of jurisdiction was granted on January 31, 2020 (Ullmann, J.).

Bear Hill Nursing Ctr v. MCAD, et al., Suffolk Superior Court Civil Action No. 1984CV01309. In April 2020, the Superior Court affirmed the Full Commission's Order, upholding a hearing officer's decision that the complainant, Dorothea Codinha, was subjected to discrimination based on her age and disability. (Ullmann, J.). Plaintiff/Respondent filed a timely notice of appeal to the Massachusetts Appeals Court. The matter was subsequently settled, and a Stipulation of Dismissal filed.

Guillaume v. MCAD, Suffolk Superior Court Civil Action No. 1984CV02247. In July 2019, the plaintiff filed an action in the Superior Court seeking judicial review and judicial intervention into a still pending matter before the MCAD. The Commission's motion to dismiss for lack of jurisdiction and failure to state a claim upon which relief may be granted was allowed on October 17, 2019. (Leighton, J.).

Meriem Arachiche vs. MCAD, Swampscott Public Schools, & another, Suffolk Superior Court, Civil Action No. 1984CV03931. In this action, Plaintiff Meriem Arachiche requests declaratory judgment relief under G.L. c. 231A, arguing that she timely filed her complaint of race discrimination with the MCAD, and that the MCAD misapplied the law and applicable regulations when the Investigating Commissioner dismissed it for being untimely. Commission Counsel filed a Motion to Dismiss for failure to state a claim with a supporting brief.

Lacroix v. MCAD, Norfolk Superior Court Civil Action No. 1984CV01605. In March 2020, the pro se plaintiff filed a second amended complaint in Superior Court, seeking judicial review of the Full Commission order upholding the hearing officer's decision dismissing his complaint. The case involved a public-school psychologist allegedly discriminated against when he was denied a reasonable accommodation for his disability and retaliated against for filing an earlier charge. The administrative record was filed with the Superior Court and the parties are currently briefing the issues.

Gabriel Care, LLC v. MCAD & Chani Dupuis, Bristol County Superior Court. Civil Action No. 1973-CV-01186-C. In January 2020, Respondent/plaintiff appealed the MCAD Full Commission decision in favor of Complainant to the Superior Court, in accord with G.L. c. 30A. Plaintiff's argument on appeal is that

the Hearing Officer's findings are unsupported by substantial evidence, are inconsistent, arbitrary and capricious, and an abuse of discretion and not in accordance with the law. Specifically, plaintiff asserts that Complainant failed to establish that she engaged in a protected activity and failed to establish that there is a causal connection between any alleged protected activity and her termination from employment. The agency administrative record and the Motion for Judgment on the Pleadings, with Cross Motion was filed with the Superior Court.

MCAD v. Shahkar Fatemi, et al., Hampden County Superior Court, Civil Action No. 2005-00379. Mr. Fatemi served the Commission in December of 2019 with a Motion for Reversal of Judgment pursuant to Mass. R. Civ. P. Rule 60B arising from a complaint that was filed at the MCAD in 1997 against Yellow Cab Company. A finding in favor of the Complainant, Mr. Barbot, was made by a Commission Hearing Officer in 2001 and the Commission brought an action to enforce the finding against the Respondent in 2005 in Hampden County Superior Court. During the enforcement action, Mr. Fatemi was added as a Defendant. Judgment was entered against Mr. Fatemi in 2009, and the judgment was later amended for clerical errors in 2010. In 2018, Mr. Barbot filed a complaint in Springfield District Court to enforce the judgment against Mr. Fatemi and, in November of 2019, Mr. Fatemi was ordered to make payment to Mr. Barbot. Two weeks after the Springfield District Court ordered Mr. Fatemi to make weekly payments to Mr. Barbot, Mr. Fatemi served the Commission with the Motion for Reversal of Judgment of the 2009 Superior Court decision. The Commission opposed the Motion to Vacate. Mr. Fatemi's Motion for Reversal of Judgment was denied on January 29, 2020 (Callan, J.), and the case remains closed.

Serge Toussaint v. MCAD, Suffolk County Superior Court Civil Action No. 2084CV00500-H. The Commission issued an LOPC determination in this employment discrimination matter, which was affirmed following a preliminary hearing. The Complainant filed a Superior Court Complaint in February 2020 arguing that he is entitled to relief pursuant to G.L. c. 30A. The MCAD's motion to dismiss for lack of jurisdiction is currently pending.

Slive & Hanna, Inc. v. MCAD et al., Suffolk Superior Court No. 1884CV3513C; Appeals Court No. 2020-P-0290. The Full Commission upheld a Hearing Officer's Decision partially in favor of Complainant, in which Respondent was held to have retaliated against Complainant after he filed his MCAD complaint alleging discrimination on the basis of disability. Respondent obtained a default court judgment against Complainant for money owed, and executed the judgment by taking possession of the Complainant's ex-wife's van, which she used to transport her children. Respondent told the wife that she could have the van back if her ex-husband dropped his MCAD claim. Respondent filed an appeal of the MCAD's decision in Superior Court. The Court ruled in favor of MCAD on January 7, 2020, affirming the Commission's determination that the activities taken by Respondent to execute on its default judgment were retaliatory. (Squires-Lee, J.). Slive + Hanna appealed the decision to the Appeals Court.

Sea View Retreat, Inc. et al v. Michelle A. Falzone, MCAD, Essex County Superior Court No. 1977CV00121. The Full Commission affirmed a Hearing Officer's decision that Respondents retaliated against Complainant by terminating her employment after she made an internal report of sexual harassment, and awarded emotional distress damages and lost wages to the Complainant. Sea View filed a G.L. c.30A Superior Court action challenging the Commission's conclusions and awards of damages and attorney's fees and costs. In December 2019, the Commission filed a Motion to Dismiss for failure to timely appeal the Commission's Decision, along with Plaintiff's Opposition and the other defendant's Motion in Support. The Commission is awaiting a decision on its Motion to Dismiss.

Melissa Poirier v. MCAD, Worcester County Superior Court No. 1985CV00676. Pro se Complainant, whose discrimination claim on the basis of sex was dismissed at MCAD for Lack of Probable Cause after investigation, alleges that the Commission is responsible on various grounds for her failure to file a timely court action against her former employer. The Superior Court granted the Commission's Motion to Dismiss for lack of jurisdiction under G.L. c.30A on October 24, 2019. (Susan E. Sullivan, J.).

Complainant appealed the decision to the Appeals Court. As of the end of the fiscal year, the Appeals Court had stayed the deadlines for Complainant's brief after she filed a Motion to extend date for filing brief and appendix, treating it as a Motion to stay appellate proceedings and giving leave to the Trial Court to consider a Motion for Reconsideration.

Tufts Medical Center v. MCAD, Marie Lunie Dalexis, Suffolk Superior Court No. 2084CV00156. The Full Commission upheld a Hearing Officer's Decision partly in favor of Complainant, who prevailed on disability discrimination grounds and was awarded back pay, attorney's fees, and other remedies. Tufts appealed the decision to Superior Court. As of the end of the reporting period, counsel for the parties were conferring regarding the proposed administrative record.

15 Lagrange Street Corp., d/b/a The Glass Slipper et al. v. MCAD & Sims, Suffolk Superior Court C.A. 1984-CV-0182E. Plaintiffs filed an action pursuant to M.G.L. c. 30A challenging the Commission's decision finding them liable for race discrimination when they subjected Mr. Sims to a racially hostile work environment and terminated him based on his race. The Superior Court (Giles, J.) issued two decisions: the first decision (November 22, 2019) affirmed the MCAD's underlying final decision finding The Glass Slipper liable for race discrimination and awarding back pay and emotional distress damages to Mr. Sims; the second decision (March 6, 2020) awarded counsel for Sims attorneys' fees, costs and interest for her work before the MCAD and before the Superior Court, and entered a \$200,000 attachment on The Glass Slipper's real estate and/or liquor license. The matter is on appeal.

American Reclamation Corp. and Vincent Iuliano v. MCAD et. al, Worcester County Superior Court C.A. 2015-0283-C. The Worcester Superior Court (Sullivan, J.) entered a decision in favor of the MCAD and Complainants in this 30A action on December 5, 2019. The Complainant in this matter filed for bankruptcy during the MCAD proceeding and did not disclose his MCAD complaint to the bankruptcy court. The Court held that the doctrine of judicial estoppel related to the Complainant's non-disclosure does not prevent the Complainant, the Trustee in bankruptcy or the MCAD from pursuing the racial discrimination claim nor does it foreclose any recovery on that claim. In addition, the Superior Court affirmed that M.G.L. c. 151B, sec. 4 encompasses associational discrimination based on race or color, and that the MCAD decision was otherwise supported by substantial evidence.

Madonna v. MCAD & Fall River Police Dep't, Suffolk County Superior Court, C.A. No. 1984CV1428. This is an ongoing 30A challenge to a Full Commission's decision affirming a Hearing Officer's dismissal of Mr. Madonna's disability discrimination claim.

J.C. Cannistraro LLC v. MCAD & Robert Laing, Middlesex Superior Court C.A. 2018-CV-00071-J. Plaintiff/Respondent filed an action pursuant to M.G.L. c. 30A challenging the Commission's decision finding it liable for disability discrimination. The parties resolved the matter.

## Massachusetts Appeals Court Activity

Stefani v. Massachusetts Commission Against Discrimination & Massachusetts State Police, Mass. Appeals Court Docket No. 18-P-1631 (March 31, 2020) (1:28)

The Appeals Court affirmed the MCAD's decision finding that the Massachusetts Department of State Police ("State Police") did not engage in gender discrimination when the colonel demoted the plaintiff from a command staff position based on his concern that she was not personally loyal to him. The plaintiff filed a charge of gender discrimination with the MCAD after she was demoted from the rank of major by the State Police. After three days of public hearing, the commission determined that the plaintiff failed to prove that her demotion was motivated by discriminatory animus and dismissed her complaint. On judicial review, the Appeals Court concluded that the substantial evidence supported the commission's conclusion that the plaintiff failed to meet her ultimate burden of proving that discriminatory animus was the reason for her demotion.



The Appeals Court concluded that the evidence supported the MCAD's finding that the State Police colonel was motivated by a sense of betrayal when plaintiff sought to be appointed to his job, as opposed to bias based on her gender. The fact that the plaintiff was recruited by a group dedicated to the advancement of women did not, standing alone, show discriminatory animus because plaintiff failed to present evidence that the decision to demote her was connected to the purpose of the group. The Court deferred to the Commission's finding that there was no evidence to suggest that plaintiff was treated differently than a male counterpart. Finally, the Court found that the MCAD was warranted in concluding that the fact that the plaintiff was the first female to attain the rank of major and remained the only female at that rank did not make it more probable than not that the colonel's decision to demote was motivated by gender bias, particularly in light of the fact that the colonel demoted multiple men during his tenure and promoted two women to major after demoting the plaintiff.

C-Worcester v. MCAD & Tatum, Harris, Worcester County Superior Court 1585CV01263, 1185CV02497, 1185CM02500, Mass. Appeals Court Docket No. 2018-P-05760 (October 22, 2019) (Rule 1:28). The underlying MCAD matter involves the failure to promote two Black police officers to sergeant positions because of their race and color. In January 2018, the Superior Court dismissed the case based on res judicata. The Superior Court considered preclusive the effect of a 2007 federal court action in which Tatum and several African American and Hispanic police officers unsuccessfully sued their employers, alleging disparate impact based on the use of promotional examinations. In February 2019, the Appeals Court heard arguments addressing the Superior Court's dismissal. In October of 2019, the Appeals Court reversed the Superior Court decision.

In rendering its decision, the Appeals Court considered the elements necessary to establish res judicata. The Appeals Court recognized that the MCAD was not a party in the 2007 federal court action, and concluded, among other things, that the public interest served by the MCAD was not adequately represented in the 2007 Federal action, and the adjudication of a matter at the MCAD did not create privity between the Commission and Tatum. The Appeals Court remanded the matter to the Superior Court for review in accordance with G.L. c. 30A. The Superior Court heard arguments in March 2020, and a decision is currently pending.

Federal Square Properties, Inc. and Pacific Land, LLC v. MCAD, et al., Mass. Appeals Court Docket No. 2019-P-1824. In October 2019, plaintiffs appealed the Superior Court's decision, issued in accord with M.G.L. c. 30A, affirming the Commission's final order finding unlawful housing discrimination. In addition to emotional distress damages, the Commission also assessed civil penalties against both plaintiffs. On appeal, the plaintiff's challenges include the propriety of the Commission's issuance of the civil penalties. The matter has been briefed and is awaiting scheduling for arguments.

Grandoit v. MCAD et. al., 95 Mass. App. Ct. 603 (2019), Mass. Appeals Court Docket No. 18-P-7628 & 18-P-1493, The Massachusetts Appeals Court issued a decision in a consolidated case involving five complaints filed at the MCAD by Mr. Grandoit against various entities, in which Mr. Grandoit sought judicial review by the Superior Court. In each of these cases, the MCAD issued Lack of Probable Cause dispositions (LOPCs). The Massachusetts Appeals Court affirmed the lower courts' dismissals of Mr. Grandoit's complaints on the grounds the MCAD's LOPC determinations were not reviewable under G. L. c. 30A or G. L. c. 249, § 4 (certiorari statute).

Gerard D. Grandoit vs. MCAD & Milton Housing Authority, 97 Mass. App. Ct. 1126 (2020) (1:28) [Mass. Appeals Court Docket No. 2019-P-1252 (June 29, 2020)]. This appeal concerns pro se Plaintiff Mr. Grandoit's appeal of a lack of probable (LOPC) disposition which was affirmed at preliminary hearing. The Superior Court dismissed the matter on the grounds that there is no jurisdiction pursuant to M.G.L. c. 30A or a writ of certiorari. Mr. Grandoit appealed. Commission Counsel's brief in support of the appellee relied on the earlier decision by the Appeals Court in Grandoit v. MCAD, 95 Mass. App. Ct. 603 (2019). The Appeals Court dismissed the matter by order dated June 29, 2020, holding that "a



determination by MCAD to dismiss a complaint means that it will not proceed to enforce the claim of discrimination brought in the complaint. That decision is not reviewable by any court.”

Grandoit v. MCAD, et al., Mass. Appeals Court Docket No. 2019-P-1496. The Massachusetts Appeals Court consolidated two appeals of decisions dismissing complaints seeking judicial review of investigatory dismissals in 1) Grandoit v. MCAD, Arbella Mutual Ins. Agency, Suffolk Superior Court C.A. No. 18-02906 and 2) Grandoit v. MCAD, Roche Ins. Agency, Suffolk Superior Court No. 18-02909. The MCAD appellee brief was filed March 12, 2020.

J. Whitfield Larrabee v. MCAD, Suffolk Superior Court No. 1584CV02725; Appeals Court No. 2018-P-0464. In this action alleging breach of contract and violation of the Massachusetts Public Records Act, Plaintiff, an attorney, sought access to data and complaints regarding case data and complaints still under investigation at the Commission. The Commission denied such access under several exemptions to the Public Records Act, as well as its own regulations. Plaintiff also alleged that the Commission breached an earlier agreement reached with the Commission as to his ability to access certain case records, which the Commission denied. As a result, Plaintiff sought damages, preliminary and permanent injunctions, a writ of mandamus, and other legal and equitable relief. After the Superior Court ruled in the Commission’s favor, Plaintiff sought relief in the Appeals Court. Oral argument was held on March 8, 2019. On November 19, 2019, the Appeals Court vacated the judgment of the Superior Court based upon its understanding of MCAD’s former regulations in effect at the time of the data request and remanded the case to the Superior Court for further proceedings.

Mansir v. MCAD & BJ’s Wholesale Club, 97 Mass. App. Ct. 1104 (2020) (1:28) [Mass. Appeals Court Docket No. 19-P-0393 (March 5, 2020)]. Pro se Complainant sought judicial review of the MCAD’s investigatory conclusion that the MCAD did not have jurisdiction over the claim alleged by the complainant, and appealed the Superior Court’s dismissal of his complaint. The Appeals Court held that the courts do not have jurisdiction to review the MCAD’s investigative dispositions, reaffirming its prior holding in Grandoit v. MCAD, 95 Mass. App. Ct. 603 (2019) (Superior Court does not have jurisdiction to review the MCAD’s investigatory dismissals).

Camille T. Mata v. MCAD, [Mass. Appeals Court Docket No. 2018-P-0782] The Commission issued an LOPC determination in this education discrimination matter. Complainant appealed the LOPC determination in a written preliminary hearing, which affirmed the determination. Complainant sought relief pro se in Superior Court pursuant to G.L. c. 30A. The MCAD’s motion to dismiss for lack of jurisdiction was allowed on February 14, 2018 (Callan, J.) because a LOPC determination and the results of a preliminary hearing are not subject to judicial review. Complainant appealed the matter to the Massachusetts Appeals Court, which upheld the decision of the lower court on February 14, 2019. The Complainant sought Further Appellate Review on March 18, 2019, which the Commission opposed and was denied on May 9, 2019. On March 27, 2020, Ms. Mata filed a writ of certiorari with the United States Supreme Court, which was denied on June 8, 2020. Ms. Mata submitted a Petition for Rehearing of the denial of certiorari on June 26, 2020.

Camille T. Mata v. MCAD, [Mass. Appeals Court Docket No. 2019-P-1133] The Commission issued an LOPC determination in this education discrimination matter concerning another educational institution. The MCAD affirmed the LOPC determination following a written preliminary hearing and the Complainant sought relief pro se in Superior Court. The Complainant again argued that she was entitled to relief pursuant to G.L. c. 30A. The lower court (J. Mason) granted the MCAD’s motion to dismiss. Complainant appealed the matter to the Massachusetts Appeals Court, which upheld the decision on May 20, 2020. The Complainant filed an Application for Further Appellate Review on June 9, 2020, which the Commission opposed. The decision regarding the Application remains outstanding.

## Hearings Division Report

In fiscal year 2020, the Hearings Division issued thirteen decisions. The majority of those addressed claims of employment discrimination, while one addressed claims of housing discrimination. Of the thirteen cases decided, seven were decided in favor of Complainant and six were decided in favor of Respondent. The following is a summary of the decisions issued.

### Significant Hearing Officer Decisions

MCAD & Tia v. Herb Chambers 1186, Inc., 41 MDLR 105 (2019) (sexual harassment, retaliation, employment)

The Complainant's charges of sexual harassment and retaliation were dismissed. The Hearing Officer found the Complainant lacked credibility, as graphic details were raised for the first time at the public hearing, some incidents were not mentioned at all in her original complaint, and one alleged incident which the Complainant described as occurring on a "snowy, very bad day" was contradicted by actual weather records. The Complainant also made an implausible assertion that she didn't understand the meaning of the term "insubordination." Her credibility was further undermined by findings in a prior adjudicatory hearing before the state Board of Registration of Physician Assistants which deemed similar accusations of sexual harassment to be "contradictory" and "inconsistent." The fact that the Complainant was denied car repair service for several hours was found too insignificant to give rise to a claim of retaliation. Given the Complainant's history with the Respondent resulting in her termination and the fact that she was likely viewed as fabricating allegations against the dealership, the Hearing Officer found it understandable that the Respondent might have been leery of conducting further business transactions with her. The Respondent quickly reversed its decision, however, and proceeded to service the Complainant's car on an ongoing basis.

MCAD & Daye v. Rte. 2 Hyundai, 41 MDLR 111 (2019) (race, color, retaliation, employment)

The Hearing Officer found the Respondent car dealership liable for terminating the Complainant based on his race (African American) and color (black). The Complainant was a very successful salesman with a record of good customer service and satisfaction. The Complainant had no disciplinary history and was terminated without warning for allegedly being disruptive during a company training session. There were also vague allegations that the Complainant had behaved inappropriately at a company dinner the night prior to his termination where the "n-word" was allegedly used by him or another employee. Given Complainant's positive performance history, the precipitous nature of his termination, and the fact that the Respondent's reasons for the termination were inconsistent and discredited, the Hearing Officer found that the reasons were a pretext for discrimination. The Hearing Officer dismissed the charge of retaliation, finding there was no evidence as to when the Complainant's report of racially disparaging comments made by two employees occurred, and the decision-maker behind the Complainant's termination was not involved in that incident. The Complainant was awarded \$32,085.80 in damages for lost wages and \$50,000 for emotional distress.

MCAD & Martin v. Pepin, 41 MDLR 119 (2019) (disability, housing)

In this housing case, the Hearing Officer found the Respondent landlord liable for disability discrimination. The Complainant suffered from PTSD and bipolar disorder. At the start of the tenancy, the Respondent was made aware that the Complainant was a 100% disabled veteran who had a service dog and whose son exercised her power of attorney. After several distressing interactions, the Complainant requested specific accommodations from the Respondent. In three separate letters from her son and her attorney, one of which was accompanied by a letter from the Complainant's therapist, the Complainant requested specific accommodations regarding how the Respondent should contact her and provide notice before entering the apartment. The Respondent did not respond to these letters, and refused to meet with the Complainant's attorney regarding the requests. The Hearing Officer concluded that the Respondent was aware of the Complainant's disability, that the requested accommodations

were reasonably necessary for her use and enjoyment of the property, and that the Respondent discriminated by failing to engage in an interactive dialogue with the Complainant regarding the requested accommodations. As the Respondent largely adhered to the Complainant's requested accommodations regarding entering the apartment and knocking on the door, and made some other efforts to assist the Complainant, the Hearing Officer concluded, however, that the Respondent did not subject the Complainant to a hostile environment. Based on testimony from the Complainant and her son that her psychological symptoms worsened and that the Respondent's physical health declined, the Hearing Officer awarded \$10,000 in emotional distress damages. The Respondent was also ordered to attend disability discrimination training.

MCAD & Dauwer v. Coca-Cola Refreshments USA, Inc. & Woodford, 41 MDLR 130 (2019) (associational discrimination, disability, employment)

The Hearing Officer found the Respondent employer liable for associational disability discrimination, based on the Complainant's wife's severe disabilities, which significantly increased the Respondent's health insurance costs. Over the year-and-a-half of the Complainant's employment, his wife's healthcare cost to the Respondent's self-funded health insurance plan \$311,256. Due to the need to care for his wife, the Complainant repeatedly missed work, was late, or had to leave work early. The Complainant exhausted his FMLA leave to care for his wife. The Complainant requested additional leave or a change in shifts that would allow him to remain employed. After the Complainant left his shift when his wife was rushed to the hospital due to a seizure, he was terminated. The Hearing Officer concluded that the Complainant was a member of a protected class due to his association with his disabled wife, and that the Complainant's termination was pretext for discrimination. The Hearing Officer cited numerous factors that suggested the termination was pretextual: exaggerations of the number of times the Complainant was tardy, a manager attributing an increase in the Respondent's health insurance premiums to the Complainant's wife's care, other employees with worse disciplinary records who were not terminated, leniency granted to other employees regarding attendance and leave policies, and the Respondent's immediate cancellation of the Complainant's wife's insurance coverage while allowing the Complainant and their children to remain on the policy through the end of the month. In addition to \$91,373.38 in lost wages, the Hearing Officer awarded \$500,000 in emotional distress damages, concluding that the Complainant's termination sent him into a severe downward spiral of depression and serious contemplation of suicide.

MCAD & Martin v. Sal's Pizza & Muratore, 41 MDLR 146 (2019) (race, employment)

The Hearing Commissioner dismissed the Complainant's complaint alleging that the Respondent employer created a racially hostile work environment, and that her termination was racially discriminatory and retaliatory. The Complainant, who identifies as African-American, Puerto Rican, and Native American, alleged that the Respondent's Owner directed racial epithets towards her and called her a "half breed" on a daily basis, and that the Complainant repeatedly requested that he stop. The Hearing Officer did not credit the Complainant's testimony, citing inconsistencies in the Complainant's statements, contrary testimony by two other employees who allegedly witnessed the harassment, undisputed testimony that the Owner offered the Complainant rides and other favors, friendly text messages between the Owner and the Complainant, and the fact that the Complainant never notified the corporate office of the issue. The Hearing Commissioner concluded that there was no racially hostile work environment and that the Complainant's termination was for legitimate non-discriminatory reasons—namely theft and unprofessional behavior.

MCAD & Rivera v. Top-Notch Abatement, LLC & Orcutt, 41 MDLR 161 (2019) (disability, retaliation, employment)

The Hearing Officer dismissed the Complainant's complaint alleging disability discrimination and retaliation by the Respondent employer. The Complainant alleged that, after sustaining a knee injury on an asbestos abatement job site, he was discouraged from seeking medical attention and was required to continue working despite his injury. The Complainant also alleged that his absence from work beginning a week later was with permission, and that he remained in contact with the Respondent regarding a broken nose (sustained outside of work) which prevented him from working. The Hearing

Officer did not credit this testimony, instead crediting the Respondent's testimony that the Claimant declined medical attention for his knee injury, voluntarily continued to work through the injury for five more days, was only excused from work for one day to attend a court date, and never submitted medical documentation indicating that he needed to miss work. The Complainant was a no-call no-show for four consecutive work days, after which he was terminated for his absences as well as other issues. The Hearing Officer concluded that, while the Complainant could make out a prima facie case of discrimination, he was terminated for legitimate non-discriminatory reasons unrelated to his disabilities. While the Complainant's work-related knee injury did eventually require surgery and the Complainant's nose injury would have prevented him from wearing a work-required mask, the Respondent was not aware at the time that the Complainant sought any medical treatment or needed to miss any time from work for these injuries, so could not be held liable for failing to offer reasonable accommodations. Likewise, as the Hearing Officer determined that the Complainant did not request accommodations, he could not make out a case that he was retaliated against for such a request.

MCAD & Pereira v. JSI Cabinetry, 42 MDLR 1 (2020) (disability, retaliation, employment)

The Hearing Officer found the Respondent employer liable for disability discrimination and retaliation. The Complaint suffers from depression and Hepatitis C, treatment of which exacerbates his depression and causes other physical side effects. Over the course of his employment, the Complainant took two periods of FMLA leave for treatment of his Hepatitis C. Shortly after the Complainant submitted a doctor's note excusing him from work for three consecutive days, and another doctor's note requesting to have a snack at his desk as an accommodation, the Complainant was called into a meeting and issued two disciplinary notices for exceeding allowable sick time and for eating at his desk. The Hearing Officer credited the Complainant's version of events during the meeting. The Complainant began crying and said, "Is it going to make you happy if I give you my two weeks' notice because I'll give you my two weeks' notice." When the HR Manager responded "okay", the Complainant immediately indicated he did not actually wish to quit and instead asked for FMLA leave. The Respondent denied the Complainant's request for leave, taking the position that he had submitted his notice of resignation, which could not be retracted. The Hearing Officer found that this forced resignation constituted an adverse employment action. The Hearing Officer concluded that the Respondent's decision was pretextual, as they could not have reasonably believed that the Complainant actually intended to resign, and the real reason for the termination was a desire to avoid granting the Complainant another FMLA leave. The Hearing Officer declined to award back pay, due to the long period of time that the Complainant did not seek employment after his termination, but awarded \$35,000 in emotional distress damages.

MCAD & Ferris v. City of Lawrence, 42 MDLR 15 (2020) (disability, employment)

The Hearing Officer found the Respondent employer liable for disability discrimination. The Respondent was aware of the Complainant's Crohn's disease, but the Complainant did not require any accommodations during his first seven years of employment as Cemetery Superintendent. Due to a bout of pneumonia, a lack of expected volunteers, a flare up of the Complainant's Crohn's disease limiting his work, and budget issues, the cemetery was not in its best condition for events on Memorial Day. The Complainant failed to install security cameras as directed by the Mayor, because he was unable to obtain necessary bureaucratic approval from the Cemetery Board. The Complainant then failed to attend a City Council meeting because he was ill with Crohn's symptoms. These issues resulted in a three-day disciplinary suspension. Stress from this suspension exacerbated the Complainant's Crohn's disease and he shortly thereafter began FMLA leave. While the Complainant was on leave, the Mayor – without consulting with the Complainant – removed him as Cemetery Superintendent and transferred him to a position as Superintendent of Parks and Streets. This position would be more stressful, more physically demanding, and require more overtime. Via letter, the Respondent informed the Complainant that his leave was imminently expiring and that he was expected to return as Superintendent of Parks and Streets. The Complainant's receipt of this letter caused a setback in his Crohn's symptoms. The Complainant then notified the Respondent that he was not capable of performing the duties of the new position, and requested reinstatement to his previous position. The Respondent did not respond to the Complainant's letter. After the Complainant was medically cleared to return to work, and the Respondent still did not respond to the Complainant's request to return to his



previous job, the Complainant remained on sick leave. After the Complainant filed his MCAD complaint, the Respondent later offered him an unrelated administrative position, which the Complainant refused. The Hearing Officer concluded that the Complainant's three day suspension was for legitimate non-discriminatory reasons, but that the decision to remove him from his position while he was on leave was pretextual and in response to his FMLA leave. The Hearing Officer also concluded that, in removing the Complainant from his position and reassigning him without any dialogue, the Respondent failed in its duty to engage in an interactive process with the Complainant regarding his return to work. The Hearing Officer concluded, however, that the offer of the administrative position was reasonable, and thus the Complainant's ultimate termination was not discriminatory. The Hearing Officer awarded one month's back pay and \$70,000 in emotional distress damages.

MCAD & Ibeh v. Lahey Hospital and Medical Center, 42 MDLR 34 (2020) (disability, employment)

The Hearing Officer found the Respondent employer liable for disability discrimination for terminating the Complainant rather than offering her reasonable accommodations. The Complainant generally worked from home four of five days per week, until it was discovered that the Complainant made a number of coding errors that resulted in patients' bills being sent to the wrong recipient, a HIPAA violation. Around the same time, the Complainant went out on a two-week medical leave. The Respondent prepared (but did not issue) a disciplinary warning, revoked her remote work privileges, and requested on-site for training related to the errors. The Complainant responded by requesting to work fully remotely due to neuropathy, back pain, and depression, the first time the Complainant had informed the Respondent of any medical issues affecting her ability to work. The Respondent repeatedly denied the Complainant's requests to work remotely on a full-time basis, citing the need to observe the Complainant's work flow in order to devise training to address her errors. The Complainant remained on leave until eventually being terminated. The Hearing Officer concluded that working on-site was not an essential function of the job, as the Complainant had successfully worked remotely until that point. In regards to the Respondent's stated reasons for denying the Complainant the ability to work from home, the Hearing Officer noted that the source of the Complainant's errors had already been identified and no particular training had been articulated. The Hearing Officer ultimately concluded that the Complainant's request to work from home was reasonable and would not have been an undue hardship on the Respondent. The Hearing Officer awarded \$49,866.64 in lost wages and \$150,000 in emotional distress damages.

MCAD & Magen v. Auto Mall Collection, 42 MDLR 53 (2020) (religion, national origin, employment)

The Hearing Officer dismissed the Complainant's complaint alleging that the Respondent employer discriminated against him based on religion (Judaism) and national origin (Israeli). The Complainant alleged that the Respondent car dealership's Muslim Owners regularly harassed him, directed slurs at him, disparaged his beard, and offered him inferior sales leads. The Hearing Officer declined to credit the Complainant's testimony, noting that the Complainant acknowledged that he was told during his job interview that his religion was "absolutely no problem", that the Respondent allowed the Complainant a month-long trip to Israel before starting his position, that there was no evidence that the Complainant was offered inferior sales leads, and that the Complainant apparently attempted to 'bribe' a witness with a potential job in exchange for favorable testimony. The Hearing Officer concluded that the Complainant left his employment not due to harassment or discrimination, but because he became disenchanted with his earnings.

MCAD & Torres v. New England Sports Orthopedics, 42 MDLR 57 (2020) (gender, pregnancy, employment)

The Hearing Officer dismissed the Complainant's claims of gender and pregnancy discrimination against the Respondent medical practice. The Complainant worked directly for the Respondent as a medical assistant for approximately six hours per week, and indirectly for the Respondent as an employee of a third-party company collecting specimens for toxicology testing of the Respondent's patients for 24-32 hours per week. The Respondent discovered that the Complainant was submitting duplicate hours on her timesheets, indicating that she worked for the Respondent the hours she actually worked for the third-party employer. The Complainant was allowed to remain employed, but had to



work off the overpaid hours without pay for the next six months. Soon thereafter, the Complainant informed the Respondent that she was pregnant and planned to take parental leave. The Complainant began to take more time off, some of which was for medical appointments, but this time off was always approved by the Respondent. After the Respondent learned of an additional two more weeks in which the Complainant submitted duplicate hours on her timesheets, the Respondent terminated the Complainant, citing time fraud and excessive absenteeism. The Hearing Officer concluded that the Complainant's pregnancy played some part in the Respondent's decision, citing to a manager's disparaging comments about another employee's pregnancy and inconsistencies in their testimony about the reasons for termination. However, the Hearing Officer ultimately concluded that the Respondent was not liable for discrimination, as they would have still terminated the Complainant solely for the time fraud even if she was not pregnant.

MCAD & Roch v. MA Department of Correction, 42 MDLR 63 (2020) (race, color, employment)

The Hearing Officer found the Respondent employer liable for discriminatory discipline based on the Complainant's race/color (Black). The Complainant correctional officer witnessed an incident in which an inmate threw urine on another officer and the officer responded by throwing a tray of food at the bars of the inmate's door. As the Complainant did not initially report the tray-throwing portion of the incident and used the other officer's computer login to submit an incident report on his behalf, the Complainant was demoted. The Hearing Officer found that other officers were given an opportunity to amend false reports and were issued lesser discipline, including for incidents that were more serious and that included more egregious lies. The Respondent tried to distinguish these comparator incidents. The Hearing Officer concluded that these differences were pretextual, and that the disparity in discipline was due to race, though acknowledged that this may have been based in part on unconscious bias. The Hearing Officer awarded \$75,000 in emotional distress damages and \$67,761 in back pay.

MCAD & Wetherbee v. IBA, Inc., MCAD Docket No. 17-WEM-00384 (2020) (sexual harassment, retaliation, employment)

The Hearing Officer dismissed the Complainant's complaint of sexual harassment and retaliatory termination. The Hearing Officer found that, in this particular workplace, lewd jokes, homophobic insults, and profane language were commonplace. The Hearing Officer also found that the Complainant had a history of confrontational and insubordinate behavior, which resulted in a formal warning and the denial of an annual raise. After this warning, the Complainant was also caught in a scheme to transport 30,000 - 40,000 pounds of wood stove pellets for his personal use using the Respondent's trailers and drivers. The Complainant later initiated a lengthy back-and-forth text message exchange with another truck driver, involving profane, homophobic, and sexual insults. During this exchange, the Complainant laughed and showed the messages to other coworkers. As a result of this incident and previous incidents between the two, the other driver obtained a restraining order against the Complainant. The Complainant was terminated, while the other driver was placed on probation. The Hearing Officer concluded that the other driver's inappropriate sexual language did not create a hostile work environment for the Complainant, as the overwhelming evidence indicated that the Complainant himself often engaged in and initiated the same behavior, and the Complainant was not genuinely offended or insulted by the comments. In regards to the complaint of retaliation, the Hearing Officer concluded that the Complainant did not notify the Respondent about the offensive text messages until after he had been terminated, and that the Respondent had legitimate non-discriminatory reasons for its decision to terminate the Complainant which were not pre-textual.

## Significant Full Commission Decisions

In fiscal year 2020, the Full Commission issued twenty-four decisions and one order. The Full Commission Decisions issued in fiscal year 2020 are described below.

MCAD & Lauria v. Robert W. Sullivan, Inc., 41 MDLR 101 (2019) (retaliation, sexual harassment, employment) The Hearing Officer dismissed a complaint of retaliatory termination, which the Full Commission affirmed. The Hearing Officer found that the Complainant was in fact terminated for poor performance and excessive internet usage, and that the decision to terminate was made prior to her internal complaint of sexual harassment. The Full Commission found there was sufficient evidence to support these findings, as well as the Hearing Officer's conclusions that there was not a causal connection between the Complainant's internal complaint and her termination, and that the Complainant was terminated for legitimate non-discriminatory reasons.

MCAD & White v. Cosmopolitan Real Estate, Inc., 41 MDLR 103 (2019) (receipt of public benefits, housing) In this housing discrimination case, the Full Commission affirmed the decision of the Hearing Officer regarding the amount of the Complainant's damages. The Full Commission affirmed that the Respondent real estate brokerage firm was liable for \$200 in emotional distress damages for discriminating against the Complainant for receiving public rental assistance, where a policy required prospective tenants to forfeit a deposit if the apartment did not pass a Section 8 inspection. The Hearing Officer denied additional damages sought by the Complainant, determining that portions of his testimony were not credible, that the discriminatory conduct was not the cause of the Complainant's homelessness, and that there was scant evidence of emotional distress. The Full Commission affirmed, concluding that there was sufficient evidence to support the Hearing Officer's determination on these points.

MCAD & Lazaris v. MA Human Resources Division, 41 MDLR 117 (2019) (disability, employment) The Respondent Human Resources Division approved the City of Lynn's request to bypass the Complainant for a firefighter position based in part on his mental illness, which the employer improperly inquired about during the interview. The Full Commission reversed the Hearing Officer's decision finding the Respondent liable for both aiding and abetting discrimination, and for interfering with Complainant's right to be free from discrimination. The Full Commission concluded that, while the Respondent's failure to inquire into how the City obtained Complainant's medical information may have been negligent, there was insufficient evidence to conclude that the Respondent had any intent to discriminate against the Complainant, a requirement of both counts.

MCAD & Floyd v. MA Department of Correction, 41 MDLR 127 (2019) (race, color, gender, retaliation, employment) The Full Commission reversed the Hearing Officer's decision finding the Respondent employer liable for a single incident of discriminatory discipline based on the Complainant's race (African American), color (black), and gender (female). The Full Commission found that there was insufficient evidence to support the Hearing Officer's conclusion that a similarly situated white male employee was disciplined more severely for a comparable incident of insubordination. The Full Commission determined that the two employees were not in fact similarly situated, as the Hearing Officer failed to take into account the Complainant's long history of prior misconduct in comparing the employees, which was properly considered by the employer when determining punishment for the Complainant. The Full Commission affirmed the Hearing Officer's dismissal of the Complainant's complaints that her termination was discriminatory and retaliatory, as there was sufficient evidence to support the Hearing Officer's determination that the termination was for legitimate, non-discriminatory reasons.

MCAD & Gutierrez v. Gabriel Care, LLC, 41 MDLR 143 (2019) (race, national origin, retaliation, employment) The Hearing Officer dismissed a complaint of harassment and disparate treatment by the

employer based on her race (Hispanic) and national origin (Puerto Rican), as well as retaliatory termination. The Full Commission affirmed the Hearing Officer's dismissal of all of the Complainant's claims. The Hearing Officer concluded that the Complainant was not subject to a hostile work environment, and that her termination was due to her taking steps to open a competing business in violation of a non-compete clause. The Full Commission found that there was sufficient evidence to support both the Hearing Officer's decision not to credit the Complainant's testimony regarding her work environment, as well as the Hearing Officer's conclusion that the Complainant was terminated for legitimate, non-discriminatory reasons.

MCAD & Dupuis v. Gabriel Care, LLC, 41 MDLR 140 (2019) (retaliation, employment) In a companion case, the Full Commission affirmed the Hearing Officer's decision finding the employer liable for retaliation in its termination of the Complainant. The Complainant refused to leave her coworker Gutierrez's termination meeting, stating that she would back up Gutierrez in a discrimination complaint; she was then terminated for insubordination. The Full Commission determined that the Hearing Officer's conclusions – that the Complainant reasonably believed that her coworker was being unlawfully discriminated against, that she was acting in good faith, and that her actions constituted protected activity – were supported by the record. However, the Full Commission did not award all of the Complainant's requested attorneys' fees, as some of the work was solely in regard to the companion Gutierrez case and was not in furtherance of Dupuis' retaliation case.

MCAD & LaCroix v. Holliston Public Schools & Jackson, 41 MDLR 144 (2019) (disability, retaliation, employment) The Full Commission affirmed the decision of the Hearing Officer dismissing a complaint of disability discrimination and retaliation. The Complainant alleged that the Respondent employer failed to provide a reasonable accommodation for the Complainant's sleep apnea by refusing to allow him to work from home, and later retaliated against him for filing this MCAD complaint. The Hearing Officer's findings of fact that credited the employer's testimony over the Complainant's were not disturbed by the Full Commission. The Full Commission found that there was sufficient evidence to support the Hearing Officer's conclusions that the Complainant's requested accommodations were unreasonable, that the Complainant failed to participate in an interactive process with the employer by refusing any other accommodations, and that the employer had legitimate non-discriminatory reasons for its alleged retaliatory actions.

MCAD & Laing v. J.C. Cannistraro, LLC, 41 MDLR 157 (2019) (disability, employment) The Full Commission affirmed the decision of the Hearing Officer finding the Respondent employer liable for disability discrimination. After the Complainant plumber suffered a work-related back injury and obtained worker's compensation, the employer terminated the Complainant for failing to return to work. The Full Commission found that there was sufficient evidence to support the Hearing Officer's findings that the Complainant had not been cleared to return to work by his doctor and that the return-to-work date initially provided by the doctor was merely an estimate. Surveillance video of the Complainant performing yard work was not inconsistent with his inability to perform light-duty work. The Full Commission affirmed the Hearing Officer's conclusion that the Complainant qualified as a handicapped individual, as he was injured on the job and continued to be affected by the work-related injury. The Full Commission agreed that the Respondent failed to engage in the interactive process with the Complainant by neglecting to follow-up on the Complainant's assertion that he was not yet capable of returning to work but instead relying on its insurance company's assertion that he had been cleared to return. In addition, the Full Commission refused to disturb the Hearing Officer's award of \$50,000 in emotional distress damages.

MCAD & Dalexis v. Tufts Medical Center & Miglietta, 41 MDLR 166 (2019) (disability, employment) The Full Commission affirmed the decision of the Hearing Officer finding the Respondent liable for disability discrimination by failing to provide her with a reasonable accommodation and constructively discharging her from her employment. The Full Commission deferred to the Hearing Officer's decision

to credit the Complainant's testimony. The Full Commission agreed with the Hearing Officer's implicit determination that working overtime was not an essential function of the job, as other nurses were not required to work overtime and the Complainant had previously been granted an exemption from overtime. The Full Commission also affirmed the Hearing Officer's determination that the Respondent failed to engage in an interactive process with the Complainant and constructively discharged her when it failed to offer her several suitable open positions. The Full Commission did not award all of the Complainant's requested attorneys' fees, as the Complainant's claims of race and national origin discrimination were dismissed by the Hearing Officer, an excessive amount of time was billed by the Complainant's co-counsel for conferencing with each other and for administrative tasks, and because some of the time records lacking sufficient detail.

MCAD & Mont-Louis v. City of Cambridge, 41 MDLR 174 (2019) (age, employment) The Hearing Officer dismissed the Complainant's complaint of employment discrimination based on age and retaliation. The Full Commission affirmed the Hearing Officer's dismissal of both claims. The Full Commission found that there was sufficient evidence to support the Hearing Officer's findings of fact indicating that the Complainant failed to perform his assigned job duties, was observed not working all of the hours he was on the clock, and violated attendance rules. The Full Commission affirmed the Hearing Officer's conclusion that the Complainant could not make out a case of age discrimination because the Complainant was not performing his job at an acceptable level and his termination did not occur under circumstances that would raise a reasonable inference of discrimination.

MCAD & Lammlin v. Seder Foods Corp., 41 MDLR 178 (2019) (age, ethnicity, employment) The Full Commission affirmed the decision of the Hearing Officer finding the Respondent employer liable for discrimination based on age and ethnicity (White). Based on testimony from the Respondent's CFO, the Hearing Officer found that the Respondent wanted to replace the Complainant with a "younger, more aggressive salesman who can speak Spanish" and that he was in fact terminated and replaced by a significantly younger, bilingual Latino salesperson. The Full Commission deferred to the Hearing Officer's decision not to credit the CFO's testimony, and affirmed the Hearing Officer's conclusion that the Respondent would not have terminated the Complainant but for his age and ethnicity.

MCAD, Chase, Eason v. Crescent Yacht Club and McCarthy, 42 MDLR 8 (2020) (sexual harassment, retaliation, employment) The Full Commission affirmed the Hearing Officer's decision finding the Respondent liable for sexual harassment and retaliation against two of its female employees by a member of its Executive Board. The Full Commission found there was sufficient evidence to support the Hearing Officer's conclusions that the Executive Board member served as a supervisor of the two Complainants, that this supervisory relationship was not negated by the fact that his conduct took place outside of the workplace, that the harassment was severe or pervasive enough to create a hostile work environment, and that Complainant Eason was retaliated against for her internal complaint. However, the Full Commission reduced the award of back pay damages for Complainant Eason due to a mathematical error.

MCAD & Torres v. Commonwealth Waste Transportation, 42 MDLR 13 (2020) (race, color, national origin, employment) The Hearing Officer dismissed the Complainant's complaint that the Respondent refused to hire him because of the Complainant's race/color (Hispanic), and national origin (Puerto Rican). The Full Commission affirmed the Hearing Officer's decision. After losing its contract to the Respondent, a separate waste transportation company laid off all of its drivers, including the Complainant. Some, but not all, of its drivers were then hired by the Respondent. The Full Commission deferred to the Hearing Officer's credibility determination and affirmed the Hearing Officer's conclusion that the Respondent's decision not to hire the Complainant was for legitimate non-discriminatory reasons, specifically a history of performance and safety issues at the previous employer.

MCAD & Drigo v. City of Boston, 42 MDLR 25 (2020) (race, color, retaliation, employment) The Full Commission affirmed the decision of the Hearing Officer finding the Respondent employer liable for discrimination based on race/color (Black), and retaliation. The Full Commission deferred to the Hearing Officer's credibility determinations. The Full Commission found that there was sufficient evidence to support the Hearing Officer's conclusions that a negative change in work climate and work assignments constituted an adverse action, and that the seven performance warnings the Complainant received in as many months were causally connected to the internal discrimination complaint filed by the Complainant. The Full Commission also upheld the Hearing Officer's award of \$50,000 in emotional distress damages.

MCAD & Loewy v. Ariad Pharmaceuticals, Inc., 42 MDLR 28 (2020) (retaliation, employment) The Hearing Officer dismissed the Complainant's complaint of retaliatory termination, which was based upon the Complainant's refusal to lower the performance rating of an African American employee whom he supervised. The Full Commission affirmed the Hearing Officer's conclusion that the Complainant's termination was not retaliatory but was instead for a legitimate, non-discriminatory reason: Complainant's poor supervision of his department, including the African American employee.

MCAD & Costa v. Gabriel Care, LLC, 42 MDLR 33 (2020) (disability, employment) The Hearing Officer dismissed the Complainant's complaint of disability discrimination, alleging that the Respondent terminated her due to her history of breast cancer. The Full Commission affirmed the Hearing Officer's decision. The Full Commission deferred to the Hearing Officer's credibility determinations and affirmed the Hearing Officer's conclusion that the Respondent was discharged not due to her disability but because she was not adequately performing her job. Specifically, the Hearing Officer determined that Respondent terminated the Complainant for poor performance, falsifying mileage reimbursement reports, and for inappropriate workplace behavior.

MCAD & LaPete v. Country Bank for Savings, 42 MDLR 49 (2020) (disability, employment) The Full Commission affirmed the decision of the Hearing Officer finding the Respondent employer liable for disability discrimination when it terminated the Complainant. The Complainant, who was suffering from post-partum depression, was unable to return to work at the end of her 12-week FMLA leave. The Full Commission found sufficient evidence to support the Hearing Officer's findings that the Complainant had requested a brief leave in order to consult with her healthcare providers in order to establish a definite return-to-work date. The Full Commission affirmed the Hearing Officer's determination that this requested accommodation was reasonable, and that the Respondent failed to participate in an interactive process in response to this request. The Full Commission also upheld the Hearing Officer's award of \$50,000 in emotional distress damages.

MCAD & Canton v. Biga Breads et al., 10-BEM-03156 (2020) (sexual harassment, retaliation, employment) The Full Commission affirmed the decision of the Hearing Officer finding the Respondent employer liable for sexual harassment and retaliation. The Hearing Officer found that the Complainant was sexually harassed by her supervisor for several years, who also cut her hours for refusing his advances, and that the Respondent later terminated the Complainant in retaliation for an internal complaint against the supervisor. The Full Commission found sufficient evidence to support the Hearing Officer's findings. . The Full Commission affirmed the Hearing Officer's decision to find one of the Owners individually liable, as she supervised the Complainant's harasser and served as the Respondent's personnel officer. The Full Commission also upheld the Hearing Officer's award of \$47,992 in back pay damages and \$125,000 in emotional distress damages.

MCAD & Carta v. Wingate Healthcare, Inc., 11-BEM-02841 (2020) (disability, employment) The Full Commission affirmed the decision of the Hearing Officer finding the Respondent employer liable for



disability discrimination when it terminated the Complainant. The Complainant, after taking a medical leave due to an on-the-job injury and related complications, returned to work on a part-time basis. After five months of part-time work, the Respondent denied the Complainant's request to continue working part-time for an additional three weeks, and instead terminated her. The Full Commission affirmed the Hearing Officer's conclusions, as they were supported by the record. The Complainant was capable of – and had indeed been performing – the essential duties of her position despite her disability. Working a full-time schedule was not an essential function of the job, and extending the Complainant's part-time schedule for three additional weeks would not have been unreasonable. The Respondent's argument that it was justified in terminating the Complainant because of a significant risk of serious injury if she continued working was purely speculative. The Hearing Officer's conclusion that the Respondent's stated reasons for termination were a pretext for disability discrimination was supported by the record. The Full Commission declined to modify the Hearing Officer's award of \$25,000 in emotional distress damages.

MCAD & Eslinger v. MA Department of Transportation, 10-BEM-02076 (2020) (gender, employment) The Full Commission affirmed the Hearing Officer's dismissal of a complaint of gender discrimination in employment. After the merger of several state agencies into the MassDOT, the Respondent eliminated the Complainant's position and reassigned her to an arguably lesser position with the same pay, which the Complainant refused, resulting in her termination. The Hearing Officer concluded that the employer's decisions were not based on gender discrimination but were rather for legitimate non-discriminatory reasons. The Full Commission affirmed, deferring to the Hearing Officer's credibility determinations.

MCAD & Robar v. Int'l Longshoremen Assoc. Local 1413-1465 & Fortes, 09-NEM-03054, 11-NEM-02713 (2020) (gender, retaliation, labor union) The Full Commission affirmed the decision of the Hearing Officer finding the Respondent labor union liable for gender discrimination. The Respondent, which is responsible for selecting workers at the New Bedford docks, repeatedly refused to hire the Complainant as a forklift operator on fruit boats. The Hearing Officer concluded that this decision was based on the Complainant's gender, as no females were ever hired to work on fruit boats, the Complainant had superior credentials to the male forklift operators who were selected over her, and a union member's statement that "we don't pick women to work on fruit boats" and that they only select women who "knew their place". The Full Commission affirmed, as the Hearing Officer's findings and conclusions were supported by the record. In addition, the Full Commission declined to modify the Hearing Officer's award of \$50,000 in emotional distress damages.

MCAD & Morrison v. Wilder Brothers Tire Co., 15-BEM-00714 (2020) (disability, employment) The Hearing Officer dismissed a complaint of disability discrimination in employment, which was affirmed by the Full Commission. The Hearing Officer found that the Respondent's decision to terminate the Complainant was not due to his brain tumor or depression, and was unrelated to the Complainant's request for a medical leave of absence submitted the day before his termination. Rather, the Respondent terminated the Complainant for a no-call no-show on an important tax holiday weekend, after months of poor performance and poor attendance. The Full Commission deferred to the Hearing Officer's credibility determinations and affirmed the Hearing Officer's conclusions that the Respondent was not obligated to grant the Complainant's requested medical leave, as doing so would have been an undue hardship and unreasonable after the employer had decided to terminate the Complainant for legitimate non-discriminatory reasons.

MCAD & Babu v. Aspen Dental Management, Inc., 10-WEM-00914, 11-WEM-01886 (2020) (national origin, retaliation, employment) The Full Commission affirmed the decision of the Hearing Officer finding the Respondents liable for discrimination based on national origin (Romanian) and retaliation. The Hearing Officer found that after the Complainant confronted a new office manager about her

sexually inappropriate comments towards a male patient, the office manager repeatedly denigrated the Complainant's accent and began finding numerous faults with the Complainant's performance, despite eight previous years of employment without issue. The Complainant was demoted and then terminated for alleged performance issues. The Full Commission agreed with the Hearing Officer that, even if other managers made the ultimate decisions, the office manager indirectly played a role in the decisions to demote and discharge the Complainant. Likewise, the Full Commission confirmed that the Complainant's complaint about the office manager's flirtatiousness constituted protected activity. The Full Commission deferred to the Hearing Officer's credibility determinations, and found that there was sufficient evidence to support the conclusion that the Respondent's stated reasons for the Complainant's demotion and termination were a pretext for discrimination and retaliation. In addition, the Full Commission granted the Complainant's request for an additur, as the Complainant's receipt of unemployment benefits should not have been deducted from her back-pay award without explanation due to the collateral source rule.

MCAD & Cooper v. Raytheon Co., 11-BEM-01635 (2020) (disability, employment) The Full Commission affirmed the decision of the Hearing Officer finding the Respondent employer liable for disability discrimination. The Complainant suffered from a traumatic brain injury, which the Respondent was aware of, and successfully performed his job for eight years after this injury without formal accommodations. As a result of a new policy requiring performance rankings to fit a bell curve, the Complainant's annual performance evaluation was lowered and he was placed on a Performance Improvement Plan (PIP), which required him to perform duties that had not previously been required of him. After the Respondent refused to modify or extend the PIP, the Complainant ultimately failed the PIP's requirements and was demoted. The Full Commission affirmed the Hearing Officer's conclusions that the Respondent was obligated to offer reasonable accommodations to the Complainant, that it failed to engage in an interactive dialogue with the Complainant despite being aware of his disability, and that its reasons for placing the Complainant on the PIP were pretextual. The Full Commission noted that, while an employer has the right to alter or expand an employee's job duties, it must take into account an employee's known limitations when making such changes. In addition, the Full Commission chose not to disturb the Hearing Officer's award of damages, including the decision to cut off the award of back pay due to the likelihood that the Complainant would have eventually been laid off, the decision to award \$100,000 in emotional distress damages, and the decision to deny the Complainant's requested front pay.

## Staff List

Eric Allbright  
Deborah Avant\*  
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Eric Bove\*  
Sophia Buchanan  
Ashley Cain  
Kenneth Callahan II  
Elizabeth Caiazzi  
Candice Carrington  
Wendy Cassidy\*  
Alison Caton  
Janet Cha\*  
Nicole Cocuy  
Joseph Cohen  
Evan Coleman\*  
Ethan Crawford  
Mary Crosby  
Kristen Dannay  
Elizabeth Davey  
Vanessa Davila\*

Edith Demont-Rosenthal  
Andrew Espinosa\*  
Geraldine Fasnacht\*  
Jillian Fisher  
Cynthia Garcia  
Sunila George\*  
Karlyn Greene\*  
Joseph Greenhalgh  
Eugenia Guastaferrri\*  
Heather Hall  
H Alex Harrison  
Marzella Hightower\*  
Deirdre Hosler  
Neldy Jean-francois  
David Johnson  
Judy Kalisker◇  
Judith Kaplan\*  
Kristina Khoury  
Nomxolisi Khumalo\*  
Patricia LaFore  
Paul Lantieri  
Jennifer Laverty\*  
Nicole Leger

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## Advisory Board

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Remona L. Davis  
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Jeff Dretler , Esq.  
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Anne L. Josephson, Esq.  
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Bronwyn Roberts, Esq.  
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Thomas L. Saltonstall, Esq.  
Courtney B. Scrubbs., Esq.  
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Ivonne Vidal, Esq.  
Richard L. Wise, Esq.

## Staff List

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 Melanie Louie-tso\*  
 Jennifer Maldonado-Ong▪  
 Matthew Marotta  
 Angela Matute▪  
 Gilbert May\*  
 Sheree McClain  
 Constance McGrane  
 Michael Memmolo  
 Lynn Milinazzo-Gaudet\*  
 Peter Mimmo  
 Ying Mo\*  
 Carol Mosca\*  
 Korey Moscatelli▪  
 Carol Murchison\*  
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 Helene Newberg  
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 Yudelka Pena\*  
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 Elisa Petrigliano▪  
 Michelle Phillips\*▪  
 Monserrate Quinones  
 Lila Roberts\*  
 Jeremy Scheiner  
 Vera Schneider  
 Caitlin Sheehan\*  
 Dina Signorile-Reyes  
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 Myrna Solod\*  
 Abigail Soto-Alvira\*  
 Karen Stonehouse-Dumont  
 Ethel Stoute\*  
 Tania Taveras\*  
 Nancy To\*  
 Betty Waxman\*  
 Devin Wintemute  
 Paul Witham\*  
 Pattie Woods\*  
 Carmen Zayas\*  
 Michael Zeytoonian

### Key

- Employed by MCAD for a portion of FY20
- \* 10+ years of service to MCAD
- ◇ Contract employee

## FY20 Interns

Adrian Ashley  
 Alexa Sydor-Czartorysky  
 Allison Mello  
 Alyssa Abele  
 Andrea Lim  
 Ariana Vazquez  
 Benjamin Levy  
 Caitlin Whitman  
 Carol MacDonald  
 Christina Heiler  
 Emma Wolters  
 Farnaz Daneshvaran

Gethin Binns  
 Gillian Veralli  
 Janine Salameh  
 Jessica Gavin  
 Jillian Fino  
 Julia Gaffney  
 Katherine Renzoni  
 Meagan Coyle  
 Nicholas Moore  
 Sangyeol Lee  
 Valentina Daniele  
 Angela Camcho-DeSousa

Anjali Biswas  
 Anne-Sophie Tome  
 Aurora GrantWingate  
 Deja Morehead  
 Eilidh Currie  
 Mitchell Carney  
 Sara Hogenboom  
 Tianren Zhang  
 Cullen Mulrooney  
 Sarah Friedman  
 Bronwyn Lloyd  
 Victoria Arend

## Glossary of Terms

**Administrative Resolution:** A Complaint that is resolved at the MCAD other than through completion of the investigative process or final adjudication. Such cases may be resolved through the actions of the parties or action by the Commission.

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

**Americans with Disabilities Act (ADA):** The Americans with Disabilities Act is a federal law that was enacted by the U.S. Congress in 1990. The ADA is a wide-ranging civil rights law that is intended to protect against discrimination based on disability.

**Chapter 30A Appeals:** State Administrative Procedures Act governing judicial review of a final agency decision of the Full Commission.

**Chapter 478:** Case closure when the Complaint is withdrawn from MCAD to remove the case to Court.

**Conciliation:** Mandatory post-probable cause resolution process in which the Commission attempts “to achieve a just resolution of the Complaint and to obtain assurances that the Respondent will satisfactorily remedy any violations of the rights of the aggrieved person, and take such action as will assure the elimination of discriminatory practices, or the prevention of their occurrence, in the future.”

**Disposition:** The official document issued stating the determination by the Investigating Commissioner at the conclusion of an investigation.

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

**HUD:** The U.S. Department of Housing and Urban Development. Within the Department of Housing and Urban Development, the Office of Fair Housing and Equal Opportunity (FHOO) administers and enforces federal laws to ensure equal access to housing.

**Jurisdiction:** the official power to make legal decisions and judgments.

**Lack of Jurisdiction:** A determination that the MCAD lacks the statutory authority to investigate, adjudicate, or otherwise address the allegations charged.

**Lack of Probable Cause:** A determination by the Investigating Commissioner of insufficient evidence upon which a fact-finder could form a reasonable belief that it is more probable than not that the Respondent did not commit an unlawful practice.

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

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

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



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

**Regulations:** The whole or any part of every rule, regulation, standard or other requirement of general application and future effect, including the amendment or repeal thereof, adopted by an agency to implement or interpret the law enforced or administered by it.

**Substantive Disposition:** The disposition of a Complaint upon conclusion of the investigation resulting in a finding of either “Probable Cause” or a “Lack of Probable Cause.”





