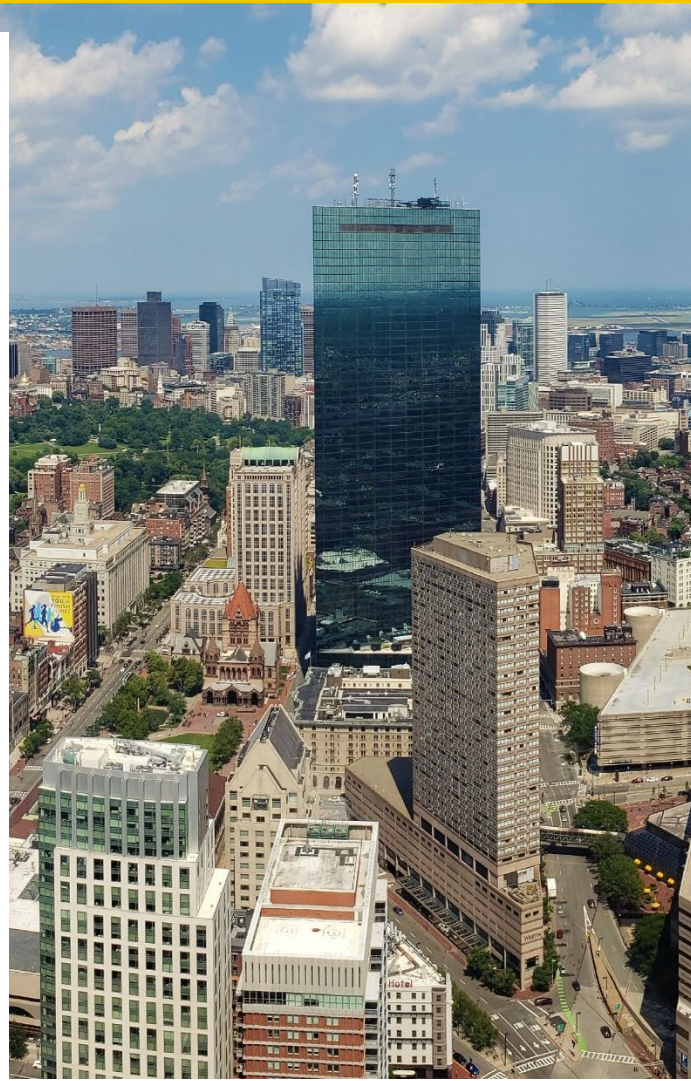


Annual Report

Fiscal Year 2021



**MASSACHUSETTS
COMMISSION AGAINST
DISCRIMINATION
(MCAD)**

COMMISSIONERS

Sunila Thomas George,
Chairwoman

Monserate Quiñones

Neldy Jean-Francois

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 alleged treatment 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 three offices, Boston, Springfield, and Worcester, where one can meet with an intake specialist for a free consultation and file a Complaint. The MCAD closed its New Bedford office temporarily while searching for a new office location in the region.

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

Main Contact Numbers

Boston Headquarters Reception

Front Desk Reception	mcad@mass.gov	617-994-6000
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Office of the Commissioners & Press Office

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

Ken Callahan, Acting Chief of Investigations	kenneth.callahan@mass.gov	413-314-6111
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Legal Division

Deirdre Hosler, Acting General Counsel	deirdre.hosler@mass.gov	617-994-6016
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Training Unit

Alison Caton, Acting Director of Training	MCADTraining@mass.gov	617-994-6072
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Clerk's Office

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

Theresa Lepore, Records Access Officer	cadrao@mass.gov	617-994-6124
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Alternative Dispute Resolution Unit

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

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

Sunila Thomas George
Chairwoman

Monseratte Quiñones

Neldy Jean-Francois

MCAD Locations

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

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

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

TTY 617.994.6196

www.mass.gov/mcad

Letter from the Commissioners

Dear Governor Baker, Lieutenant Governor Polito, Speaker Mariano, 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 2021 (FY21) Annual Report of the Massachusetts Commission Against Discrimination (MCAD or “Commission”), which covers the activities undertaken by the MCAD during the periods of performance, July 1, 2020 – June 30, 2021.

Although the COVID-19 pandemic disrupted life as we know it, the remarkable development of multiple vaccines and the inoculation of over 200 million adults have given us all a glimmer of hope and a positive outlook on the future. Thanks to the ingenuity of the MCAD staff and the technological advancements that we have made over the past year, we have learned to adapt to the changing times while still finding new ways to stay connected to the public and focus on achieving our mission.

During Fiscal Year 2021, MCAD had to overcome several challenges posed by the disruptions caused by COVID-19, but also achieved a number of notable accomplishments. The Commission closed its doors to the public in March 2020 and they remained closed throughout the entirety of FY21. However, thanks to the successful efforts of the staff to pivot the agency’s services to online portals and electronic processes, the MCAD’s operations never ceased. We continued accepting new complaints, investigating cases, and issuing investigative findings throughout FY21. In June 2020, with the safety of the staff at the forefront of our decision-making, the MCAD enacted office cleaning and capacity protocols, which allowed staff to return to the office one to two days per week. Investigative productivity increased thanks to the staff’s presence in the office and the agency’s investment in technology solutions. The MCAD shifted to 100% virtual proceedings, allowing our Training unit, Alternative Dispute Resolution unit, and Hearings unit to conduct proceedings amidst the pandemic. The agency also hosted numerous virtual events including conferences, staff training, cultural celebrations, all staff meetings, and more. Of note, the MCAD hosted the U.S. Equal Employment Opportunity Commission (EEOC) New York District Regional Conference in March 2021, with participation from all seven New England states.

At the beginning of the fiscal year, the U.S. Department of Housing and Urban Development (HUD) awarded the MCAD \$75,000 in CARES Act funding for two separate initiatives. First, the MCAD hired a temporary housing investigator to assist with the backlog of fair housing complaints due to the ongoing disruptions caused by COVID-19. The second initiative was for the MCAD to develop COVID-19 specific content to incorporate into the agency’s anti-discrimination training courses. The MCAD also applied for and received HUD funds to host a virtual Fair Housing and Anti-discrimination Education conference in April 2021. The conference proved to be very successful, with over 100 registered attendees from across the Commonwealth in attendance. This event specifically targeted educating new renters, students, public assistance recipients and other populations at an increased risk of facing discriminatory treatment when searching for a home, as well as new homeowners, landlords and other housing providers.

Most notably in FY21, the MCAD had a noteworthy retirements at the agency, including Mediator Gilbert May (31yrs), Operations Specialist Ethel Stoute (33yrs), Attorney

Supervisor Geri Fasnacht (20yrs), General Counsel Connie McGrane (7yrs), as well as all three of the MCAD's Hearing Officers, Judy Kaplan (30yrs), Betty Waxman (20yrs), and Senior Hearing Officer Eugenia Guastaferrri (36yrs).

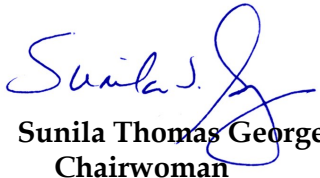
We Commissioners had the honor to nominate five candidates for appointment to the Massachusetts Peace Officer Standards and Training (POST) Commission. On April 1, 2021, Governor Baker and Attorney General Healy jointly appointed one of the MCAD nominees, Clementina M. Chéry to the nine-person Commission, which is tasked with creating a mandatory certification process for police officers, a decertification process, and suspension of certification, or reprimand in the event of certain misconduct.

In June 2021, the MCAD ran its second public awareness campaign, which included placing billboards across the eastern half of the state, on the Massachusetts Bay Transportation Authority's (MBTA) subway system, and on buses run by the Pioneer Valley Transit Authority (PVRTA). The ad campaign (p.8) had an estimated impact of over 20 million views.

At the end of the fiscal year, the MCAD budget and federal funding levels were uncertain. In written testimony delivered to the Joint Committee on Ways and Means in March 2021, Chairwoman George asked the Legislature to increase the Commission's state appropriation to reflect the operational needs of the agency through fiscal year 2022. We anticipate that the demand for MCAD services will only increase as more employees return to their offices, eviction moratoriums come to an end, and more venues reopen to the public. Furthermore, the MCAD fears that its federal contracts with the HUD and EEOC may face across-the-board cuts, like we saw in FY20 and FY21. To that end, the Commissioners have pursued legislation, sponsored by Representative Carlos Gonzalez, to create the Massachusetts Against Discrimination Fund and to establish a voluntary contribution to the MCAD when individuals file their annual Massachusetts Income taxes. The fund would offset costs associated with investigation, prosecution and adjudication of claims of unlawful discrimination, and to assist with its training of public and private entities and individuals to prevent and remediate unlawful discrimination.

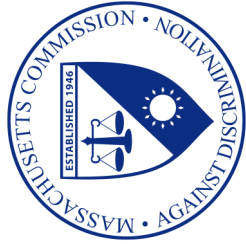
In closing, the hardships we have endured during FY21 are a testament to the ongoing resolve and perseverance of our dedicated staff, who, with limited resources, continue to comply with our expanding legislative mandate amid a national pandemic. We extend a special thanks to the Governor and Lieutenant Governor, Senate President, House Speaker, members of the Legislature, 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,

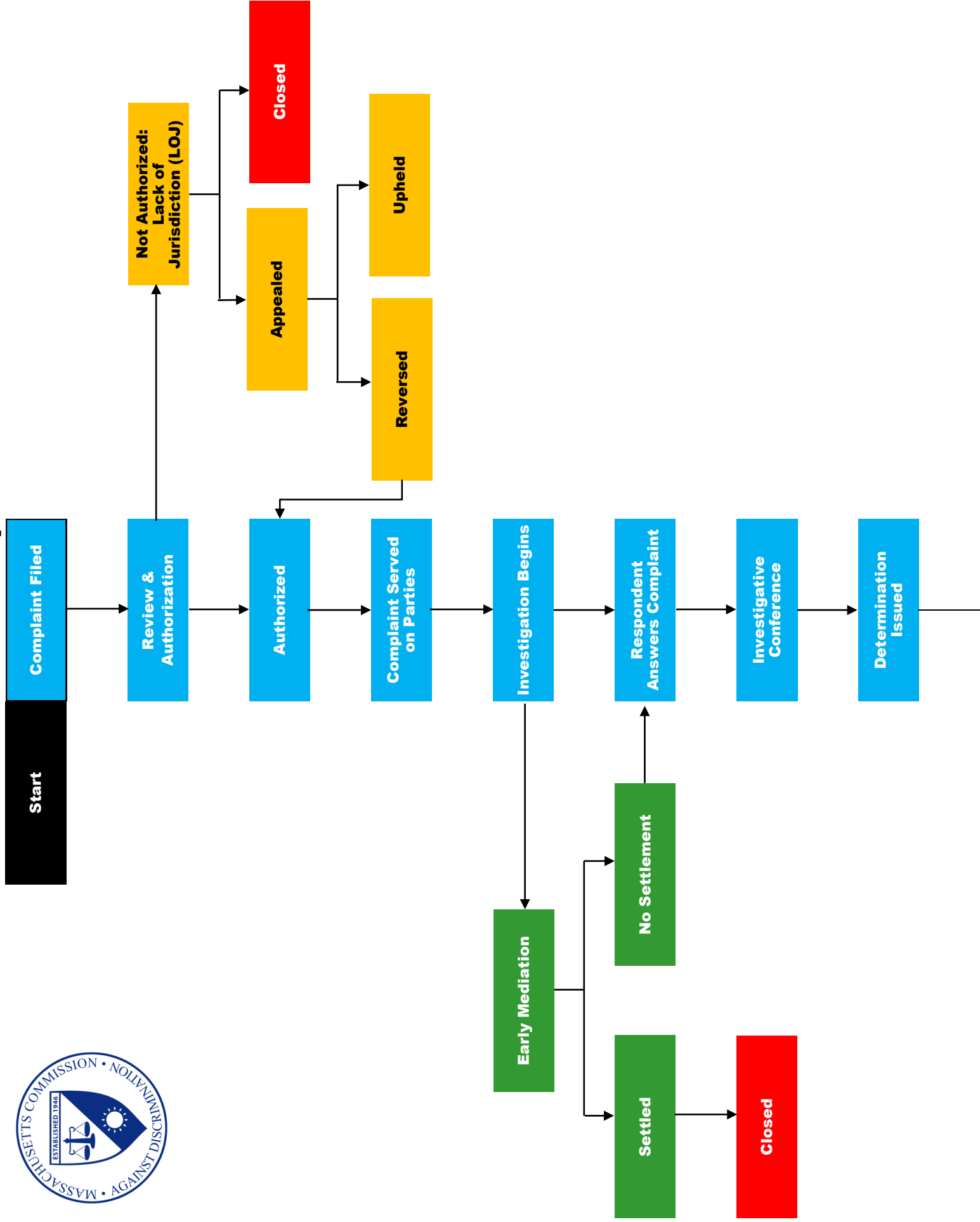

Sunila Thomas George
Chairwoman


Monserrate Quiñones
Commissioner

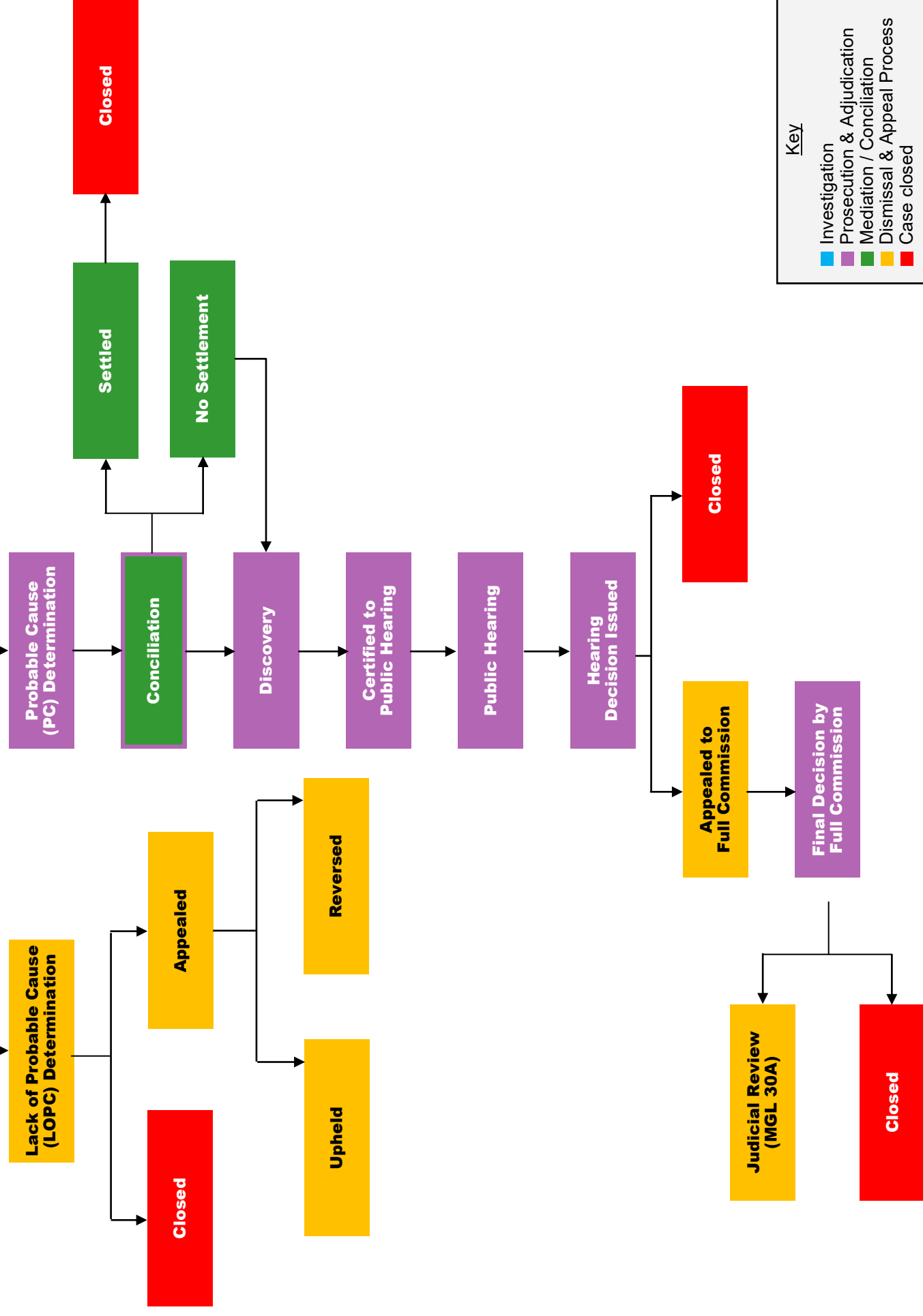

Nelly Jean-Francois
Commissioner



Flowchart of MCAD Complaint Process



(Continued from previous page)



Operations and Finance Division

Narrative Report

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

Fiscal/Budget

The Unit is tasked with all the financial and budgetary functions of the Commission. The 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.

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.

Funding/Personnel

As uncertainty around funding levels at the state and federal levels persisted throughout FY21, the agency continued to position itself to absorb funding reductions by maintaining reduced staffing levels and closing its New Bedford Office in October of 2020. Over the course of FY21, the agency experienced a high level of attrition led by an unprecedented number of retirements. As agency funding levels remained unclear, these positions, in addition to positions vacated at the end of FY20,

were left unfilled for a significant portion of FY21. These staffing challenges significantly impacted the Commission's operations, especially the Investigations Division, which incurred the majority of these staffing vacancies.

Despite these challenges, the agency adopted initiatives to address production levels and made the difficult decision to bring staff back to the offices as early as June 2020, and increasing the in office presence of staff through a phased reopening plan throughout FY21. As the agency approached the mid-point of FY21, funding levels were established and the agency began the herculean effort to backfill the agency's significant number of vacant positions. The agency was able to post over a dozen positions and fill a majority of them before the end of FY21. The agency continued to post vacant positions throughout the end of FY21 and into FY22 with the hope of staffing the agency at pre-pandemic levels before the end of FY22.

MCAD Budget for FY21 July 1, 2020—June 30, 2021

Direct State Appropriation (Line Item 0940-0100)

State Appropriation Total \$ 4,169,189

Retained Revenue Collected (Line Item 0940-0101)

HUD \$ 985,716
EEOC \$ 1,877,880
Audit/Copying fees \$ 100
Attorneys' Fees \$81,665
PAC from FY20 \$ 150,000

Retained Revenue Total \$ 3,095,361

Training Program (Line Item 0940-0102)

Training Program Total \$ 164,245

Total FY21 Appropriated Funds &
Collected Retained Revenue \$ 7,428,573

Expenses

Payroll (\$5,694,011)
Rent (\$ 161,367)
Administrative Overhead (\$ 969,051)

Total FY21 Expenses (\$ 6,824,429)
Reversion to General Fund¹ (\$ 604,366)
Requested PAC to FY22 (\$ 120,000)

MCAD Proposed Budget for FY22 July 1, 2021 – June 30, 2022

State Appropriation (Line Item 0100) \$ 4,280,144
Retained Revenue (Line Item 0101) \$ 1,100,000
Training Program (Line Item 0102) \$ 410,000
Retained Revenue (Line Item 0103) \$ 2,520,000

Total FY22 Budget² \$ 8,310,144

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 unprecedented attrition and retirements as well as delays in hiring, due to funding uncertainty, which are not expected to reoccur in FY22.
2. The FY22 Budget includes all funds and retained revenue allocated in the FY21 Final Budget and all supplemental appropriations.

Training and Outreach Unit Report

At the beginning of FY21 oversight of the Director of Training was transferred to the Chief of Operations and Finance. 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 190 external discrimination prevention training sessions, community events, and career fairs across the state impacting roughly 4,434 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 20th 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 2020.

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.

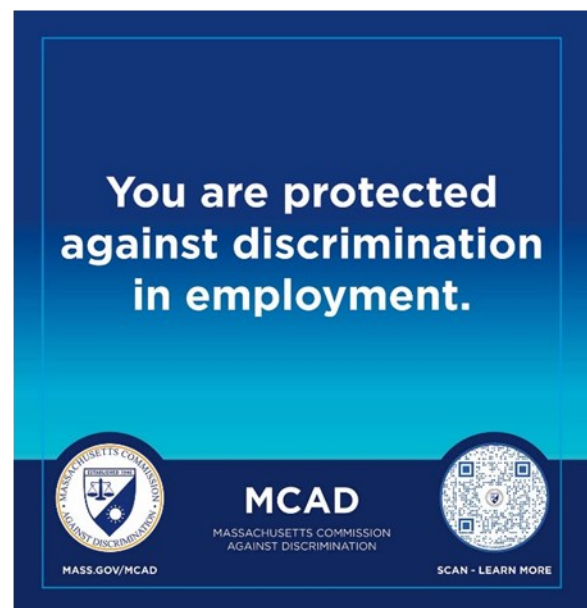
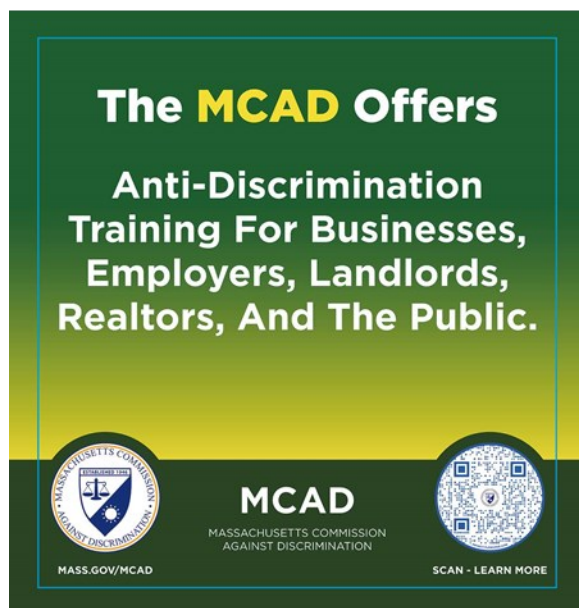
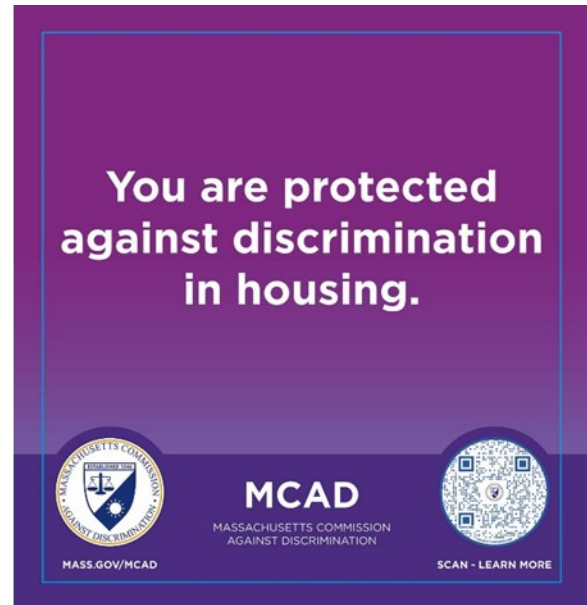
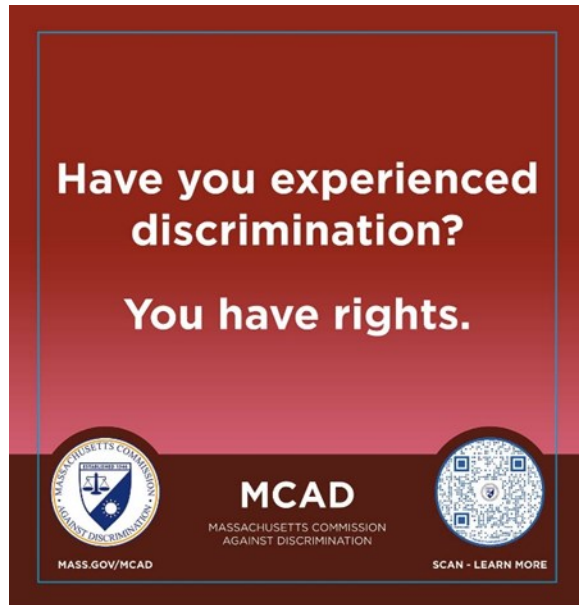
Additionally, in FY20, the Unit transitioned the management of the Commission’s legislative affairs program to the office of the General Counsel, who continued to track all legislation impacting the work of the Commission, including coordinating and attending meetings with legislators and interest groups about pending legislation, attending public hearings, and coordinating written and oral testimony on behalf of the agency.

Training Unit FY21 Statistics

Total Training Events.....	190	Top Industries trained in FY21	
External Trainings	147	· Police Departments & Trial Courts	
Employment Law	47	· Hospitals & Healthcare Workers	
Sexual Harassment	20	· Housing Authorities	
Fair Housing	28	· Municipalities	
Public Accommodations	5	· Higher Education & Food Services	
Total Participants	4,434	· Real Estate Professionals	

MCAD FY21 Public Awareness Campaign

In June 2021, the MCAD ran its second public awareness campaign, which included placing billboards across the eastern half of the state, on the Massachusetts Bay Transportation Authority's (MBTA) subway system, and on buses run by the Pioneer Valley Transit Authority (PVRTA). The ad campaign had an estimated impact of over 20 million views.



Investigations Division Report

The MCAD's Investigations Division investigates complaints of discrimination in employment, housing, and public accommodations, among other areas. 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 FY21, MCAD staff teleworked from home three or four days per week, with staff reporting to the office one or two days per week. By the end of the fiscal year, most of the employees work at least two days per week in the offices, with administrative staff working in the offices at least three days per week. Parties who file complaints with the MCAD should be mindful of the MCAD's limited in-office capacity during the pandemic. In this vein, the MCAD encourages the use of email whenever possible.

The MCAD has suspended in-person services, and is currently conducting the following services and proceedings via telephone and/or video conferencing: Complaint intake for pro-se complainants; investigative conferences; mediations; conciliations; and hearings on appeals of investigative dispositions.

FY21 At-A-Glance



2,463
New Complaints filed



381
Mediations & Conciliations



5,400
Information Calls



4,300
Consultations

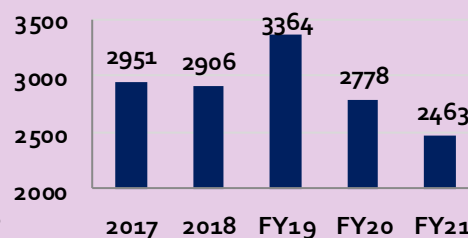


11,400
Website visitors



608
Public Records Requests

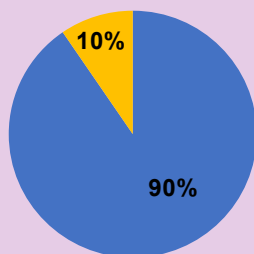
Annual Inventory of New Complaints



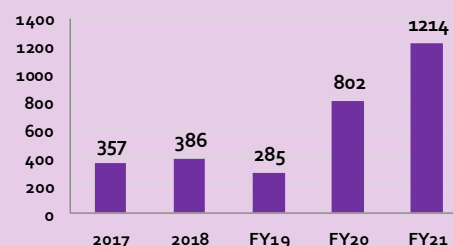
Complaints by Jurisdiction

Employment	1958
Public Accommodation	223
Private Housing	212
Public Housing	51
Education	16
Credit	3

Active Case Inventory



Annual Inventory of Backlog Cases



Investigative Findings

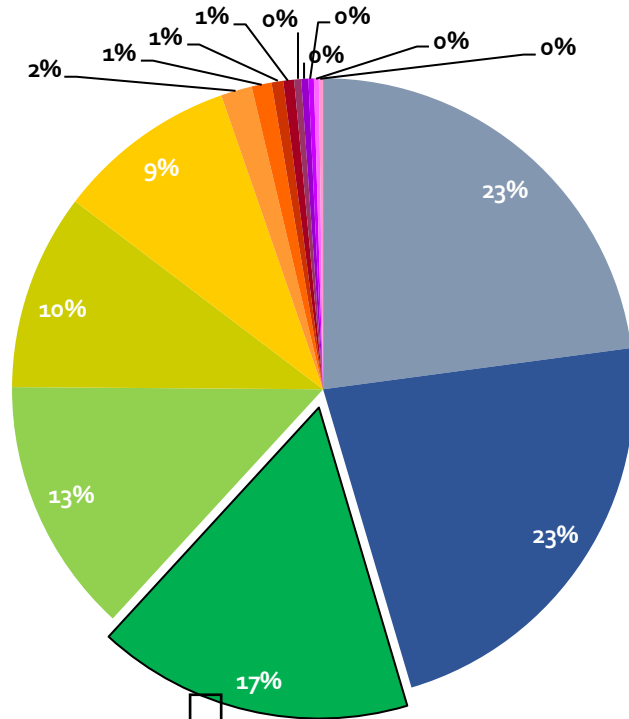
Probable Cause	241
Lack of Probable Cause ..	1158

Investigations	3,514
Post-Probable Cause	371

Breakdown of Complaints by Protected Category

Complaints by Protected Category	
Disability	1,060
Retaliation	1,044
Sex	760
Race	616
Age	473
National Origin	434
Sexual Orientation	75
Religion	48
Public Assistance	28
Gender Identity	26
Children	17
Family Status	17
Lead Paint	13
Other*	12
Military Status	10

* Includes Criminal Record, Marital Status, and Genetics



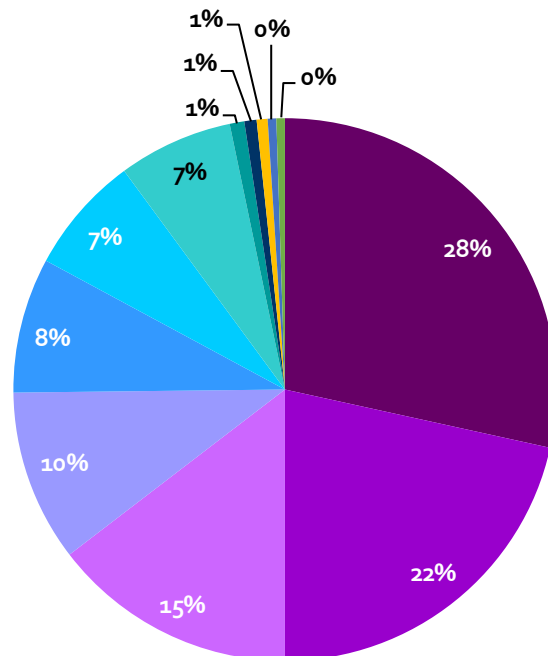
Sex Discrimination Breakdown

Sex	477
Harassment	228
Parental / Pregnancy	89

FY21 Administrative Closures

Administrative Closures	
Removed to Court	392
Withdrawn With Settlement ..	297
Conciliated	201
Dismissed	141
Withdrawn	111
Lack of Jurisdiction	97
Pre-Determination Settlement ..	94
Housing Judicial Review	12
No Violation	10
Other*	9
Failure to Cooperate	17
Violation/Enforcement	7

* Includes Investigation Not Authorized, Unable to Locate Complainant, and Failure to Accept Full Relief



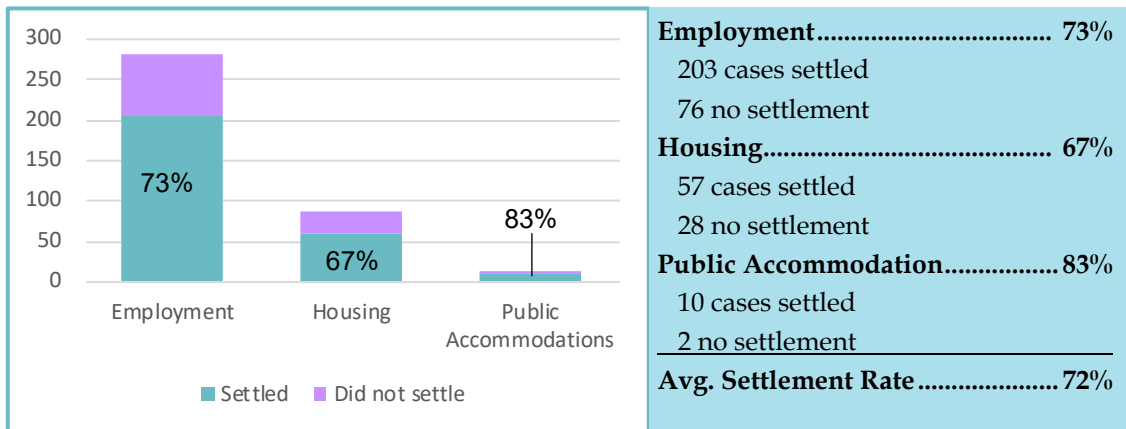
Alternative Dispute Resolution Unit Report

This year, the ADR Unit continued to work on its 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.

Our efforts continue to serve these goals and include regular ADR Unit meetings; reviewing, updating and standardizing materials and forms; refining our internal guidelines for the ADR Unit; and holding monthly “best practices” discussions at our ADR Unit meetings to exchange and share ideas and experiences across the Boston and regional offices. We regularly invite experienced mediators and lawyers to join us and make presentations on relevant topics in these discussions. We also invite other state and federal agency-level mediators to join in these best practices discussions. We continued our practice of holding a series of “Roundtable Meetings” in the winter of 2021 inviting lawyers who practice at the MCAD to educate lawyers about our practices and procedures and encourage the exchange of ideas and feedback. Once again this year, we held several sessions, could invite more attendees by presenting these online via Zoom video, and again had wait lists for each session. Given the positive response, we will offer these again in the fall of 2021. We continued to maintain quantitative data to measure the volume of cases handled and our success rate at settling cases through mediation and conciliation. One new project we undertook this year and will continue to develop is a database for all MCAD decisions and awards, organized by type of discrimination claims, and including data on amounts of awards designated form emotional distress damages.

Our ADR Unit has successfully transitioned from in-person mediations and conciliations to doing these sessions completely remotely by video, as the challenges from the COVID-19 pandemic continue. Throughout the pandemic, there has been no interruption in offering our dispute resolution services. We have trained our mediators, commissioners and Commission Counsel in using Zoom for video mediations and conciliations. The response and feedback we have received from both the attorneys who appear for these mediations and conciliations as well as their clients has been overwhelmingly positive, and reflects a strong preference by those we serve to continue to do these sessions remotely, even after the pandemic has subsided.

FY21 Conciliations by Jurisdiction



Noteworthy Settlements from the ADR Unit

- Complainant in a housing case alleged sexual harassment and sexually hostile environment based on the landlord's alleged comments about her body and offers of not having to pay rent in exchange for sex. The settlement included preventive training on discrimination and sexual harassment and a forgiving of \$12,000 in back rent.
- In a disability discrimination and retaliation claim, Complainant alleged discrimination based on Respondent employer's inappropriate responses to Complainant's request for reasonable accommodation due to mental illnesses. These responses allegedly included Respondent unilaterally directing Complainant to take two weeks off despite the fact that Complainant was cleared to return to work and making inappropriate inquiries and offering opinions as to Complainant's mental health condition. Settlement included payment of \$22,500, a positive letter of reference and anti-discrimination training of Respondent's managers as affirmative relief.
- In a housing discrimination case in which the Respondent was another tenant who allegedly discriminated against Complainants on the basis of national origin and religion (Muslim), settlement included a payment of \$5,000 from Respondent to Complainants. As affirmative relief in the public interest, the settlement also required Respondent to watch an hour-long video suggested by Complainant's counsel called Inside Islam: What a Billion Muslims Really Think, and then report 5 take-away points learned by watching the video.
- Complainant in an age and gender discrimination case was allegedly wrongfully terminated after many years of outstanding performance and replaced by a younger, male employee. Settlement included reinstatement of Complainant, an immediate increase of \$1 an hour, and a monetary settlement of \$84,100 – \$30,000 of which was for emotional distress.
- In a COVID-leave related case in which the Complainant alleged age and disability discrimination, Complainant along with other employees was furloughed in March, 2020 due to COVID. When Respondent employer began to bring employees back to work, Complainant was not brought back allegedly due to Respondent's concerns about Complainant's disability and age. The case settled for \$45,000 – \$15,000 of which was for emotional distress damages.
- Complainant alleged disability discrimination and retaliation in an employment case in which Complainant, who worked in a service industry (office) job, went out on leave for knee surgery. Upon her return, her surgeon recommended an accommodation of limiting the frequency Complainant would have to get up from her chair and work standing. Three months later, when COVID hit, Complainant was furloughed but at the same time was advised by her employer to stay out until she was cleared by her doctor to be able to work without restrictions. A month later, Complainant was laid off. The case settled during mediation for \$100,000.
- Complainant alleged age discrimination based on his termination after 40 years of outstanding employment with the Respondent company as well as ageist comments referring to Complainant as the "old guy". Complainant, age 60 at the time, was then replaced by a younger employee in his early thirties. Complainant also took the position that Respondent's stated reason for his termination, based on a safety violation which resulted in injury to another employee, occurred while Complainant was on vacation. The matter was settled at conciliation for \$150,000 – \$50,000 of which was for emotional distress.

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 oversees the Full Commission review process, 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.

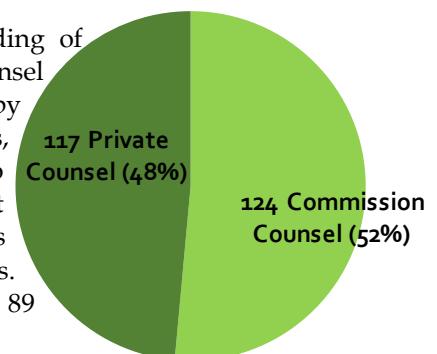
The Clerk's Office within the Legal Division consists of the Clerk of the Commission, Deputy Clerk/Records Access Officer, Hearings Clerk, Conciliation Clerk, and Appeals Clerk. The Clerk's Office in Boston is responsible for overseeing Commission public hearings and Full Commission filings, assignment of motions to Hearing Commissioners and Officers, issuing Commission decisions and responding to public inquiries. In fiscal year 2021, the Clerk's Office responded to 578 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 continued to be challenged by the Covid-19 pandemic. State offices remained closed throughout the fiscal year to stem the spread of the virus. With the assistance of technology support that continued from last fiscal year, personnel in the Legal Division performed most of their work on a remote basis. In order to maintain physical distancing requirements in the office, the Legal Division continued with a rotating schedule so that few employees were in the office at one time. The Legal Division once again participated this fiscal year in drafting investigative dispositions and in performing administrative functions otherwise performed by the Investigations Unit to address the backlog of complaints resulting from office closures. The Legal Division conducted depositions and attended court hearings on a remote basis, building on its learning from last fiscal year on conducting depositions and advocating in the courts via Zoom. It also conducted its meetings on a remote basis, through telephone conferences, Zoom and WebEx. Continuing from the previous fiscal year, the Legal Division endeavored to maintain the same level and volume of quality work, despite the challenges wrought by the COVID-19 pandemic. 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 241 cases with a Probable Cause (or Split Decision) determination in fiscal year 2021, the Legal Division was assigned to prosecute 124 new cases filed by pro se Complainants. Commission Counsel remained assigned to prosecute the caseload of 89 cases that existed as of June 30, 2020 (the end of fiscal year 2020).



Noteworthy Settlements by Commission Counsel

Commission Counsel resolved 78 discrimination cases through conciliation and negotiation, recovering \$1,410,800.00 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 2021 fiscal year, classified by the type of alleged discrimination.

Employment Cases

- Complainant alleges that his supervisor subjected him to unwelcome verbal comments of a sexual nature, sexualized physical contact, and obscene written notes. Respondent agreed to obtain MCAD-approved anti-discrimination training for all managers, the Human Resources Director, and the President. Complainant received \$25,000.00 as compensation. [Franklin County]
- In this case alleging discrimination on the basis of age, disability, and retaliation, Complainant, a Senior Manufacturing Engineer for a mobile robot developer, alleged that, after he required a medical leave to obtain and recover from hernia surgery, his employer failed to grant him an extension of time to complete tasks required to fulfill a Performance Improvement Plan (PIP) on which Complainant had been placed. The Commission found Probable Cause with regard to Complainant's retaliation and certain disability claims. The case settled for \$60,000.00 and fair employment training for Respondent's senior leadership in Massachusetts. [Middlesex County]
- In this sexual harassment case, Complainant, a truck driver, alleged that a coworker who was providing her with training repeatedly slapped her buttocks. After Complainant reported the sexual harassment to Respondent, Complainant alleges Respondent failed to take appropriate remedial action, that she received a negative performance review, and that she was suspended for three days. The case settled for \$30,000.00, an MCAD review of Respondent's sexual harassment policies, and confirmation that Respondent had recently completed sexual harassment training satisfactory to the Commission. [Worcester County]
- A manager employed by an international business consulting company for over a decade alleged that she had been subjected to disability discrimination. The employee had a strong employment history that was documented by merit raises and positive performance evaluations. She was then diagnosed with a disability, which required her to take a medical leave. After her medical leave, the employer issued her a poor performance evaluation, noting the "personal issues" which caused her to take an extended leave of absence. Subsequently, her employer encouraged her to resign and ultimately, terminated her employment. The case was resolved with a settlement of \$75,000.00, disability discrimination training for the supervisory employee who issued the poor performance evaluation and advanced disability training for Respondent's human resources representatives. [Norfolk County]
- An older, female employee alleged that her employer harassed her, retaliated against her and constructively discharged her based on her age and sex. The Complainant, who had been employed in a supervisory position for over 10 years at a global delivery and shipping business, alleged that she was subjected to a hostile work environment in which managerial employees made disparaging comments related to her age and gender. Complainant further alleged that the company failed to investigate or address her internal complaints of sexual harassment and gender discrimination, and those of other female employees. In addition, she asserted that the company demoted and constructively discharged her based on her age, sex and her internal complaints of discrimination. The

case was resolved for \$42,500.00 and an agreement by the Company to provide training for its human resources director on properly conducting internal investigations of discrimination. [Berkshire County]

- Complainant, who is deaf, worked as a storeroom helper for a global catering company. He alleged that the company discriminated against him based on his disability when his employer failed to provide American Sign Language interpreter services at critical meetings. In addition, he alleged that he was sexually harassed by his co-workers' lewd and sexual comments and conduct, targeted at him because of his disability, and that his employer failed to take prompt and effective remedial action to address this. This matter was resolved for \$21,000.00 and an agreement to provide management with training on accommodation and working with the deaf and hard of hearing. [Suffolk County]
- Complainant was employed as a management assistant for a university. After she was hired, Complainant disclosed her disabilities to her supervisor, seeking accommodation to her work schedule. Her supervisor referred her to a human resources representative and the Complainant met with HR to begin the process of obtaining an accommodation. She was terminated shortly after her meeting with the human resources officer, on the alleged basis that her work performance was substandard. Complainant alleged that the decision to terminate her was based on her disclosure of her disabilities and request for accommodation, and not on her work performance. This matter was settled for \$35,000.00. [Middlesex County]
- The Complainant, who was a public school teacher, filed two complaints at the MCAD. The first Complaint alleged that he had been subjected to race and color discrimination in the terms and conditions of his employment. The MCAD ultimately dismissed this claim for lack of probable cause. The second Complaint alleged retaliation and was found to have probable cause. After the Complainant filed the first charge of discrimination, he was issued the first poor work performance evaluation he had received in his teaching career. In addition, the school subjected him to harsher terms and conditions of employment and passed him over for opportunities within the school system. The retaliation claim was resolved for \$50,000.00. [Essex County].
- Complainant alleges that his supervisors and coworkers mocked him for having a disability that impacts his short-term memory and ability to focus, refused to provide Complainant with requested accommodations, and insulted him based on his national origin. After filing his claim with the Commission, Complainant asserts that Respondent refused to discuss a requested reduction in hours from full-time to part-time, which left him with no choice but to resign from his position. Respondent agreed to obtain MCAD-approved anti-discrimination training for all managers at the location at which Complainant worked and provided Complainant with \$5,000.00 as compensation. [Hampden County]
- Complainant alleges that he was denied the opportunity for advancement at Respondent due to his age and disabilities. After reporting his allegations of discrimination to Respondent, Complainant received a promotion. Shortly thereafter, in an emotionally charged moment, Complainant resigned from the position. Respondent refused to allow Complainant to rescind the resignation. Respondent agreed to obtain MCAD-approved anti-discrimination training for all Operations Managers and Site Managers in Massachusetts and provided Complainant with \$15,000.00 as compensation. [Hampden County]
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- Complainant, a certified nursing assistant, was placed at a worksite by an employment agency. Complainant alleges that a nurse with supervisory authority at the worksite targeted Complainant and other employees of color with derogatory comments and harsher discipline. After Complainant reported the discrimination, she was no longer subject to that nurse's supervision; however, the nurse continued to harass Complainant. While Respondent was investigating allegations against the nurse, Complainant was subject to further discriminatory comments by Respondent and felt she had no choice but to resign. Respondent agreed to obtain MCAD-approved anti-discrimination training for the Director of Human Resources and provided Complainant with \$18,800.00 as compensation. [Berkshire County]
- Complainant alleges that various coworkers and supervisors made unwelcome sexual comments and offensive racist comments to him throughout his employment. When Complainant sustained an injury at work that required emergency medical treatment, Respondent failed to return his calls after he was cleared to return to work and effectively terminated his employment. Respondent agreed to obtain MCAD-approved anti-discrimination training for all managers and provided Complainant with \$15,000.00 as compensation. [Hampden County]
- Complainant, who is Black and Latina, applied for a promotion to Assistant Director at Respondent. A white coworker with less experience was hired instead. Respondent asserts that Complainant was not promoted because she received corrective action letters; however, those warnings were not issued to Complainant until after she applied for the position, Complainant contends they were unwarranted, and the person who received the promotion had also received warnings within the prior year. Complainant also asserts that she received negative performance reviews after she declined to serve as a witness during the investigation of another employee's sexual harassment Complaint. Respondent agreed to obtain MCAD-approved anti-discrimination training for all managers and provided Complainant with \$20,000.00 as compensation. [Hampden County]
- Complainant is a practicing Muslim and believes in good faith that serving alcohol is a violation of Islamic law. Complainant was employed for several years as a server in a coffee café at an international hotel. When the hotel then restructured its services, and began providing café services that included the service of alcohol, the hotel re-hired many of the employees who had formerly worked as coffee servers. The Complainant, who was an excellent employee, sought a religious accommodation to work in the café without handling alcohol. The hotel denied the accommodation, and despite her experience and work record, failed to hire Complainant in any capacity at any of the hotels that it operated in the area. The Complainant alleged that the hotel discriminated against her based on her religion. The matter was resolved for \$40,000.00. [Suffolk County]
- Complainant, who applied for a teaching position with a Public School, alleges that Respondent refused to hire her because she made requests for accommodations due to her disabilities during the interview and during her tenure as a teacher a few years prior. Respondent contends that Complainant did not make any accommodation requests during the interview and provided misinformation to Respondent in her application in an attempt to hide the fact that Respondent chose not to renew her position as a teacher previously. Respondent agreed to provide Complainant with \$5,000.00 as compensation. [Franklin County]
- Complainant alleges that he was subject to verbal sexual harassment and derogatory comments about his perceived sexual orientation by a coworker on a regular basis. After Complainant reported the conduct, the harassment continued and was augmented by

comments from a supervisor and other employees. Complainant again reported the conduct to Respondent. Complainant was then terminated for allegedly threatening the employee who initiated the sexual harassment. Complainant admits that he spoke with the coworker but denies any threatening conduct. Respondent agreed to obtain MCAD-approved anti-discrimination training for all managers and provided Complainant with \$15,000.00 as compensation. [Hampden County]

- Complainant, a Black male, alleged that he fainted at work and left to seek medical attention with his supervisor's approval. Complainant provided a doctor's note stating that he could not return to work as he was being treated for a neurological issue that may have caused the fainting. Complainant alleges that his supervisor allowed his medical leave of absence and then Respondent abruptly terminated him without warning for failure to appear for work. Complainant alleges white employees were allowed to return to work after medical leaves of absence. Respondent agreed to obtain MCAD-approved anti-discrimination training for all managers and provided Complainant with \$15,000.00 as compensation. [Hampden County]
- Complainant, who has dyslexia, alleges that he requested numerous accommodations for his disability throughout his employment. Complainant's supervisor denied his accommodation requests, chastised him for spelling errors, and required him to hand write certain documents, which she knew or should have known was difficult for him due to his disability. Respondent agreed to obtain MCAD-approved anti-discrimination training for all agency Field Operation Team Leaders, all managers in the Western region, and a Human Resources employee. Complainant also received \$13,000.00 as compensation. [Berkshire County]
- In this employment discrimination case, Complainant was a Bus Monitor for Respondent's transportation services. As a Bus Monitor, Complainant did not operate the vehicles. As Respondent was aware, Complainant relied on medicinal marijuana to relieve the diabetic nerve pain in his legs, which was a debilitating condition. Complainant never used nor was under the influence of marijuana while on duty. Despite having informally accommodated Complainant, Respondent nevertheless terminated him after testing positive for marijuana following a random drug test. Respondent further ignored Complainant's requests for a formal accommodation. To resolve the matter, Respondent agreed to pay the Complainant \$55,000.00 for emotional distress and to training provided by the Commission. [Worcester County]
- In this case, alleging discrimination based on gender identity, criminal record, and retaliation, the Commission issued a Finding of Probable Cause with regard to Complainant's allegations of retaliation. Complainant, a Baker at a coffee and donut shop, alleged that, after he complained to his employer about alleged harassment and disparate treatment related to his job duties, his employer made a statement indicating retaliatory animus towards Complainant, and terminated his employment. The case settled for \$7,500.00, and fair employment training for Respondent's Human Resources Director and one manager. [Barnstable County]
- A male employee whose wife had just given birth to twins sought and took parental leave from his employer. After initially being told he was entitled to only one week of leave, the man complained that he had confirmed his rights with this Commission and that he was entitled to the same amount of leave as female employees. His employer relented and granted him the proper amount of leave. However, upon his return, the employer terminated his employment purportedly on the basis of poor job performance. The matter was resolved with the employer agreeing to pay the man \$40,000.00. [Middlesex County]
- In this disability case, a man took a full-time job working as a "floater" five days per week. After several weeks on the job, a pre-existing orthopedic condition flared necessitating him to take time off from work to attend myriad medical appointments. The man sought a reasonable

accommodation in the form of working only a part-time schedule instead of a full-time schedule. The employer refused, alleging that to do so would be an undue burden. Instead, the employer offered the employee a six-month, unpaid leave of absence. The matter settled for \$10,000.00. [Suffolk County]

- A female corrections officer with years of favorable performance reviews was removed from an advantageous position and replaced by a male corrections officer with lesser credentials. The change in assignments meant a less-favorable work schedule. After pointing out the discriminatory treatment, the employer retaliated by giving Complainant less-favorable work assignments for a period of approximately 3 years, although no lost wages or other benefits. The matter settled for \$18,000.00 paid to the Complainant. [Plymouth County]
- A Black employee who worked for the same company for years during which she furthered her own education and professional credentials was nevertheless repeatedly denied promotions in favor of less-qualified, non-Black candidates, many of whom were trained by the Complainant. The matter settled for \$40,000.00 paid to Complainant and training for key managers at the company. [Middlesex County]
- A Black male employee who ended a dating relationship with a white, female co-worker complained to their employer after the woman maligned him to coworkers and managers; gave him dirty looks in front of other coworkers, and sent him a series of unwelcomed, racially offensive text messages. The employer did not investigate. Weeks later, upon similar complaints by his ex-girlfriend, the employer investigated, terminating the male employee. The matter settled for \$30,000.00 paid to the male employee. [Suffolk County]
- A disabled supervisor of an advocacy organization alleged that she was denied workplace accommodations that permitted her to perform her job. The employee, who was still working at the advocacy organization at the time of settlement, resolved the case with a \$6,000.00 settlement reflecting emotional distress damages, an agreement to fully implement a written accommodation plan, and disability training for all management and supporting staff. [Norfolk County]
- An individual with depression and anxiety applied for and was offered a position working as a cadet for Respondent university police force. The Complainant alleged that he was discriminated against because of his disabilities, when his employment was abruptly withdrawn after he was briefly hospitalized for depression and anxiety. Rather than conducting an individualized assessment of the Complainant's ability to perform the essential functions of the job, the university police department withdrew the offer based on its awareness of the Complainant's hospitalization. The university agreed to resolve the claim for \$12,500.00 and to pay for and provide for two trainings: (1) advanced training for the university's human resources department on providing reasonable accommodations to university employees; and (2) training on providing accommodations for individual at the police department who withdrew the employment offer. [Middlesex County]
- Complainant, who was seventy-eight (78) years old at the time of her termination, had worked for a municipality for more than twenty (20) years. She received positive feedback during her employment and had never received a verbal warning, written performance warning or negative performance evaluation. The City laid her off along with seven other individuals over the age of sixty (60), and retained two individuals in the same position as Complainant, who were significantly younger and less experienced than the Complainant. Complainant alleged that her selection for the lay-off was based on her age. The case was resolved for \$35,000.00. [Plymouth County]

- The Complainant worked for an international company that provides services including food services. She alleged that her co-workers harassed her based on her race (Black) and national origin (Dominical Republic). She complained to the general manager who failed to remediate the harassment. When the company failed to take action after several internal complaints, the Complainant resigned, submitting a resignation letter, which described the disrespectful work environment, unacceptable language, and bullying to which she had been subject. The case was settled for \$30,000.00. [Suffolk County]
- Complainant worked as a teacher at a regional school for aestheticians where she received positive feedback from her students and supervisors. She alleged that an officer of the company harassed her based on her race (African American) and gender. Complainant submitted a written internal Complaint of harassment, detailing the comments made by the officer of the company. She was terminated from her employment thereafter, allegedly due to insubordination. Complainant alleged that she was terminated based on her race, gender and in retaliation for her internal complaints of harassment. The matter was settled for \$17,500.00. [Suffolk County]
- In this employment discrimination and retaliation case, Complainant, an African American female, worked as a warehouse employee/driver for Respondent, and was the only woman of color working in that role. Complainant alleged a hostile work environment based on her sex, race and color, that Respondent unlawfully retaliated against her when she complained about the same, and then constructively discharged her employment when, in addition to the above, it failed to include her in a unit-wide pay raise. Complainant also alleged that she reported this conduct to the Owner who failed to take effective remedial action. To resolve the matter, Respondent agreed to pay the Complainant \$15,000.00 in damages and to training offered by the Commission. [Worcester County]
- In this employment discrimination case, Complainant alleged Respondent harassed and then terminated her because she is transgendered. To resolve the matter, Respondent agreed to training provided by the Commission and to pay Complainant \$10,000.00 for emotional distress damages. [Worcester County]
- In this employment discrimination Complaint (disability), Complainant, who had been on an approved extended medical leave, requested additional leave. Respondent refused to consider the request without engaging in an interactive dialogue and terminated her employment. To resolve the matter, Respondent agreed to pay \$20,000.00 in emotional distress damages to Complainant and to Commission-sponsored training. [Norfolk County]
- In this employment discrimination Complaint, Complainant alleged a part owner of the restaurant made frequent and unwelcome sexual comments and innuendo. The part owner also made derogatory remarks about Complainant's Brazilian national origin. Complainant resigned following an argument she had with the part owner over a cup of coffee she brought to work bearing the corporate logo of a competitor. The other part owners were not aware of the harassment, and Complainant did not report it until after her employment ended. Shortly after the MCAD Complaint was filed, the harassing part owner disclaimed all financial interests in the restaurant, and left the country. The remaining witnesses would not corroborate Complainant's claims. To resolve the matter, Respondent agreed to attend training provided by the Commission. [Worcester County]
- In this Complaint (retaliation), the Commission issued Split Decision crediting Complainant's allegation of retaliation only. Complainant claimed Respondent retaliated against her for reporting an alleged instance of discrimination. Respondent had effectively

demoted Complainant thus effectively denying her opportunities for promotion. The Respondent agreed to pay a total of \$15,000.00 in compensation for emotional distress damages. Respondent also agreed to adjust Complainant's personnel records and to training provided by the Commission. [Worcester County]

- The Complainant, a sales professional, alleged that she was discriminated against based on her gender and disability. The Complainant alleged that because of the stress created by the alleged misogynistic treatment she received from her supervisor, she contemplated a leave of absence to address an underlying condition. The Complainant alleged that after her employer learned of her possible leave of absence, they manufactured a reason to terminate her employment. The matter settled for \$35,000.00 and a review of the training offered by the organization. [Essex County]
- A deaf food service worker alleged her employer engaged in disability discrimination when its failure to provide her the accommodation of an ASL interpreter hindered her ability to receive the training necessary to perform all the functions of her position. The lack of an ASL interpreter prevented the Complainant from full participation in the workplace, denying her the opportunity to interact with customers, and relegated her to working primarily in the kitchen. The matter was resolved with an agreement on both a national and statewide accommodation policy and \$ 11,500.00 in compensation. [Middlesex County]
- Complainant, an administrative employee in the building trades industry, filed a Complaint with this Commission alleging discrimination based on disability, retaliation, and individual interference with protected rights. The Complainant alleged that she was a good employee who received considerable merit increases and external travel/training opportunities. After being diagnosed with stress-related panic attacks, the Complainant was given a course of medical treatment. After informing her employer of her diagnosis and informing her supervisor of the need for intermittent leave, the Complainant was instructed to take the week off. The employer then used the Complainant's time away from the office to change the locks on the doors and prepare a severance agreement. One week later, the Complainant's employment was terminated. In resolving the matter, the employer agreed to training and \$35 000.00 in compensation. [Middlesex County]
- Complainant alleged that he was subjected to disability discrimination and retaliation by his employer when he was terminated after he went out on a temporary medical leave due to a work related back injury. Complainant alleged that he suffered a back injury at work and went out on a three-month paid medical leave for which he claimed workers' compensation, however, when he attempted to return to work with a note from his doctor clearing him to return to full duties, Respondent terminated his employment, citing alleged misconduct that preceded his medical leave. Respondent agreed to resolve the matter for a payment of \$11,500.00 to Complainant and its supervisors' participation in an MCAD anti-discrimination training. [Plymouth County]
- Complainant alleged that she was subjected to discrimination based on her disability (Carpal Tunnel Syndrome) when her employer refused to act on her multiple requests for an ergonomic computer mouse, which she needed to manage chronic pain arising from a prior wrist injury and carpal tunnel syndrome. Complainant alleged that although she followed up with a number of supervisors and made multiple requests, Respondent failed to engage in an interactive dialogue with her as required and did not approve the accommodation that she requested in the six months prior to her resignation. Respondent agreed to pay Complainant \$6,000.00 and to participation in anti-discrimination training with an MCAD-certified trainer. [Suffolk County]

Housing Cases

- In a case alleging discrimination in housing based on familial status/children, Complainant, who had a 15-year-old daughter, contacted the property manager of a rental property regarding rental of a one-bedroom unit. Complainant alleged that the property manager refused to rent her the apartment, telling Complainant he could not rent to her because the apartment was a one-bedroom unit, and that her daughter would need to have her own bedroom. The case settled for \$4,500.00, and fair housing training for the Respondents. [Suffolk County]
- In a case alleging discrimination in housing based on public assistance, Complainants, longtime residents of a rental property, began receiving a Section 8 housing voucher administered by a local housing authority. Thereafter, a new owner purchased the property. Complainants alleged that the new owner sent out notices of a rental increase and permitted at least one non-Section 8 voucher holder the opportunity to negotiate their rents. However, believing that the housing authority would not permit an increase in the rental amount, Respondent failed to allow Complainants the opportunity to discuss a potential rent increase with their housing authority, which might have allowed Complainants to remain at the property. The claim settled for \$5,000.00, and the adoption of a fair housing policy by Respondent. [Middlesex County]
- A woman and her adult daughter, both disabled, entered an emergency shelter with their service dog. At the time they became residents, they applied for a reasonable accommodation to the “no pets” policy so that they could keep their service animal, who was trained to, among other things, detect epileptic seizures. Respondents forced the family to remove the service animal from the shelter pending review of their request for the reasonable accommodation. After thirty days, and after filing a Complaint with HUD, Respondents allowed the service animal to be reunited with the family but still had not formally approved the reasonable accommodation request. The matter settled for \$3,000.00 paid to the family and training for the Respondents. [Middlesex County]
- A disabled woman searching for an apartment in a competitive rental market was denied the apartment of her choosing because of her three emotional support animals even though the landlord had been warned that his refusal to enter into an interactive dialogue with the would-be renter was discriminatory. The matter settled for \$7,000.00 paid to the woman and training for the landlord. [Middlesex County]
- A female resident of a large apartment complex needed work done in her apartment. The apartment’s maintenance workers were dispatched to the woman’s apartment. During the course of making repairs, the maintenance workers leered at the woman and made a series of unwelcome, suggestive sexual comments to the woman. The matter settled for \$3,000.00 and training for the apartment managers. [Middlesex County]
- A Section 8 recipient responded to a landlord’s advertisement seeking a tenant for a vacant unit. In inquiring about the prospective tenant’s public assistance, the landlord expressed a preference to work with one subsidy-provider more than another before denying the prospective tenant’s application. The case settled for \$4,000.00 and training for the landlord. [Norfolk County]
- A tenant with a child under the age of six sought confirmation from her landlord that the rental unit in which the family was residing was deledaded. The landlord evicted the tenant after sending her numerous text messages assuring her that the unit was deledaded when, in fact, it was not. The landlord agreed to undergo training, and to dismiss the housing court case against the tenant, noting that that judgment entered therein was satisfied, in exchange for the tenant dismissing the MCAD matter. [Suffolk County]

- In this housing discrimination (disability) and retaliation case, Complainant, who is visually impaired, is a tenant of a condominium complex, which is managed by a Property Management company. Because of her visual impairment, Complainant required additional lighting in order to access her unit. Respondents had broken an overhead light and failed to replace it. Respondents also fined Complainant for installing an additional motion sensor light because it violated the condominium's rules. When Complainant notified Respondents of her vision impairment, and asked Respondents to accommodate her requests for lighting, Respondents refused to engage in an interactive dialogue. In addition, Respondents treated Complainant disparately regarding the use of visitor parking spaces. To resolve this matter, Respondents agreed to training offered by the Commission and to develop policies concerning reasonable accommodations to tenants, and a policy to assure equal access to the visitor parking spaces. Respondents also agreed to reimburse Complainant for the cost of installing an overhead light, and to accommodate Complainant's need for additional motion sensor lights. Respondents also agreed to pay the Complainant \$7,500.00 in emotional distress damages and waive all fines associated with Complainant's installation of the motion sensor light. [Worcester County]
- In this housing disability discrimination case, a female who suffered from a heart ailment, was a tenant of a condominium complex, which was managed by a Property Management company. The female tenant, whose condition limited her ability to walk long distances, sought a designated parking spot closer to the main entrance of the building as an accommodation. Respondent unreasonably denied her accommodation request. While the matter was in discovery, the female tenant died and her estate was substituted as a party despite Respondent's motion to close the matter. To resolve this matter, Respondents agreed to Commission-sponsored training, and to implement a Reasonable Accommodation Policy. Respondents also agreed to pay the female tenant's estate \$15,000.00 in emotional distress damages. [Worcester County]
- Complainant alleged that she was subjected to discrimination and discriminatory statements based on her receipt of public assistance after she inquired about renting an available apartment and informed Respondent's agent that she would be paying for the rental in part using a Section 8 Voucher. Complainant alleged that Respondent's agent subsequently informed her that Respondents "do not participate in any government programs," ceased communicating with her, and did not allow her to view the apartment. Respondents agreed to resolve the matter for a payment of \$5,000.00 to Complainant and participation in an MCAD anti-discrimination training. [Norfolk County]
- Complainants, a married couple, alleged that they were subjected to discrimination based on familial status (children), discriminatory statements, and the Commonwealth's Lead Paint Law when they engaged in a series of communications with Respondent's real estate agent, seeking to view an advertised apartment. Complainants alleged that upon learning that they were expecting a child, the agent made discriminatory statements regarding the likely presence of lead paint on the premises in order to dissuade them from pursuing the rental of the property. The agent ultimately refused to let them view the apartment, based on their intention to reside in the property with a child under the age of six (6) years old. Respondents agreed to resolve the matter for a payment of \$6,500.00 to Complainants and participation in an MCAD anti-discrimination training. [Middlesex County]
- Complainant alleged that her landlord subjected her to discrimination based on her disabilities, which included anxiety, depression, and fibromyalgia. Complainant alleged that on multiple occasions, she requested reasonable accommodations from Respondent, namely, that Respondent allow her to reside on the premises with her emotional support dog and that Respondent allow her to park in the driveway as she did with others who

rented from her on short-term basis. Despite Complainant providing letters from her medical providers confirming her need for the accommodations, Respondent refused to grant the requested accommodations. Complainant also alleged that Respondent harassed her subsequent to her requests for reasonable accommodation. Respondent agreed to resolve the matter for a payment of \$3,500.00 to Complainant and participation in an MCAD anti-discrimination training. [Suffolk County]

- Complainant alleged that she was subjected to discrimination based on familial status (children), after she viewed an available apartment with the property management company's agent. When the agent learned that she intended to reside at the subject property with her minor child, he replied, "the walls are very thin." Complainant alleges that when she subsequently inquired about applying to rent the subject property, she was denied the opportunity to submit an application by another one of the management company's agents without explanation. Respondents agreed to resolve the matter for a payment of \$4,500.00 to Complainant and the agents' participation in an MCAD anti-discrimination training. [Plymouth County]
- Complainant alleged that she was subjected to discrimination based on her disabilities (anxiety, Post Traumatic Stress Disorder, ADHD), and retaliation. Complainant alleged that she secured the rental of an apartment unit offered by Respondents and furnished Respondents with a security deposit. Complainant alleged that after she informed Respondents that she planned to reside in the unit with her service dog, which she needed to alert her to panic attacks, Respondents attempted to charge her a pet deposit in violation of the law. Complainant alleged that when she replied to Respondents that such a deposit would be illegal, Respondents refused to rent the apartment to her. Respondents agreed to resolve the matter for a payment to Complainant of \$6,000.00 and to participation in MCAD anti-discrimination training. [Middlesex County]
- 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]

Public Accommodations Cases

- While dining at a restaurant together, three African American women allege that they were singled out by the owner and verbally accosted before being told to leave the restaurant. Complainants allege that they, along with white customers, were complaining about the temperature at the restaurant; however, the owner only took issue with them. Respondents dispute the allegations. Respondents agreed to provide each Complainant with \$8,000.00 and to obtain MCAD-approved anti-discrimination training for the owner of the Respondent restaurant if the training the restaurant previously undertook was found to be insufficient under the Commission's criteria. [Dukes County]
- While visiting a casino with her friends, Complainant, a Black woman, contends that she alone was told by security that her outfit was too revealing while her white friend, who was similarly dressed, was not addressed. Upon reentering the casino after a change of outfit, Complainant alleges that the security officer continued to follow Complainant in an intimidating manner and eventually escorted Complainant from the casino. Respondent asserts that only Complainant was wearing an entirely transparent shirt and that security acted appropriately following a confrontation with Complainant. Respondent agreed to obtain MCAD-approved anti-discrimination training for all security staff managers and provided Complainant with \$5,000.00 as compensation. [Hampden County]
- A disabled woman went to a local restaurant with her service animal. Seeing the dog, the workers told the woman to leave without serving her. The matter resolved with the restaurant making a \$1,000.00 charitable contribution to a charity of the woman's choosing. [Suffolk County]

- A Rhode Island woman who identifies as Hispanic went into a Massachusetts discount store to purchase cigarettes. When she was asked to produce her driver's license, she did so, only to be told by the store clerk that the Massachusetts store did not accept "foreign" licenses. The matter settled for \$5,000.00 paid to the woman plus anti-discrimination training for the store's management. [Norfolk County]
- A Muslim, female patron wearing a hijab while attempting to summons assistance at an automated check-out counter of a national grocery store chain was ignored by a store employee who willingly assisted other patrons who were not wearing religious attire. The employee denied ignoring the patron but, when confronted by video footage, admitted that she knowingly ignored the Muslim patron. The case settled when the grocery store made a \$15,000.00 donation to a local religious charity and agreed to get training for the store's management. [Suffolk County]

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 2021, Commission Counsel were assigned fifteen new Superior Court cases to defend. The Legal Division and Commission Counsel remained responsible during fiscal year 2021 for twenty-four cases which were pending as of June 30, 2020. The following report describes some of the activity in cases against the Commission being defended in the Massachusetts Superior Courts.

International Longshoreman's Association v. MCAD et. al., Bristol County Superior Court Civil Action No. 2073CV00475. This 30A action is pending in Bristol County Superior Court. The MCAD obtained an attachment in the amount of \$190,000.00 on land owned by the Respondent, International Longshoremen's Association. The attachment was obtained to secure the MCAD's underlying award of \$50,000.00 with 12% statutory interest running from the date of the filing owed to the Complainant, a \$10,000.00 civil penalty owed to the Commonwealth and affirmative relief ordered by the Commission.

John Loewy v. MCAD and Ariad Pharmaceuticals, Inc., Suffolk County Superior Court Civil Action No. 2084CV01550E. In September of 2020, Complainant/Plaintiff appealed the MCAD Full Commission decision in favor of Respondent to the Superior Court in accordance with G.L. c. 30A. Plaintiff's argument on appeal is that the Hearing Officer's findings are arbitrary, capricious, and based on a substantial error of law. Specifically, Complainant alleges that the Commission erred by failing to find proximate cause to establish his claim of retaliation as the Commission disregarded the temporal proximity between the alleged protected activity and adverse action, failed to properly evaluate his Cat's Paw theory of liability, and did not make any finding as to the underlying claim of discrimination that gave rise to Complainant's protected activity. The agency administrative record and the Motion for Judgment on the Pleadings, with Cross Motions, was filed with the Superior Court.

Meriem Arachiche v. Swampscott Public Schools, Jason Greene, Suffolk Superior Court Civil Action No. 1984CV03931. In this Complaint, Arachiche ("Plaintiff") sought judicial review and a declaratory judgment concerning the Commission's investigatory dismissal of Plaintiff's MCAD Complaint. A hearing was held on the Commission's Motion to Dismiss on September 22, 2020. In allowing the Commission's Motion, the Superior Court held that Plaintiff lacked standing and otherwise failed to present an actual case or controversy for declaratory judgment purposes, and otherwise affirmed the basic principle that there is no right of judicial review of an MCAD investigative determination.

Aspen Dental Management v. MCAD & Babu, Suffolk Superior Court, Civil Action No. 2084CV01735-D. In this Complaint and Motion for Judgment on the Pleadings, Aspen Dental sought review of a Full Commission decision in favor of Ms. Babu under G.L. c. 30A. In its Complaint, Aspen Dental challenged several factual findings reached by the Hearing Officer, and raised several legal issues, including whether the Hearing Officer properly evaluated comparator evidence, reached her decision based on “reverse cat’s paw theory,” and demonstrated a bias against Respondent when she resolved most credibility determinations against its witnesses. The Commission and Babu responded with their own Cross Motions for Judgment on the Pleadings and a hearing was held on May 24, 2021. The parties await a decision by the Court.

Gerard D. Grandoit v. MCAD & American Health and Life Insurance Company, Suffolk Superior Court, Civil Action No. 2084CV01862. Pro se Plaintiff Gerard D. Grandoit sought judicial review of the Commission’s Investigatory Disposition dismissing his Complaint for lack of probable cause under c. 30A and the certiorari statute. On December 3, 2020, the Superior Court allowed the Commission’s dispositive motion to dismiss on grounds familiar to Plaintiff: that the court lacks jurisdiction to review an investigatory disposition under G.L. c. 30A or via a writ of certiorari. See *Grandoit v. MCAD*, 95 Mass. App. Ct. 603 (2019)..

Gerard Grandoit v. MCAD and Amica General, Suffolk Superior Court, Civil Action No. 21840482-A. Pro se Plaintiff Gerard D. Grandoit sought judicial review of the Commission’s Investigatory Disposition dismissing his Complaint for lack of probable cause under c. 30A and the certiorari statute. On June 15, 2021, the Superior Court granted the Commission’s Motion to Consolidate this matter with *Gerard D. Grandoit v. MCAD & New York Fried Chicken*, 2184CV00483-G; *Gerard D. Grandoit v. MCAD & John J. Needham Appraisal Bureau*, 2184CV00514-F; *Gerard D. Grandoit v. MCAD & Lancer Compliance Services, Inc.*, 2184CV00515-B; *Gerard D. Grandoit v. MCAD & All Write Transcription and Reporting, Inc. & Marsha Johnson*, 2184CV00516-D; *Gerard D. Grandoit v. MCAD & Cambridge Honda*, 2184CV00517-A; *Gerard D. Grandoit v. MCAD & Shields Care Group, Inc.*, 2184CV00519-C. Accordingly, also on June 15, 2021, the Commission served Plaintiff with a dispositive motion to dismiss and a motion for sanctions as a vexatious litigant.

Serge Toussaint v. MCAD, Suffolk County Superior Court Civil Action No. 2084CV00500-H. The Commission issued an LOPC determination in this employment discrimination matter. Complainant appealed the LOPC determination during a preliminary hearing before the MCAD. The MCAD affirmed the LOPC and the Complainant sought relief in Superior Court. The Complainant filed a Complaint with the Court arguing that he is entitled to relief pursuant to G.L. c. 30A. The MCAD filed a Motion to Dismiss in the matter, which was granted. Complainant did not appeal the Court’s Order granting the Commission’s Motion.

City of Worcester v. MCAD & Tatum, Harris, Worcester County Superior Court 1585CV01263, 1185CV02497, 1185CM02500. The two underlying MCAD matters, originally filed in 1994, involve the failure to promote two Black police officers to sergeant positions because of their race and color. Considered under both disparate impact and disparate treatment theories of discrimination, the Commission concluded that, based on the facts presented in these cases, the City’s policy of awarding promotions based strictly on a candidate’s rank order on the civil service list violated M.G.L. c. 151B. In March 2020, following a lengthy, complicated history that included multiple substantive and procedural reviews by the Commission and the Courts, the Superior Court considered the matter in accord with the standard of review articulated in M.G.L. c. 30A. In January 2021, the Superior Court issued its opinion affirming the appealed Commission decisions. The Court concluded that the City presented no meaningful evidence that the City’s promotional practice was job-related and consistent with business necessity. The Court further affirmed the Commission’s conclusion that the determinative cause of the

City's decision to forego application of alternative selective services promotional tools was impermissible racial bias. In February 2021, the City of Worcester filed a notice of appeal. The parties are currently exploring alternative avenues of resolution.

Lacroix v. MCAD, Norfolk Superior Court Civil Action No. 1982CV01605. In December 2019, the pro se plaintiff initiated a Complaint in Superior Court, seeking judicial review of the Full Commission Order upholding the Commission's decision to dismiss 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. Following briefing and argument, the Court took the matter under advisement.

Eslinger v. MassDOT and MCAD, Barnstable Superior Court Civil Action No. 2072CV00282. In July 2020, the pro se plaintiff instituted a 30A action seeking judicial review of the Commission's final decision dismissing her Complaint of gender discrimination. Plaintiff's MCAD Complaint concerned the elimination of her position during the consolidation of the State's transportation authorities under the Transportation Reform Act of 2009. In May 2021, the Court issued its decision in accord with M.G.L. c. 30A, affirming, in its entirety, the Commission's dismissal of the underlying Complaint. The plaintiff has noticed an appeal. The matter currently awaits the assembly of the docket.

Sea View Retreat, Inc. et. al. v. Michelle A. Falzone, MCAD, Essex County Superior Court Civil Action No. 1977CV00121. After a Hearing Officer's decision that Respondents retaliated against Complainant by terminating her employment after she made an internal report of sexual harassment, and her award of emotional distress damages and lost wages to the Complainant, the Full Commission affirmed the Hearing Officer's decision and awarded attorney's fees and costs. Sea View filed this appeal challenging the Commission's conclusions and awards of damages and attorney's fees and costs. The Commission filed an administrative record with the Court. After the Commission filed a Motion to Dismiss for Failure to Timely Appeal and Sea View opposed it, the Court held a Rule 12 Hearing and Conference to Review Status on April 8, 2021. On June 25, 2021, the Court denied the Commission's Motion to Dismiss. The Commission anticipates that next steps will include responding to a Motion for Judgment on the Pleadings to be filed by Sea View.

Tufts Medical Center v. MCAD, Marie Lunie Dalexis, Suffolk County Civil Action No. 2084CV00156. The Commission found that Respondent discriminated against Complainant on the basis of disability and constructively discharged her, and awarded Complainant back pay, emotional distress damages, and attorney's fees. Tufts appealed the decision to Superior Court. Subsequent to filing of the administrative record and of briefs, the Superior Court held oral argument on January 25, 2021. The Court issued an Order and Decision in favor of MCAD on February 17, 2021. Tufts filed its Notice of Appeal with the Appeals Court.

Wingate Healthcare, Inc. v. MCAD, Cecilia Carta, Norfolk Superior Court Civil Action No. 2082CV00727. After a Commission determination that Respondent discriminated against Complainant on the basis of disability, in which the Commission awarded emotional distress damages, attorney's fees and costs, and directed that certain personnel of Respondent receive anti-discrimination training, Respondent appealed the decision to Superior Court. The Commission filed the administrative record of the proceedings with the Court on January 27, 2021. Wingate's Motion for Judgment on the Pleadings, the Commission's Opposition and Cross Motion, and Carta's Opposition were filed with the Court on June 2, 2021.

CSX Transportation v. MCAD, Peter Joyce, Suffolk Superior Court Civil Action No. 2084CV02562. After the Commission found Respondent liable for discrimination on the basis of handicap, utilizing the "cat's paw" theory of liability, and awarded damages for back pay, emotional distress, and attorney's fees, Respondent appealed the Commission's decision to Superior Court. The Commission filed the administrative record on February 10, 2021. After

Respondent's Motion for Judgment on the Pleadings and the Commission's Opposition and Cross Motion were filed, the Court set oral argument for October 2021.

Melissa Poirier v. MCAD, Worcester County Superior Court Civil Action No. 1985CV00676, Appeals Court No. 2020-P-0321. Complainant, whose discrimination claim on the basis of sex was dismissed at MCAD for Lack of Probable Cause after investigation, filed an appeal in Superior Court, alleging that the Commission is responsible on various grounds for her failure to file a timely court action against her former employer. After the Superior Court dismissed the claim, Poirier filed a Notice of Appeal in the Appeals Court and a Motion in the Superior Court which the Appeals Court deemed a Motion for Reconsideration. The Appeals Court stayed its proceedings pending resolution of the Superior Court matter.

Gabriel Care, LLC v. MCAD & Chani Dupuis, Bristol County Superior Court Civil Action No. 1973CV01186-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. Oral argument occurred in January 2021 and judgment entered in favor of the MCAD on March 23, 2021.

Rigauert Aime v. MCAD and Department of Corrections, Suffolk Superior Court Civil Action No. 2184CV00353. In February 2021, Complainant/plaintiff appealed the MCAD Full Commission decision in favor of Respondent to the Superior Court, in accord with G.L. c. 30A. Plaintiff's argument on appeal is that the agency's determination that Respondent was not liable for retaliation is an error of law. The agency administrative record was filed with the Court on May 17, 2021. Plaintiff requested, and was allowed, until July 19, 2021 to serve his Motion for Judgment on the Pleadings.

City of Boston v. MCAD & Drigo, Suffolk Superior Court Civil Action No. 2084CV01634. In July 2020, Complainant/plaintiff filed a limited appeal of 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 Court should vacate the MCAD assessment of pre-judgment and post-judgment interest assessed against the City of Boston. The matter resolved while on appeal.

Massachusetts Appeals Court Activity

In 15 LaGrange Street, Corp. v. MCAD et. al., 99 Mass. App. Ct. 563 (2021), the Appeals Court affirmed the MCAD's finding that 15 LaGrange Street (The Glass Slipper), an adult entertainment venue, created a racially hostile work environment for its African American employee, Derrick Sims, who worked as a bouncer. The Court affirmed the MCAD's conclusion that The Glass Slipper subjected Mr. Sims to a racially hostile work environment based on the following facts: one of the owners of The Glass Slipper, Nicholas Romano, refused to acknowledge Sims while greeting the non-Black bouncers by name, stationed Sims outside when he was assigned to work inside, told a white bouncer that he did not want "colored people" using the newer walkie-talkies, limited the number of Black dancers who could work the night shift, and referred to the dancers with racial terms such as "Black bitches" and "n---s." With regard to the MCAD's determination that The Glass Slipper terminated Mr. Sims based on race, however, the Court overturned this ruling based on its conclusion that the employer was not on notice of this claim.

The Court found that the Complaint itself did not put Respondent on fair notice of the racially discriminatory termination claim, that Sims' deposition testimony that race "could have factored into" the termination was not sufficient to put Respondent on notice and that Sims' counsel's statement at the start of the public hearing that "race played some role in the decision to terminate" which she subsequently clarified by stating that there were two claims, a hostile work environment based on race up until the term of termination and termination based on retaliation, did not constitute fair notice. Moreover, the Court determined that after Respondent sought clarification of the claims certified to public hearing, the Commission should have held a certification conference to determine whether to amend the certification Complaint to include allegations of discriminatory termination. The Court stated that the Commission's waiver of the certification conference was generally permissible and within its authority, but held that in this case, where there was a request for clarification of the certified claims, a certification conference and/or certification order clarifying the issues was necessary to protect the substantial rights of the parties.

The Court further held in a revised decision that the Commission has the authority to amend after public hearing provided that the parties are provided sufficient notice and opportunity to be heard. The Appeals Court's original decision cited G. L. c. 30A, § 11 for the proposition that the MCAD's "contention that it had the authority to amend the certification after the presentation of evidence cannot be squared with the requirements of due process and the act." The MCAD filed a Motion for Reconsideration and Modification asking that the Court reconsider and clarify that the MCAD retains its ability to amend to conform to the evidence after the hearing, provided that it gives the parties proper notice and opportunity to answer through the presentation of evidence and argument. The Commission noted that the MCAD's regulations permit its hearing officers to amend sua sponte at any time in the proceedings, including after the public hearing "to conform to the evidence adduced at hearing." 804 CMR §1.04(8)-(10) (2020). On June 18, 2021, the Appeals Court allowed the MCAD's Motion in part, issuing a revised decision that inserted the following italicized language "[t]he commission's contention that it had the authority to amend the certified issues after the presentation of evidence without notice and an opportunity to be heard cannot be squared with the requirements of due process and the act." The revised decision makes clear that the Commission retains its right to amend after public hearing provided that notice and opportunity to be heard are offered to the parties. This is consistent with the MCAD's regulations and statutory authority to amend after hearing.

Federal Square Properties, Inc. and Pacific Land, L.L.C. v. MCAD, et al., Appeals Court 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. On appeal, the plaintiffs challenged the assessment of civil penalties and interest. The plaintiffs also appealed the award of emotional distress damages, despite the failure to preserve the issue before the Full Commission. In March 2021, the Appeals Court issued a memorandum and order pursuant to Rule 23, finding in favor of the defendants-appellees on liability and damages. The Court also dismissed the plaintiff's unpreserved challenge to the award of emotional distress damages and underscored the Commission's discretionary authority to award interest.

Slive + Hanna, Inc. v. MCAD et al., Appeals Court No. 2020-P-0290. A decision of the Full Commission upheld a Hearing Officer's decision partially in favor of Complainant, in which Respondent was held to have retaliated against Complainant after he filed his MCAD Complaint alleging discrimination on the basis of disability. Respondent obtained a default court judgment against Complainant for money owed, and executed the judgment by taking the Complainant's ex-wife's van, which she used to transport her children. Respondent further told Complainant that she could have the van back if her ex-husband dropped his

MCAD claim. Respondent filed an appeal of the decision in Superior Court, claiming that it could not have retaliated against the Complainant because it had the right under the state and federal constitutions to file a court action for monies owed. After the Superior Court upheld MCAD's decision, Slive + Hanna appealed the case to the Appeals Court. Briefs were filed by all parties, and the Appeals Court held oral argument on May 5, 2021. The case is under advisement.

J. Whitfield Larrabee v. MCAD, Suffolk Superior Court Civil Action 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. Both sides filed briefs. Oral argument was held on March 8, 2019, and a decision issued on November 19, 2019. After Larrabee filed a Motion for Entry of Judgment, Motion for Order Enforcing Judgment, Memorandum in Support of Motion, and Proposed Order were filed on December 12, 2019, the Court held oral argument on February 23, 2021. A Supplemental Opposition was submitted to the Court on February 26, 2021.

Camille T. Mata v. MCAD, Appeals Court No. 2018-P-0782; U.S. Supreme Court No. 19-8174; On August 24, 2020, Ms. Mata's Petition for Rehearing of the denial of certiorari was denied by the United States Supreme Court. Ms. Mata continues to seek a rehearing of the denial of a writ of certiorari through various filings with the Court; however, further petitions have not been accepted or docket by the Court.

Camille T. Mata v. MCAD, Appeals Court No. 2019-P-1133; U.S. Supreme Court No. 20-7004 Continued from FY2019 and FY2020; The Application for Further Appellate Review was denied on July 27, 2020. Ms. Mata submitted a Motion for Reconsideration on August 10, 2020, which was denied on October 2, 2020. On December 31, 2020, Ms. Mata filed a writ of certiorari with the United States Supreme Court, which was subsequently denied on March 22, 2021. Ms. Mata submitted a Petition for Rehearing of the denial of certiorari on April 14, 2021. On May 24, 2021, Ms. Mata's Petition for Rehearing was denied. Ms. Mata continues to seek a rehearing of the denial of a writ of certiorari through various filings with the Court; however, further petitions have not been accepted or docket by the Court.

Hearings Division Report

In FY21, the MCAD offices were closed to the public and therefore no in-person public hearings were conducted during this fiscal year. However, Chairwoman Sunila Thomas George conducted two virtual public hearings, one in March and one in May of 2021. The Hearings Unit issued two decisions in FY21, both by Hearing Officer Betty Waxman, which are described below. The decisions are published in the Massachusetts Discrimination Law Reporter and on MCAD's website.

Hearing Officer Decisions

MCAD & Coats v. Mass. State Police, 42 MDLR 119 (2020) (race, age, employment) The Hearing Officer found the Respondent employer liable for discrimination based on age and race (African American). For nearly seven years, the Complainant police officer served in the lucrative and prestigious Executive Protection Unit, protecting the Governor and Lt. Governor. Despite a spotless disciplinary record and excellent evaluations, the Complainant was removed from the unit while younger white officers were allowed to remain. The Complainant was then placed in the Joint Terrorism Task Force, an assignment ill-suited to his skillset, rather than a canine assignment where he previously excelled for 18 years. The Respondent maintained that the Complainant's reassignment was based on a long history of performance issues as well as the Governor's unfavorable opinion of the Complainant's performance. The Hearing Officer found these explanations not credible. The performance accusations were not backed up by any documentary evidence and were contrary to the Complainant's written performance evaluations, while the alleged statements by the Governor and his Chief of Staff consisted of uncorroborated hearsay. The Hearing Officer likewise did not find credible the Respondent's stated reasons for choosing to place the Complainant in the Joint Terrorism Task Force. The Hearing Officer ultimately concluded that the Respondent's explanations were pretextual and that the Complainant's transfer was due to discriminatory animus based on his race and age. The Hearing Officer awarded \$148,000 in lost overtime wages and \$250,000 in emotional distress damages.

MCAD and Donnalyn Sullivan v. Middlesex Sheriff's Office, 42 MDLR 144 (2020) (retaliation, disability, employment) This case involves an asthmatic Corrections Officer who was denied a reasonable accommodation to avoid outdoor assignments during cold weather, and was then forced into involuntary disability retirement by the Respondent employer. The Hearing Officer previously determined that the Respondent employer was liable for disability discrimination and retaliation, and ordered the Respondent to reinstate the Complainant to her previous position. While an appeal to the Full Commission was pending, the Respondent changed the written job description and prevented the Complainant from obtaining reinstatement from the Public Employee Retirement Administration Commission. After remand from the Full Commission regarding these additional actions by the Respondent, the Hearing Officer concluded that a) the MCAD has the authority to order the Complainant to be reinstated; b) the Complainant satisfies the eligibility criteria for the correction officer position if granted a reasonable accommodation; c) the Respondent's actions in preventing the Complainant from obtaining reinstatement constitute another act of disability discrimination and retaliation; and d) the Complainant is entitled to both back pay and front pay until age 59.

Significant Full Commission Decisions

The Full Commission is comprised of the three Commissioners. The Investigating Commissioner shall not participate in the deliberations of the Commission except when necessary to create a quorum of the Commission or resolve a split decision. (804 CMR 1.23(10) (2020)) After review of the decision of the Hearing Commissioner or Hearing Officer, the Full Commission may affirm the decision, or remand the matter for further proceedings before the Hearing Commissioner; or set aside or modify the decision, if it determines that the substantial rights of any party may have been prejudiced.

In FY21, the Full Commission issued nine decisions and five orders. The decisions issued in FY21 are described below. All of the decisions are published on MCAD's website, and in the Massachusetts Discrimination Law Reporter where noted.

MCAD & Wilson v. Mass. Dept. of Transitional Assistance, 42 MDLR 110 (2020) (race, color, retaliation, employment) The Hearing Officer dismissed the Complainant's Complaint of discrimination based on race (African American) and color (black), as well as retaliation. The Full Commission affirmed. The Complainant alleged that numerous individuals referred to her as "the black girl" rather than her name, and that she was unjustifiably singled out for corrections to her work. The Hearing Officer found that neither allegation was credible, and the Full Commission deferred to the Hearing Officer's credibility determinations. The Full Commission affirmed the Hearing Officers conclusions that the Complainant was not subjected to a racially hostile work environment, disparate treatment, or retaliation.

MCAD & Joyce v. CSX Transportation, Inc., 42 MDLR 113 (2020) (disability, reasonable accommodation, employment) The Full Commission affirmed the Hearing Officer's decision finding the Respondent employer liable for disability discrimination. The Complainant train conductor, who suffered from ADD/ADHD and other cognitive disabilities, was repeatedly denied additional training on a portable computer device and extra time to complete administrative tasks. The Complainant was eventually removed from his position, purportedly for overtime abuse. The Full Commission deferred to the Hearing Officer's findings of fact, and affirmed the conclusion that the Complainant's removal for overtime abuse was a pretext for discrimination. The Full Commission concluded that, under a "cat's paw" theory of liability, even if the Complainant's immediate supervisor had no discriminatory intent, his decision to remove the Complainant from his position was indirectly based on the unlawful animus of another manager. The Full Commission affirmed the Hearing Officer's award of back pay (with a slightly amended calculation), as the Respondent's removal of the Complainant from service was tantamount to termination, and affirmed the award of \$100,000 emotional distress damages.

MCAD & Brune v. The Martin Group, Inc., 42 MDLR 135 (2020) (national origin, religion, ancestry, employment) The Full Commission affirmed the Hearing Officer's decision finding the Respondent liable for discrimination based on the Complainant's national origin (Syrian and Lebanese), religion (Islam) and ancestry (Middle Eastern). The Respondent employer rescinded a job offer to the Complainant when it learned of the Complainant's former "Arab-sounding" name. The Complainant had legally changed his name 13 years earlier, at the same time he became a naturalized U.S. citizen, in order to avoid discrimination. The Hearing Officer concluded that the Respondent's stated reason for its decision—that the Complainant had failed to disclose his name change earlier—was not credible but in fact a pretext for discrimination. The Full Commission found that this conclusion was supported by the record. The Hearing Officer's award of \$35,000 in emotional distress damages was affirmed, as the Hearing Officer properly considered the harm of the Respondent's actions separate from other stressors in the Complainant's life. The Full Commission also significantly reduced the amount of the Complainant's requested attorney's fees, as many of the items were excessive, inflated, or inaccurate.

MCAD & Hernandez v. Strega Waterfront Restaurant, et al., 42 MDLR 139 (2020) (sexual harassment, employment) The Full Commission affirmed the Hearing Officer's decision finding the Respondent employer liable for sexual harassment. The Hearing Officer found that the Complainant's supervisor made a number of inappropriate comments about her body and her sexuality, and touched her inappropriately; the Full Commission deferred to the Hearing Officer's credibility determination. The Full Commission also affirmed the Hearing Officer's conclusion that the comments were both objectively offensive and that the Complainant found them to be subjectively offensive, thus creating a hostile work environment. The Full Commission did not disturb the Hearing Officer's award of \$20,000 in emotional distress damages, as it was supported by substantial evidence. The Hearing Officer was also within her discretion to exclude documents proffered by the Respondent regarding the Complainant's immigration status. The Full Commission reduced the Complainant's requested attorney's fees by 30% in light of the fact that the Complainant failed to prevail on her claims of quid pro quo sexual harassment and retaliatory termination.

MCAD & Leahy v. City of Boston Fire Dept. & Berlo, 42 MDLR 155 (2020) (retaliation, sexual harassment, employment) Following a remand order from the Full Commission, the Full Commission affirmed a decision of the Hearing Officer dismissing the Complainant firefighter's remaining claims of retaliation by the Respondents (her employer and supervisor). The Full Commission had remanded to the Hearing Officer for clarification as to both the employer and the individual named supervisor's potential liability for retaliation in reporting the Complainant to the Boston Residency Commission, leading to the Complainant's forced resignation. After remand, the Hearing Officer's decision clarified that neither the Respondent supervisor nor the Respondent employer were responsible for the retaliatory residency Complaint, but that it was solely the action of the supervisor's sister. The Full Commission affirmed the Hearing Officer's decision, with strong condemnation of the clearly retaliatory conduct in question.

MCAD & Aime v. Mass. Dept. of Correction, 43 MDLR 1 (2021) (retaliation, employment) The Full Commission affirmed the Hearing Officer's decision dismissing the Complainant's Complaint of retaliation by the Respondent employer. The Complainant Corrections Officer previously filed a Complaint of race discrimination with the MCAD, and alleged that the Respondent retaliated against him with disciplinary action and an involuntary lateral transfer. The Full Commission concluded that the Hearing Officer did not err by considering evidence of an audio recording of an interview with an absent witness, and agreed that the Complainant's transfer was not an adverse action as it did not objectively disadvantage the Complainant. The Full Commission did not disturb the Hearing Officer's findings or ultimate conclusion, as they were supported by substantial evidence.

MCAD & St. Marie v. ISO New England, Inc., 43 MDLR 5 (2021) (retaliation, employment) The Full Commission affirmed a decision of the Hearing Officer following a remand order from the Appeals Court. The Complainant alleged the Respondent employer terminated him in retaliation for filing a previous claim of age discrimination, which was settled. Based on the settlement agreement, the Hearing Officer originally excluded evidence of prior disciplinary incidents. The Hearing Officer's original decision concluded that the Respondent was liable for retaliatory termination, as it disciplined the Complainant more harshly than other individuals for the same incident. The Appeals Court ruled that prior disciplinary incidents involving the Complainant should have been considered. After taking this previously-excluded evidence into account, the Hearing Officer reversed her decision and concluded that this prior misconduct—rather than retaliatory motives—accounted for the disparate treatment of the Complainant for the final incident. The Full Commission affirmed the Hearing Officer's remand decision, noting that the Hearing Officer's about-face was reasonable and supported by the newly-admitted evidence.

Bloomfield v. Mass. Dept. of Correction & Montenero 43 MDLR 11 (2021) (race, color, retaliation, employment) The Full Commission affirmed the Hearing Officer's decision dismissing the Complainant's Complaint of retaliation by the Respondent employer. The Complainant Corrections Officer alleged a hostile work environment based on race (African American) and color (black), as well as retaliatory termination after he filed an initial MCAD Complaint. The Hearing Officer concluded that the Complainant was not in fact subjected to racial harassment and that his termination was unrelated to his protected activity. The Complainant disputed various aspects of the Hearing Officer's findings, but the Full Commission deferred to the Hearing Officer's credibility determinations and determined that all of the findings were supported by substantial evidence.

O'Leary v. Brockton Fire Dept. & Nardelli 43 MDLR 15 (2021) (employment, disability, reasonable accommodation) In this disability discrimination case, the Complainant firefighter trainee was subjected to a series of humiliating pranks by coworkers and was terminated at the end of his probationary period due to poor performance. After both parties appealed, the Full Commission affirmed the Hearing Officer's decision finding the Respondent employer liable for a hostile working environment, but dismissing the Complainant's claim of a failure to accommodate his learning disability. The Full Commission affirmed the dismissal of the failure to accommodate claim, agreeing that the Complainant failed to request a reasonable accommodation beyond the classroom component of drill school, and that an interactive dialogue would have been futile considering the nature of firefighting work. The Full Commission affirmed the Respondent's liability for \$40,000 in emotional distress damages for a hostile working environment, as the Hearing Officer's determination that the harassment of the Complainant was based on his disability was supported by substantial evidence. The Full Commission reduced the Complainant's requested attorney's fees by one third in light of the fact that the Complainant failed to prevail on one of his claims.

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Key

- * Employed by MCAD for a portion of FY21
- 10+ years of service to MCAD
- + Contract employee

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Taeyoung (Tae) Kim	Ariana Vazquez
Sangyeol Lee	Gillian Veralli
Andrea Lim	Caitlin Whitman
Bronwyn Lloyd	Emma Wolters

Glossary of Terms

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

