



ANNUAL REPORT

FISCAL YEAR 2023

JULY 1, 2022 - JUNE 30, 2023

MCAD Commissioners



Sunila Thomas George
(Chairwoman)



Monserrate Rodríguez Colón



Neldy Jean-Francois

MCAD Executive Staff (as of June 30, 2023)

Michael Memmolo
Interim Executive Director

Ken Callahan
Chief of Investigations

Deirdre Hosler
General Counsel

Shirani Jimenez
Director of Human Resources, DEI

Andrew Espinosa
Deputy Chief of Investigations

Diane Nordbye
Deputy General Counsel



LETTER FROM THE INTERIM EXECUTIVE DIRECTOR

JANUARY 2024

Governor Healey, Lieutenant Governor Driscoll, Speaker Mariano, Senate President Spilka and Members of the General Court, in accordance with Chapter 151B, §3 (10) of the Massachusetts General Laws, I enthusiastically submit the Fiscal Year 2023 (FY23) Annual Report of the Massachusetts Commission Against Discrimination (“MCAD” or “Commission”), which covers the activities undertaken by the MCAD during the period of July 1, 2022 – June 30, 2023.

FY23 was a milestone year for the MCAD as your historic decision to fully fund the agency has contributed to immense change and progress. Your collective decision to fully fund the MCAD has proven once again that Massachusetts and its leaders are ardent supporters of civil rights and prioritize the protections our laws afford for all residents of, and visitors to, the Commonwealth. Additionally, we commend you all for passing the CROWN Act during FY23—another example of your deep commitment to advancing anti-discrimination protections.

As mentioned in last year's report, the agency has transitioned to working under the MA Open Meeting Law. On July 12, 2022, the MCAD held its first ever public Commission meeting. Concurrent with this organizational change, the agency installed an Interim Executive Director at the beginning of FY23. This transition has allowed the agency's Commissioners to turn their focus to the substantive work of anti-discrimination law—truly a big step towards identifying, adjudicating and holding accountable those individuals who continue to perpetuate discrimination in our state. This has been made possible as the day-to-day operations of the agency have been entrusted to the Interim Executive Director. This management change has proven successful from the agency perspective as critical operations, policies, and employment decisions have moved forward expeditiously. Under this new position, the agency was able to institute policies and standard operating procedures (SOP) for holding new public meetings, as well as install technology to make the meetings fully accessible to the public. Working with MCAD management and staff, internal policies and SOPs were implemented to streamline and standardize operations across MCAD offices to enhance the constituent service experience for those seeking to file complaints of discrimination.

During FY23, the agency shed a major remnant of pandemic-related operations by reopening its office doors to the public on November 1, 2022. Although the agency made incredible strides in offering our services virtually, substantive access to the agency was still lacking for many of our constituents—the only remedy was to provide in-person access to our offices. Walk-in intake services are particularly important for individuals seeking to file a discrimination complaint who do not have access to technology. Since opening our doors to the public, the agency has struck a balance between the offering of in-person and virtual services. These decisions were made collaboratively with staff and constituents of the MCAD to ensure that the agency is best serving the public with a mindful, constituent service centered approach.

In other virtual adaptations, the Commission began holding hybrid adjudicatory hearings, transitioning from the fully remote practice instituted during the pandemic. This approach requires the parties and presiding officer to be in-person for their hearing, while providing public access via live stream. In furtherance of our constituent-centered approach, our technology allows for the appearance of virtual witnesses, at the presiding officer's discretion, to better facilitate the hearings process.

A final public facing accomplishment of this fiscal year was the issuance the agency's revised guidelines on Parental Leave. The MCAD Guidelines on Parental Leave were issued on May 17, 2023, and revisions included clarifying the broad scope and application of the right to parental leave to all qualifying employees, regardless of sex or gender, and the intersection between different leave laws, including the MA Paid Family and Medical Leave law enacted in 2018.

Internal agency successes in FY23 included revising and improving our new employee onboarding training, breathing new life into our successful internship program and the continued backfilling of vacant positions. For the duration of the pandemic, staffing at the MCAD was an incredibly difficult issue to tackle. Due in large part to your historic earmarking, we have been able to aggressively recruit and fill many of our vacant positions. Much of this was attributed to the agency finally being able to offer competitive salaries amid an unprecedented job market. The cascading effect of these salary improvements also bolstered our ability to retain staff who we have historically lost to more lucrative positions—many times at other government agencies. The agency was exceptionally close to meeting all hiring goals for FY23, but fell slightly short.

Undeterred, we expect to finalize our remaining FY23 hiring, as well as meet our FY24 hiring goals, in the upcoming fiscal year. In addition, the increase in support and staffing allowed the agency to maintain the historically low number of the Full Commission cases awaiting decision.

With any forward momentum, there are likely to be some bumps in the road, and the MCAD experienced a few in FY23. Operationally the agency was required to close its Worcester office on October 3, 2022 due to the sale of the building that the MCAD office was located in. This left a large gap for the reach of the agency to Central Massachusetts residents, despite the ability to provide our services virtually. The agency prioritized replacing this office, following its closure, and MCAD management worked feverishly with the Division of Capital Asset Management & Maintenance (DCAMM) to procure a new MCAD office in the City of Worcester. At the close of the fiscal year, the agency assessed responses to our Request for Response (RFR), conducted site visits, made recommendations, and received approval from the Commission to select and negotiate a lease agreement with an apparent successful bidder. It is envisioned that the agency and the apparent successful bidder will execute a lease in Q1 of FY24 and the agency will open a new office in Worcester in Q2 or Q3 of FY24.

During FY23, as a direct result from the aforementioned staffing issues which plagued the agency, we saw our inventory of backlogged complaints (complaints greater than 18 months old) continue to increase. Although the backlog is not as critically large as it was in the past, the agency is striving to immediately reduce it to the pre-pandemic level of FY20 when the backlog inventory was nearly eliminated and the agency was well on its way to completing investigations within, or before, eighteen (18) months. The MCAD Commissioners, managers, and staff are deeply committed to eliminating our backlog. A fundamental means to that end is hiring and retaining investigators, which because of your support is well on its way to being accomplished. Another factor in the equation is continuing to implement efficiencies in our processes. Our talented staff and managers are consistently discussing and recommending ways we can improve such processes. As previously mentioned, we implemented a number of improvement-driven initiatives in FY23 from the internally-generated feedback, and we will continue to refine our operating procedures in FY24.

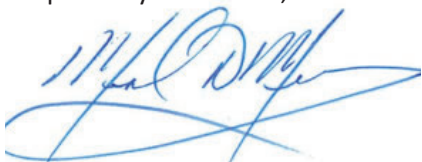
During the fiscal year, we continued our successful annual public service campaign. This year we returned to a state-wide campaign, which utilized advertising with the Massachusetts Bay Transit Authority (MBTA), the Pioneer Valley Transit Authority and the Worcester Transit Authority. The agency focused the FY23 campaign to bring attention to the Commission offices being re-opened to the public and to highlight individuals' rights around parental leave (buttressing the publishing of our revised Parental Leave Guidelines), disability and pregnancy accommodations, sexual harassment, and illegal Section 8 discrimination. This year's iteration proved hugely successful with the media resources selected and the ability to publish the campaign graphics in select MBTA stations in multiple languages including English, Haitian Creole, Portuguese, and Spanish.

Finally, in FY23 the MCAD mourned the loss of three of our former staff members: long time MCAD Clerk Myrna Solod, former Attorney Advisor Unit Supervisor Geri Fasnacht, and former Supervisor and Mediator, Gilbert May. Our hearts and thoughts remain with their families as we fondly remember their contributions to our MCAD mission.

This report captures many of the accomplishments and milestones of each division and unit within the agency, but not all. The agency's greatest strength has been, and continues to be, our workforce. The achievements outlined in this report would not be possible without the dedicated senior managers and staff of this agency who continue to dedicate themselves to our mission. Their everyday successes cannot be bound by this report alone as each day they strive to eradicate discrimination in our Commonwealth.

I would like to thank to our dedicated Commissioners: Chairwoman Sunila Thomas George, Commissioner Monserrate Rodríguez Colón and Commissioner Neldy Jean-Francois. A special thanks to the MCAD Advisory Board and our community stakeholders who steadfastly champion and support the Commission's critical role in civil rights law enforcement and our efforts to eradicate discrimination in the Commonwealth.

Respectfully Submitted,



Michael Memmolo
MCAD Interim Executive Director



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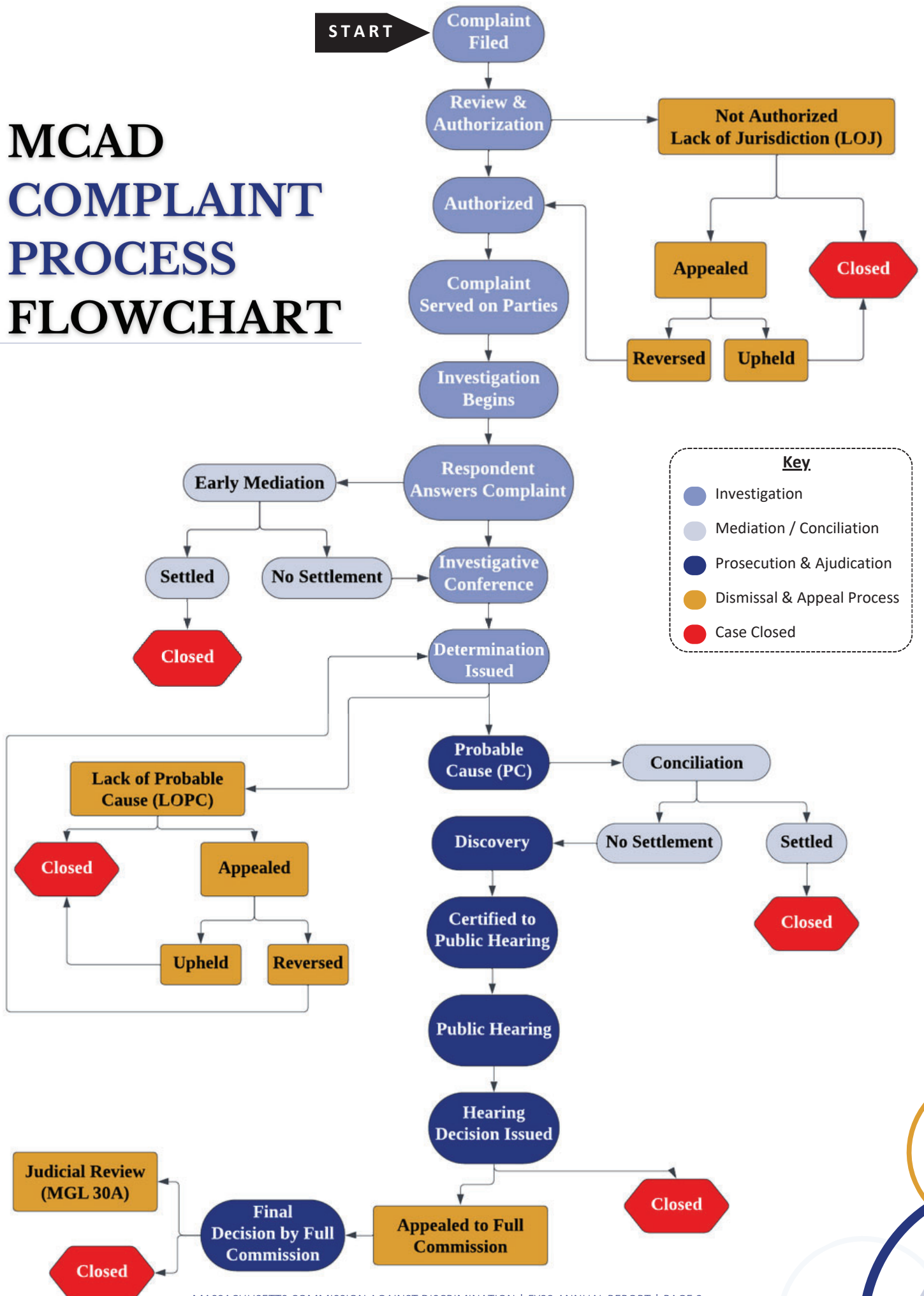
ABOUT THE MCAD

Established in 1946, the Massachusetts Commission Against Discrimination (MCAD or Commission) is the independent state agency that enforces the Massachusetts laws prohibiting discrimination in the fundamental spaces of daily life, including employment, housing, and public accommodations. The MCAD pursues its mission to eradicate discrimination in the Commonwealth through the investigation, prosecution, and adjudication of complaints of discrimination, preventative and remedial training, and education. Anyone who lives in, works in, or visits Massachusetts may file a complaint with the Commission if they believe they were treated differently or unfairly based on their identity as a member of a protected class, i.e., based on their race, color, religion, national origin, sex, gender identity, sexual orientation, genetic information, pregnancy, ancestry, veteran status, age, disability, and military service, among others. Additionally, it is illegal in Massachusetts to deny a person housing because they receive public assistance or have a family with children. The MCAD currently has two offices open to the public, in Boston and Springfield, where anyone can meet with an intake specialist for a free consultation and to file a complaint. To learn more, visit www.mass.gov/mcad.

FY23 AT-A-GLANCE

407	3,086	495
Mediations & Conciliations	New Complaints Filed	Public Records Requests
5	8,865	589
Public Hearings Decisions Issued	Information Calls Conducted	Consultations

MCAD COMPLAINT PROCESS FLOWCHART



FY23 DIVISION & UNIT REPORTS

OPERATIONS & FINANCE DIVISION

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

Fiscal/Budget Unit

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

Human Resources (HR) Unit

The HR Unit provides all aspects of personnel administration and human resource direction and support for the employees of MCAD, overseen by the Director of Human Resources, Diversity, Equity and Inclusion (DEI). These services include payroll administration, benefits and leave administration, labor and employee relations, handling of all Americans with Disabilities Act (ADA) requests, reasonable accommodations, and processing and approving all Family and Medical Leave Act requests. The HR Unit is also responsible for all posting, hiring, and recruiting of MCAD positions. The Director of Human Resources, DEI is the agency's designated Diversity Officer, overseeing all diversity considerations and professional development opportunities. Additionally, the HR Unit recommends and implements agency-wide personnel policies and procedures.

Information Technology (IT) Unit

The IT Unit oversees all of the Commission's IT and telephone functions including desktop and application support for all of the Commission's offices. The IT Unit also procures and supports all of the Commission's hardware and software.

Operations Unit

The Operations Unit manages the operations of the Commission's two office locations (Boston and Springfield) and oversees lease management for the Commission's Springfield office. The Operations 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/Operations

In FY23 the MCAD received historic full funding. This funding allowed the agency to continue the hiring initiatives, started in FY22, with the security of knowing all planned positions were supported by the agency's FY23 budget. The agency nearly filled all FY23 planned positions—however, unanticipated attrition prevented the agency from meeting this goal. During FY23, the agency was able to backfill all vacant management positions with the hiring of the agency's Deputy Chief of Investigations and Deputy General Counsel positions. At the close of the fiscal year, the agency had finally returned staffing to pre-FY20 levels and exceeded those levels in administrative staffing, as planned.

FY23 MCAD BUDGET OVERVIEW

Line Item 0940-0100	
State Appropriation	\$7,641,395

RETAINED REVENUES COLLECTED

Line Item 0940-0101	
HUD	\$1,008,460
Audit/Copying Fees	\$475

	\$1,008,935

Line Item 0940-0102	
Training Program Total	\$213,255

Line Item 0940-0103	
EEOC	\$1,246,350
Attorney's Fees	\$131,310
	<u>\$1,377,660</u>

Retained Revenue Total	\$2,599,850
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TOTAL FY23 APPROPRIATED FUNDS & COLLECTED RETAINED REVENUE

\$10,241,245

Expenses	
Payroll	\$(6,321,443)
Rent	\$(122,781)
Administrative Overhead	\$(1,260,681)
Total FY23 Expenses	\$(7,704,906)
Reversion to the General Fund	\$2,536,339

FY24 MCAD PROPOSED BUDGET OVERVIEW

July 1, 2023 - June 20, 2024

State Appropriation (Line Item 0940-0100)	\$8,237,676
Retained Revenue (Line Item 0940-0101)	\$1,100,000*
Training Program (Line Item 0940-0102)	\$410,000*
Retained Revenue (Line Item 0940-0103)	\$1,400,000*

TOTAL FY24 BUDGET

\$11,147,676

*Retained Revenue spending cap

TRAINING, EDUCATION, & COMMUNITY OUTREACH UNIT

The MCAD Training, Education, & Community Outreach (Training) Unit provides internal and external discrimination prevention trainings and assists with recruitment and onboarding of new agency staff and interns. Toward the end of FY23, the Training Unit expanded to have a Director of Training and two full-time Trainers.

In FY23, the Training Unit conducted and attended approximately 265 discrimination prevention training sessions, community events, and career fairs across the Commonwealth, impacting roughly 5,092 participants. The Training Unit offers anti-discrimination training in the subjects of employment, housing, sexual harassment, disability and religious accommodations, and how to conduct internal investigations. The Commission also held its 24th annual Courses for Equal Employment Opportunity (EEO) Professionals throughout the third quarter of FY23. These multi-day trainings include three popular courses: “Train-the-Trainer,” “Responding to Accommodation Requests,” and “Conducting Internal Discrimination Complaint Investigations.” Finally, the MCAD hosted a three-day Investigations training with the U.S. Equal Employment Opportunity Commission (EEOC) for the Northeast Fair Employment Practices Agencies (FEPA) in May. FEPA agencies representing all six New England states attended this training session.

The Unit resumed in-person training options in November 2022, resulting in approximately one third of events being held in-person. Virtual trainings with a live trainer, which we began offering in April 2020, continue to be a popular option for organizations. Of the organizations trained this fiscal year, approximately 53% were required affirmative relief resulting from a complaint of discrimination, and 47% were organizations proactively training their employees.

Beyond training work, the Training Unit continued to support the recruitment and hiring of staff members and interns at the Commission. The Unit’s work includes assisting in recruitment strategy, assisting with on-boarding plans for new staff, and conducting new employee/intern training (NEIT).



FY23 TRAINING, EDUCATION, & COMMUNITY OUTREACH UNIT STATISTICS

External Trainings	232
Employment Law	59
Sexual Harassment	42
EEO Professionals	39
Career Fairs & Speaking Events	31
Fair Housing	32
“Know Your Rights”	19
Public Accommodations	10

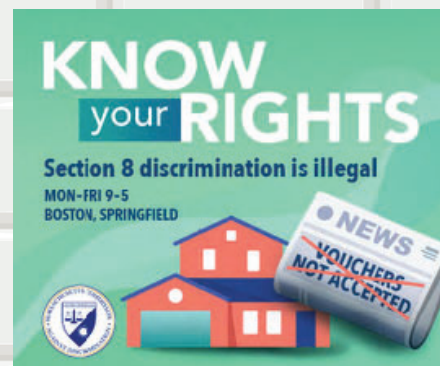
TOTAL FY23 TRAININGS 464

PEOPLE IMPACTED BY TRAININGS 4608

Top Industries Trained in FY23:

- Public Sector
- Property Management
- Education
- Healthcare
- Retail / Food Service

In June 2023, the MCAD ran its annual public awareness campaign dedicated to informing the people of the Commonwealth about their basic civil rights that the agency enforces. The campaign placed billboards and live screen graphics on interstate highways and on public transportation to reach commuters of all kinds. For the first time, the agency offered messaging in English, Haitian Creole, Portuguese, and Spanish on live screens located in Massachusetts Bay Transportation Authority (MBTA) stations. The digital ads gained an estimated 625,000 impressions.



INVESTIGATIONS DIVISION

The MCAD’s Investigations Division investigates complaints of discrimination in employment, housing, and public accommodations, higher education admissions, and credit and mortgage lending. A complaint of discrimination is dismissed if the MCAD determines that it lacks jurisdiction, or an investigation is not authorized. Otherwise, the MCAD will proceed with its formal investigation process.

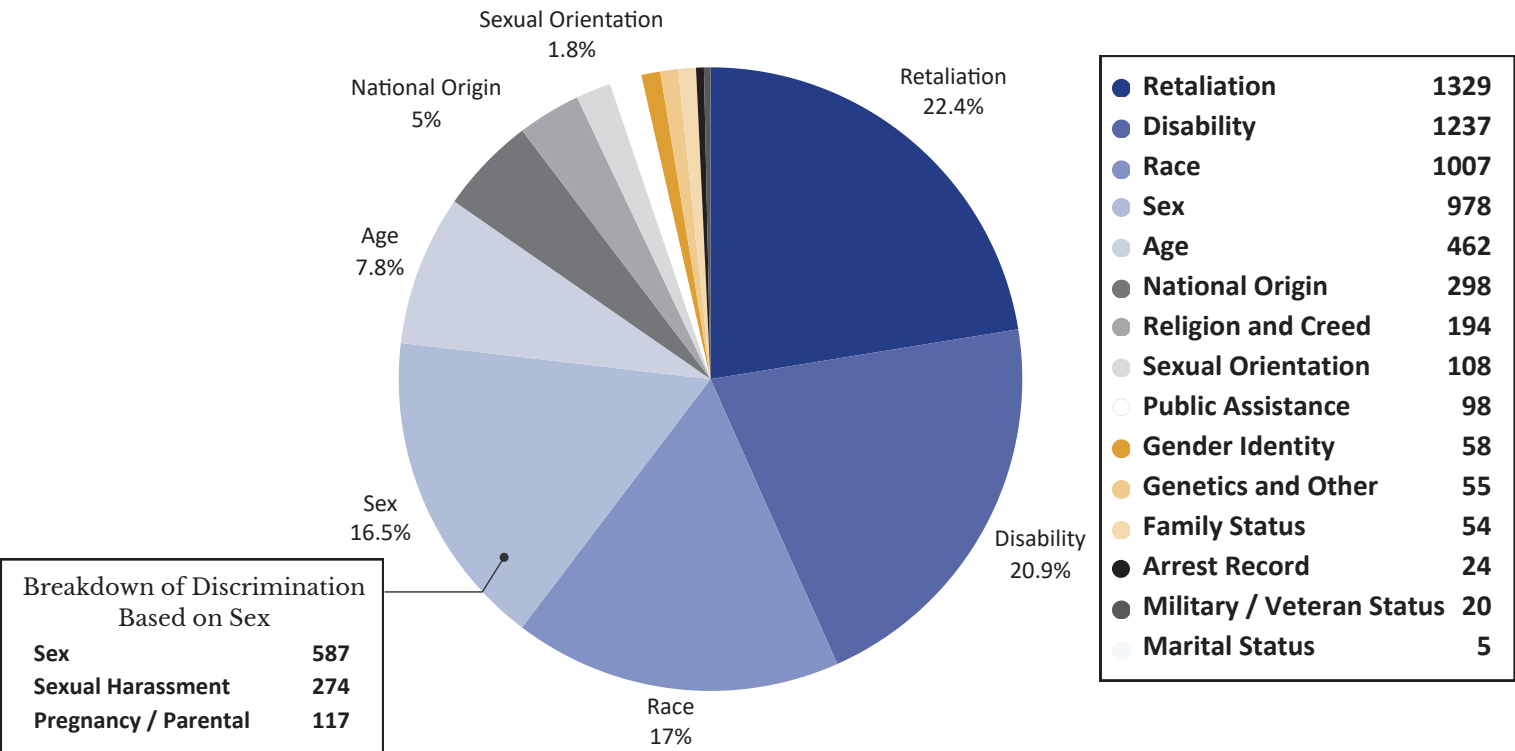
The Investigations Division is comprised of eight units with approximately 49 total employees, including administrative staff, who assist with document organization and processing; Investigators and Investigative Supervisors, who conduct the investigations; Attorney Advisors, who provide legal guidance and support to the investigative staff; and the Deputy Chief of Investigations and the Chief of Investigations, who manage the personnel and operations of the Division. The MCAD processes approximately 3000 complaints each year.

On November 1, 2022, the MCAD Boston and Springfield offices re-opened to the public and offered limited walk-in intake services. Currently, the MCAD can accommodate up to 12 walk-in intakes daily, in addition to six virtual intakes scheduled through the agency’s online portal. The reopening of both MCAD offices reinforced another step in our continued efforts to serve the individuals who need our vital services.

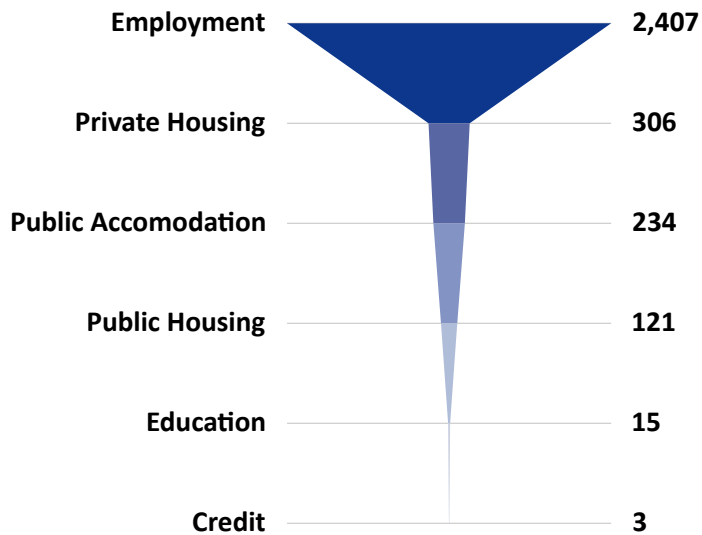
For the first three-quarters of FY23, the Investigations Division operated at 74% of the standard staffing levels due to attrition and difficulty in hiring new investigators. The understaffing caused delays in the processing time required to conduct investigations.

The MCAD is committed to staffing the Investigations Division to historic levels. In FY22, the Investigations Division hired ten employees. In FY23, the Investigations Division hired an additional 20 employees and for FY24, the Investigations Division plans to hire an additional 16 employees to increase the agency’s staffing levels to some of the highest in its history.

FY23 Breakdown of Complaints of Discrimination by Protected Category



FY23 Complaints by Jurisdiction



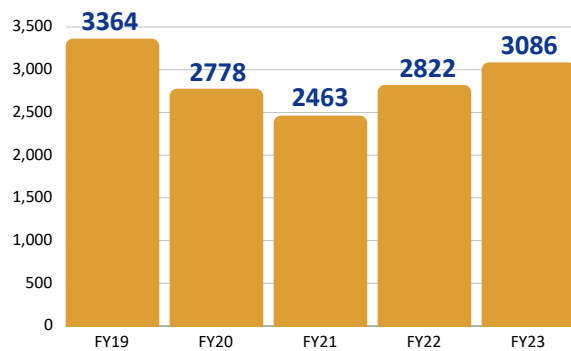
FY23 Investigative Findings

Probable Cause	236 (19.6%)
Lack of Probable Cause	966 (80.4%)

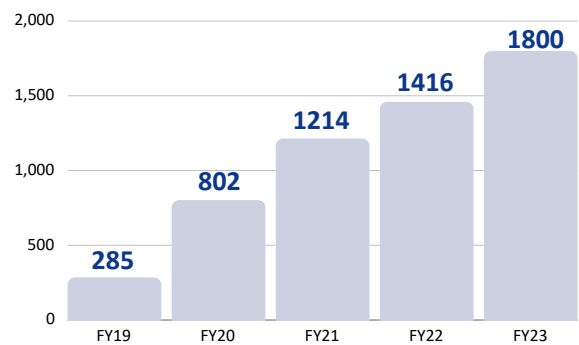
FY23 Active Case Inventory

Investigations	4538 (95.6%)
Post-Probable Cause	208 (4.4%)

Annual Inventory of New Complaints all cases filed between July 1, 2022 - June 30, 2023



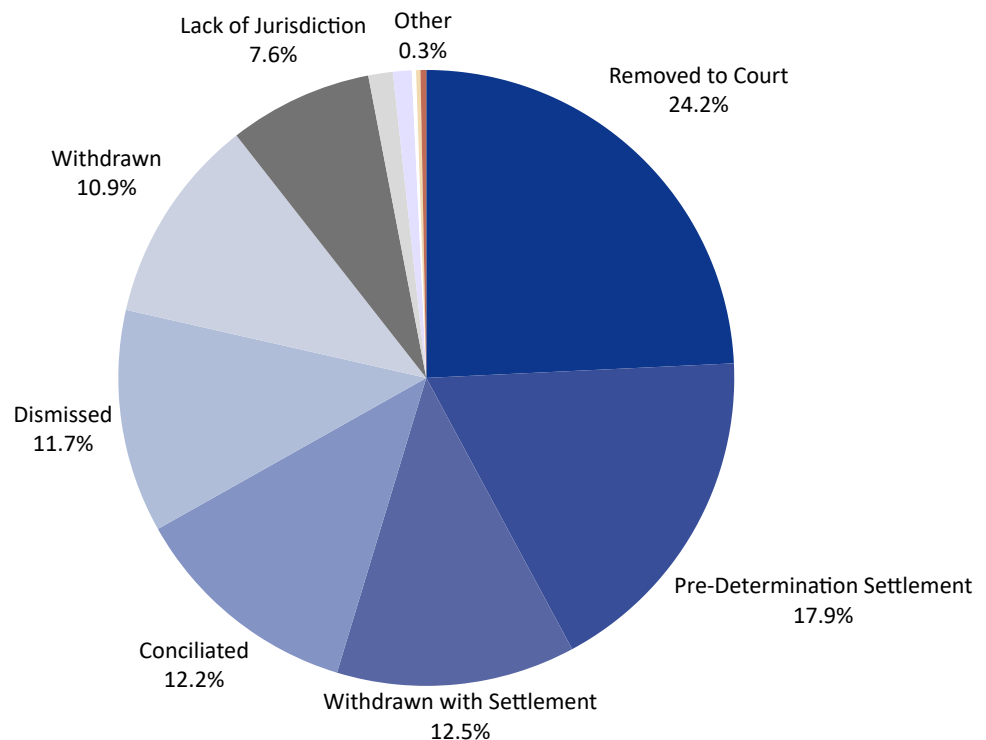
Annual Inventory of Backlog Cases all non-housing investigations >18 months old



FY23 Administrative Closures

Removed to Court	321
Pre-Determination Settlement	237
Withdrawn with Settlement	166
Conciliated	161
Dismissed	155
Withdrawn	144
Lack of Jurisdiction	100
Judicial Review	17
Violation / Enforcement	13
Unable to Locate Complainant	3
Failure to Cooperate	3
Other*	4
TOTAL	1324

*Compliance with Order (2), Failure to Accept Full Relief (1), Bankruptcy (1)





ALTERNATIVE DISPUTE RESOLUTION (ADR) UNIT

The Alternative Dispute Resolution (ADR) Unit is comprised of the Director of Alternative Dispute Resolution and two Mediators. In FY23, the ADR Unit continued to work on ongoing goals of maintaining and improving the high quality of the mediators' work; creating productive communications; developing consistency in practices and case processes among both MCAD offices; maintaining ongoing and regular communications and coordination between the ADR Unit and all other units within the MCAD; educating attorneys who practice at the MCAD on mediations and conciliations, and encouraging and nurturing an ongoing dialogue between lawyers who practice at the MCAD and the ADR Unit.

Our ADR Unit efforts toward these outlined goals include regular, weekly communication between mediators and expanded discussions during the Unit's monthly meetings. The Unit frequently reviews, updates, and standardizes materials and forms, attends advanced continuing education programs, refines internal guidelines, and holds monthly "Best Practices" discussions to exchange and share ideas and experiences across the MCAD offices. The ADR Unit regularly invites experienced mediators and lawyers to join meetings and present on relevant topics. Regular participants at ADR Unit "Best Practices" discussions include state and federal agency-level mediators and MCAD personnel including Commissioners, Commission Counsel and General Counsel. The discussion-based meetings educate other lawyers about MCAD practices, procedures, and the MCAD procedural regulations (updated in 2020) among other topics. Additionally, the ADR Unit continued to maintain quantitative data throughout FY23 to measure the volume of cases handled and the success rate at settling cases through mediation and conciliation. In FY23, the ADR Unit also developed a database for all MCAD decisions and awards to be tracked, organized by type of discrimination claim and inclusive of data on emotional distress damages.

The ADR Unit continued to hold its popular "Roundtable Meetings" in FY23, three were held in the Fall of 2022 and three in the Spring of 2023. The discussions provide useful and practical, hands-on information and advice about mediations and conciliations at the MCAD, while also offering a forum for the exchange of feedback between the Bar and the Unit. Lawyers who practice at the MCAD are regularly invited to attend these Roundtables—the meetings always fill to capacity. In FY23, the ADR Unit was able to invite more attendees than in previous years by hosting them virtually, yet each session had a waitlist for hopefuls that wanted to attend. Given the positive response, the ADR Unit will continue to offer the bi-annual ADR Roundtable Meetings in FY24.

The ADR Unit continued to perform all mediations and conciliations remotely by using Zoom, unless there were unique circumstances that required a mediation or conciliation to take place in person. Conducting virtual mediations and conciliations received strong support from both the lawyers who represent clients here at the MCAD, as well as the parties themselves, who appreciate the convenience and time-saving of being able to attend from their offices and/or homes. Holding dispute resolution sessions virtually did not adversely impact the quality of the negotiations and continued to provide several pragmatic advantages, including time and cost saving for those the Unit served.

This year, the ADR Unit continued to offer late mediation—post-discovery or post-certification mediation—to parties, giving an additional opportunity to resolve disputes and settle claims before going to public hearing. Late mediation offered parties an additional opportunity to resolve their cases when new information had come out during discovery that made it more desirable to settle the matter rather than proceeding to a public hearing.

FY23 ADR Intervention Totals

244 Mediations
voluntary pre-disposition
resolution intervention

163 Conciliations
mandatory post-probable
cause resolution intervention


Noteworthy Settlements from the ADR Unit in FY23

Housing Cases

- In a housing discrimination claim involving a requested disability accommodation by the Complainant tenant to have an emotional support animal (ESA), Respondent landlord first granted the accommodation providing the Complainant pay a security deposit. Respondent also increased the rent in light of the support animal. When the Respondent realized the ESA was a Pitbull, Respondent rescinded the accommodation and demanded the removal of the ESA. The case settled for a monetary payment of \$2,500, forgiveness of Complainant's back due rent of \$12,500, fair housing discrimination training for the Respondent and a review of Respondent's policies related to discrimination.

Employment Cases

- In a pregnancy discrimination claim, Complainant alleged that her employer discriminated against her and took retaliatory actions after she notified the employer of her pregnancy and need for parental leave. The Complainant further asserted that the employer took away the majority of her job responsibilities upon her return from parental leave, denied her a promotion, and socially isolated and mistreated her. Respondent denied the allegations and asserted that it had taken no adverse action against the Complainant and had non-discriminatory legitimate business reasons for restructuring its business. Complainant was out on her second maternity leave at the time of the mediation. The parties negotiated a separation from employment at mediation. Respondent paid \$45,000 in settlement. The parties agreed that Respondent would provide Complainant with a neutral reference that would confirm that Respondent's end date of employment as the end date of her parental leave.
- In an employment claim, Complainant alleged that her employer discriminated on the basis of disability and retaliated against her when her supervisor concluded that she could no longer perform her job duties due to her health condition. The Complainant alleged that she was disabled due to the high levels of toxic mold (mycotoxin) in her system from certain environmental exposure in the workplace. At mediation, the Respondent agreed to pay \$40,000 in settlement and agreed to send the supervisor, the executive director and multiple board members to the MCAD Employment Discrimination training. The Respondent also agreed that each member of its current Board of Directors would sign a certification, certifying that they had read the Respondent's Policies and Procedures and its Code of Conduct within 90 days of the effective date of the settlement and that new Board Members would sign the same certification within 90 days of becoming Board Members.
- In an employment claim, Complainant alleged that her employer discriminated against her on the basis of age and disability—obesity and depression—and retaliated when she took disability-related leave of absence. Respondent denied the allegations. The Complainant required medical leaves of absence for a lung infection and for a hip replacement. At the time of the mediation, Complainant had remained on leave of absence while the Respondent sought a suitable position for her return to work. The parties negotiated a separation from employment. Respondent paid \$75,000 in settlement. Respondent further agreed not to contest a claim by Complainant for unemployment benefits.

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- In a post-investigation employment claim, Complainant alleged claims of retaliation and wrongful termination such that a Probable Cause finding was issued. At conciliation, Respondent agreed to pay \$165,000 for Emotional Distress damages, Lost Wages and Attorney's fees and costs. In addition, Respondent agreed to have senior leadership attend MCAD Anti-Discrimination Training.
 - In an employment claim, Complainant's claim was based on sexual harassment/hostile work environment, retaliation and individual liability. Complainant alleged that she was subjected to discriminatory acts by her supervisor which included inappropriate comments and requests for sexual favors. The Complainant also alleged her termination was pretextual when she rebuffed Respondent's advances and continued discriminatory behavior. The case settled at conciliation for \$157,500, which included amounts for lost wages, attorney's fees and costs. Respondent agreed to attend MCAD anti-discrimination to include his entire staff.
 - In an employment claim based on pregnancy/sex and disability Respondent agreed to pay Complainant \$30,000 for lost wages and agreed to have all managers and supervisors attend MCAD anti-discrimination training. Complainant alleged that Respondent failed to provide reasonable accommodation for an extended leave and failed to engage in an interactive process to maintain her job while she could recover. Complainant asserted that Respondent's reason for her termination were pretextual, that she was a qualified disabled individual and she substantiated reasonable accommodation requests with doctor's notes.
 - In an employment discrimination claim, Complainant, a 60-year-old female employee, alleged that a newly hired younger male supervisor discriminated against her on the basis of her age and gender when he began to criticize her shortly after he joined the company and terminated her shortly thereafter. The case settled at conciliation for \$100,000 and discrimination prevention training for the Respondent.
 - In a claim alleging discrimination on the basis of asking improper questions about Complainant's criminal record on the written application. A third-party investigation followed which delved into the prior criminal record, which had been expunged by the court. As a result, Complainant was denied a civil service position. As part of the settlement at conciliation, Respondent corrected the application form, restored Complainant to the appropriate position on the hiring list, agreed to training for some of its staff and a monetary settlement of \$75,000.
 - In a gender discrimination and retaliation claim, Complainant, a teacher, after notifying her supervisor in April that she was pregnant, was not offered a renewal contract at the time (April) when new contracts are typically offered for the coming academic year. While she was later hired for the same academic year, two years later when she was pregnant again, she was not given a renewal contract. The case settled at early mediation for \$57,500.
 - In an age discrimination and retaliation case that settled at post-discovery late mediation, complainant was a teacher in a school system for nearly 30 years. Complainant had filed a prior MCAD claim, which was settled in 2017. Five months after that settlement and two years before she would be eligible to receive full retirement benefits, her position was eliminated. The matter settled for \$250,000.
 - In a claim alleging disability discrimination, the Complainant was a managing broker for a professional company. In late 2021, Complainant began experiencing anxiety, heart palpitations, fainting spells and panic attacks during work and in early 2022 she filed for FMLA leave. She was on FMLA leave beginning in April and until early July, 2022. Upon her return, Complainant alleged experiencing some discriminatory attitudes and comments from her supervisor and others about her condition. In September, 2022 Complainant was terminated purportedly as part of a reduction in force, despite her seniority over others

who were not terminated and her excellent performance record. The matter settled at early mediation for \$93,000.

- In a claim alleging race and disability discrimination and retaliation, the Complainant was a senior administrative assistant with a professional firm. When COVID hit in March 2020, Complainant was called back to working in the office as she was considered an essential worker. Her supervisor and others allegedly treated her differently after she returned to work. Her supervisor in particular seemed to treat her differently due to her race. When she brought this treatment to the attention of employee relations personnel, the company's investigation concluded that there was no discriminatory conduct by Complainant's supervisor. Employee relations at first offered to help Complainant find another job within the company, but soon after, that offer was rescinded. They also offered to reassign Complainant to a position so she would no longer be under her supervisor, but she would have to take a pay cut. The alleged treatment of Complainant by her supervisor continued to the point Complainant had to take FMLA leave from early October, 2021 to early January, 2022. These conditions continued until March, 2022 at which time Complainant was terminated, allegedly for performance issues. The matter settled at early mediation for \$72,500.

Public Accommodations Cases

- In a public accommodation claim, Complainant alleged that the Respondent restaurant denied her access with her service dog, despite the Complainant noting a service dog in her online reservation, employing a "medical alert service dog" leash, answering unlawful questions, and producing relevant legal guidance when refused service – all additional measures that she was not required to do under the law. Respondent claimed that its employees were confused because the Complainant did not appear to be disabled, because the dog was small, and because Respondent had previous issues with the Massachusetts Department of Health when a patron had a small dog on the premises. At mediation, the Respondent restaurant agreed to pay Complainant \$4,750 in settlement. The Respondent also agreed to post "Service Dogs Welcome" signage, send the owners and managers to the MCAD's Public Places Discrimination training, incorporate into its internal policies an information guidance it had received from the Massachusetts Department of Health regarding the proper accommodation of service animals, distribute this policy to current and new employees, and to post a laminated copy at the hostess station.
- In a public accommodations claim, Complainant alleged that the Respondent fitness club subjected him to disability discrimination by denying his request for a reasonable accommodation and retaliated against him when the Respondent banned him from its fitness club locations. The Complainant's disability impaired his back and neck; the accommodation he sought was to have staff members assist in pulling the levers of the fixed resistance machines closer to him. Respondent denied the allegations and claimed that it canceled Complainant's membership and banned him from its locations due to the Complainant's history of failing to pay membership dues in one location and then opening a subsequent membership in another location. At mediation, the Respondent agreed to pay \$7,000 in settlement.
- In a public accommodations claim, an African American Complainant alleged he was treated differently from white customers when he attempted to buy lobsters at the seafood department and was told to pick-up and pay for his order at the Service Desk. Respondent agreed to pay \$7,500 for emotional distress damages and for store managers and supervisors to attend MCAD anti-discrimination training. Respondent also agreed to develop a non-discrimination policy for customers to be posted on the Customer Service wall of the store.

LEGAL DIVISION

The Legal Division provides legal services and support to the Commission in furtherance of its mission to eradicate discrimination in Massachusetts. The Legal Division is comprised of the General Counsel, Deputy General Counsel, a Commission Counsel Supervisor and six 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 when requested. 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 located in the MCAD Boston office is responsible for overseeing Commission public hearings and Full Commission filings, assignment of motions to Hearing Commissioners and Hearing Officers, issuing Commission decisions and responding to public inquiries. In FY23, the Clerk's Office responded to 495 public records requests. The Clerk's Office in Springfield is staffed by a 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. Commission Counsel are also responsible for defending agency decisions when judicial review is sought in Superior Court and the Appeals Court pursuant to M.G.L. c. 30A, § 14(7). Commission Counsel defend challenges to the Commission's jurisdiction and procedures, and file enforcement actions to obtain compliance with the Commission's final orders.

In FY23, the Legal Division saw continued success with the certification processes implemented in FY22, ensuring that prosecutions were generally certified to public hearing or otherwise resolved within fifteen months post-conciliation. With input and collaboration from key staff agency-wide, the Legal Division also prepared and brought published updated Parental Leave Guidelines, replacing and improving upon the agency's previous guidelines on 'Maternity Leave.' Consistent with updates to the parental leave law, M.G.L. c. 149, § 105D, the updated guidelines clearly articulate that all qualifying employees have the right to parental leave, regardless of sex, gender, or other protected class status. The updated guidelines also include extensive provisions and questions and answers aimed at clarifying the scope of employees' rights and employers' obligations under the law, particularly in the context of other leave laws. As for meeting staffing challenges, the Legal Division filled the vacant Deputy General Counsel position, the Deputy Clerk / Records Access Officer position, and one vacant Commission Counsel position. Moreover, at the close of FY23, there were just eight cases awaiting a Full Commission decision. The following report highlights the work in the Legal Division for FY23.

FY23 Cases Assigned to MCAD Commission Counsel

Commission Counsel prosecute cases at public hearings after a finding of probable cause is issued by an 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 236 cases with a probable cause determination in fiscal year 2023, the Legal Division was assigned to prosecute 131 new cases filed by pro se complainants, which is 55% of all cases with probable cause findings. Additionally, Commission Counsel remained assigned to prosecute the active caseload of 85 cases that existed as of June 30, 2022.

Noteworthy Settlements by Commission Counsel

During this fiscal year, Commission Counsel resolved 79 discrimination cases through conciliation and negotiation, recovering \$2,029,002 in victim specific relief. In addition, the agency secured affirmative relief in the form of anti-discrimination training, reasonable accommodations and policy reviews. The following is a description of some representative matters, which were resolved by settlement during the 2023 fiscal year, classified by the type of alleged discrimination.

Housing Cases

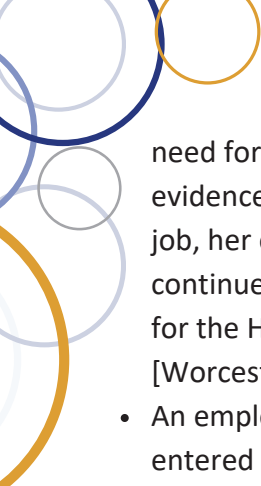
- Complainant filed a complaint of discrimination alleging that Respondent denied her request for a reasonable accommodation for her disability. Complainant suffers from muscular dystrophy, which affects her mobility and her ability to ambulate. Complainant requested that Respondents allow her to keep her mobility aids including a wheelchair and a rollator in the location where they were previously stored, as she was unable to retrieve her items from the bicycle storage area where Respondents proposed to move them. Respondents failed to engage in an interactive dialogue with Complainant as required and ultimately refused to grant the requested accommodation. Instead, Respondents moved Complainant's mobility aids out of the room in which they were stored, causing her to lose her two elevating leg rests and to have difficulty accessing her items when needed. Respondents agreed to resolve the matter for a payment of \$10,000 to Complainant, as well as attendance at an MCAD anti-discrimination training for Respondents' Superintendent, Property Manager, and two members of the Board of Trustees. Respondents also agreed to clear boxes from the space where Complainant stored her mobility aids and to keep the space free from obstructions. [Norfolk County]
- Complainant filed a complaint of discrimination alleging that Respondents subjected him to discrimination based on disability and denied him a reasonable accommodation for his disability. Complainant suffers from a mobility impairment resulting from two hip replacement surgeries. Complainant requested a wider parking space from Respondents which would allow him to enter and exit his vehicle safely and without pain. Despite Complainant providing a letter from his doctor confirming his need for the accommodation, Respondents failed to grant Complainant's request for a reasonable accommodation and failed to sufficiently engage in an interactive dialogue with Complainant regarding his request for a reasonable accommodation. Respondents agreed to resolve the matter for a payment of \$5,000 to Complainant as well as attendance at an MCAD anti-discrimination training for two members of the Board of Trustees. Respondents also agreed to ensure that there is a parking spot available near Complainant's unit that meets his disability-related needs which included creating a handicap accessible parking space in which Complainant may park. [Middlesex County]

- Complainant, a disabled veteran, filed a complaint of discrimination alleging that Respondents subjected her to discrimination based on familial status (children) and lead paint. Complainant inquired through a real estate agent about renting an available apartment listed for rent by Respondent owner. After Complainant raised questions concerning the possible presence of lead paint on the property and the possible need to have the property tested for lead and/or remediated, the real estate agent cancelled Complainant's scheduled appointment to view the apartment and subsequently stopped responding to Complainant's attempts to reschedule the viewing. Respondent owner eventually allowed Complainant to view the property after she contacted him directly, however, he did not provide Complainant with a rental application after she inquired about his willingness to de-lead the property, instead stating that he had to discuss the matter with his real estate agent. Complainant was ultimately unable to obtain a rental application from either the owner or his real estate agent. Shortly after Complainant's rental inquiries, the listing price for the subject apartment was lowered and the apartment was rented to a couple without children. As a result of Respondents' actions, Complainant and her son were forced to continue to live in a hotel for an additional three months until they could secure appropriate rental housing. Respondents agreed to resolve the matter for a payment of \$25,000 to Complainant, as well as attendance at an MCAD anti-discrimination training for Respondent owner and his real estate agent. Respondents also agreed to submit their anti-discrimination policies to the Commission for review. [Norfolk County]
- Complainant provided her landlord with a note from her therapist supporting the need for an emotional support dog in the apartment she rented from Respondent. Despite this medical note, and despite the fact that an emotional support animal is not a pet, Respondent failed to make the accommodation from the "no pets" policy to accommodate Complainant's mental illness. The case settled for \$12,500.00 in emotional distress damages. [Middlesex County]
- Complainant, the mother of a disabled minor child, complained to the property management team at her condominium regarding, among other things, a pool policy prohibiting the use of swim diapers and pool toys. After ignoring her requests and those of other parents with small children, Complainant filed a complaint alleging discrimination based on familial status. The case settled for \$16,500.00 in emotional distress damages paid by the property management company and condominium unit association. [Middlesex County]
- Complainants, parents of small children who resided in a condominium located on an upper floor, complained to the property manager after it imposed a policy requiring the in-unit storage of certain items but enforced that policy only as to children's toys, thereby treating residents with children less favorably than residents without children. After conciliation, the matter settled for \$15,925.00 in emotional distress damages. [Middlesex County]
- Complainants, both laboring under emotional disabilities, were residents of Respondent apartment complex. After their request for emotional support animals was delayed, and after they began being charged monthly "pet" fees for their emotional support animals, they filed their complaint for discrimination with the MCAD. At conciliation, to settle the matter, Respondent paid \$3,000.00 to Complainants, forgave the alleged outstanding rental and other amounts due, agreed to implement a policy for requests for reasonable accommodation, and agreed to undergo training. [Middlesex County]
- Complainant's minor child suffered from a mental health condition for which his treating physicians felt an emotional support dog would provide relief. When Complainant, a tenant, asked Respondent, the landlord, for permission to obtain an emotional support dog, Respondent denied Complainant's request

without engaging in any interactive process. Complainant obtained the dog anyway. In retaliation, Respondent evicted Complainant and her family, obtaining a judgment for eviction and damages from the Court. The MCAD case settled at conciliation for \$2,500.00 paid to Complainant for emotional distress. Respondent also forgave the amounts due from the Court Judgment (approximately \$11,500.00), adopted an anti-discrimination policy, and attended MCAD training. [Suffolk County]

Employment Cases

- Complainant alleges that his supervisor routinely entered the bathroom and looked under the stalls to locate Complainant. Complainant found this behavior concerning and reported the issue to Human Resources, alleging sexual harassment. Respondent took no corrective action and the behavior continued. Complainant believes that due to his race, color, national origin, and allegations of sexual harassment, he was bypassed for promotions and other job opportunities at Respondent. After suffering a workplace injury, Complainant claims that Respondent subjected him to increased scrutiny, unfounded reprimands, and failed to engage in an interactive dialogue regarding requested accommodations. Respondent provided \$70,000 as compensation to Complainant and agreed to obtain MCAD-approved anti-discrimination employment training for the shift supervisors and a Human Resource manager. [Hampden County]
- Complainant alleges that, shortly after hire, a manager began to regularly make unwelcome and inappropriate comments about her appearance. Soon the manager began to express a sexual interest in the Complainant. The Complainant told the manager that his comments were unwelcome and offensive, but the behavior continued. Complainant reported the behavior to Respondent's Director, who investigated and determined that no sexual harassment had occurred. The conduct continued and the Complainant felt she had no choice but to resign. Complainant obtained \$25,000 in compensation and the individually named Respondent agreed to obtain MCAD-approved anti-discrimination employment training. [Hampden County]
- In a case involving associational discrimination, the Complainant, a maintenance mechanic employed by a self-insured New England bottling company, alleged he was subjected to disparate treatment and terminated from his employment because of his association with his severely disabled wife. The Complainant alleged that the Respondent's animus was related to the cost of health insurance and the significant health care expenditures incurred by the Respondent for his wife's care. Following a three-day public hearing in which a Commission attorney prosecuted the case for the Complainant, the Hearing Officer found in favor of the Complainant, ordering the Respondent to cease and desist from any acts of discrimination based upon disability and particularly disparate treatment of employees associated with disabled family members. The Hearing Officer also awarded damages for lost wages, emotional distress, and attorney's fees. While pending review by the Full Commission, the parties settled the matter for a total payment of \$725,000. [Plymouth County]
- In this complaint, a language interpreter for a regional medical group alleged to have been subject to disability discrimination when her employment was terminated shortly after her employer learned that she suffered from a chronic relapsing-remitting condition. The Complainant, a long-term employee diagnosed with the disorder eight years before her termination, was never absent, late, or excused during an interpreter session despite her diagnosis. However, after being late to a training session and staff meeting, the employer required her doctor to complete a questionnaire regarding her condition and



need for accommodation. Based solely on the incomplete response from the doctor, and with no practical evidence that the condition prevented the Complainant from performing the essential functions of her job, her employment was terminated. After an unsuccessful conciliation conference, the parties continued good-faith negotiations. The parties agreed to settle the matter for \$30,000 and MCAD training for the Human Resource professionals responsible for assessing reasonable accommodation needs. [Worcester County]

- An employee for a waste management company alleged that his employment was terminated after he entered treatment for alcohol use disorder. Before the events giving rise to his MCAD complaint, the employee's work performance was praised by his employer. He was given increased job responsibilities and wage increases. After a short relapse, the employee had time and attendance issues that resulted in disciplinary action, including a warning that any future work-related deficiencies may result in his termination. Consistent with business practices, the employee notified the appropriate person via text that he was entering a residential rehabilitation program. Despite knowing the employee was in treatment for his disability, the employer terminated his employment. There was no consideration of a reasonable accommodation, and no interactive dialogue occurred. The parties settled this matter for \$45,000. [Essex County]
- Complainant worked as a part-time custodian at a cleaning company in Boston. He suffered several cardiac events requiring hospitalization, from which he always returned to the same job duties and hours. However, after his third heart attack, the employer refused to allow him to work fewer hours with lighter duties, even though these return-to-work restrictions were recommended by the employee's doctors. When the employee protested, the cleaning company fired him. At conciliation, the employer agreed to pay the Complainant \$30,000.00 in emotional distress damages, and no lost wages as he was physically unable to work. [Suffolk County]
- Complainant suffered from, among other disabilities, sleep apnea. She started a job with Respondent as an accountant but began making significant errors in her work within a few months of the new job because her sleep apnea left her fatigued and unable to concentrate. The employer was aware of this but refused to engage in an interactive dialogue or permit her to take unpaid time off to get surgery to correct the sleep apnea. The case settled after conciliation for \$37,500.00. [Hampden County]
- Complainant, a dishwasher, informed his restaurant manager that he intended to take parental leave and return after the birth of his first child. As the date for his leave approached, the manager stopped scheduling complainant to work. When complainant tried to return from parental leave, management terminated him, revoking his access to the company portal. Complainant was only out of work for a matter of weeks, but with a newborn infant and no income, Complainant suffered significant anxiety due to his retaliatory firing. The case settled for \$2,000.00 paid in lost wages and \$18,000.00 paid in emotional distress. [Middlesex County]

Public Accommodation Cases

- In the summer of 2021, Complainant, who is deaf and communicated by lip-reading and through American Sign Language, went to Respondent's emergency room. Upon admission to the hospital, Respondent routinely failed to provide Complainant with an American Sign Language (ASL) interpreter and staff did not wear clear facemasks to facilitate lip-reading. Complainant obtained \$20,000 in compensation and Respondent agreed to provide MCAD-approved anti-discrimination training to a significant number of staff, including Human Resources employees and clinical employees. [Barnstable County]

- Complainant is physically disabled and utilizes a walker and a wheelchair for mobility. She accused a private health club of failing to accommodate her disability after she made multiple accommodation requests in efforts to be allowed to enjoy the full advantages and privileges of the building and facilities. Specifically, complainant requested: (1) a handrail for the stairs near the club's entrance; (2) the walkway kept clear of ice, snow and leaves; (3) handicap access between the women's locker/showers and the pool; and (4) installing a pool chair lift. Respondent failed to accommodate her disability and instead subjected her to a retaliatory termination of her club membership. The matter resolved by compensating complainant \$12,500.00 for her emotional distress. [Barnstable County]
- Complainant identifies his race as Black. He alleged that a retailer racially profiled him when its asset protection staff contacted the local police department falsely accusing him of shoplifting after he left the store. Complainant further alleged that the local police department contacted his employer to investigate based upon him driving a work vehicle. Complainant's employer suspended him pending an investigation. Complainant was subsequently cleared of any wrongdoing and returned to work. The matter resolved for \$12,500.00 paid to Complainant for the emotional distress he suffered. Additionally, the retailer's asset protection staff will attend both the loss prevention training and inclusive leader training, which includes an implicit bias component.

FY23 Massachusetts Court Activity

Commission Counsel defend the Commission's decisions and procedures in the Massachusetts Superior Court and the Appeals Court. These cases include M.G.L. c. 30A administrative appeals and challenges to the Commission's investigative and enforcement authority. During fiscal year 2023, Commission Counsel were assigned three new Superior Court cases to defend. Commission Counsel remained responsible during fiscal year 2023 for 25 cases, which were pending as of June 30, 2022. The following report describes some of the activity in cases against the Commission being defended in the Massachusetts courts.

CSX Transportation v. MCAD, Peter Joyce, Appeals Court No. 2022-P-0183. 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 under c. 30A. The Superior Court upheld MCAD's decision. CSX filed an appeal with the Appeals Court. Filing of briefs was stayed while CSX and Joyce engaged in settlement discussions. Subsequently, Respondent and Joyce settled the matter on terms the Commission deemed satisfactory to the public interest. A Stipulation of Dismissal was signed by all parties and the case dismissed on April 28, 2023.

Sea View Retreat, Inc. et al v. Michelle A. Falzone, MCAD, Appeals Court No. 2023-P-1272. Sea View Retreat, Inc. filed this c. 30A appeal of an MCAD decision that Respondents retaliated against Complainant by terminating her employment after she made an internal report of sexual harassment, and the Commission's award of emotional distress damages, lost wages, and attorney's fees and costs. The case was dismissed by the Superior Court on February 15, 2022. The Commission filed a Motion to Issue Separate Amended Judgments on September 12, 2022, which was granted on December 5, 2022. As Falzone pursued execution of her judgment, Sea View filed a Notice of Appeal on December 19, 2022, and a Joint Amended Notice of Appeal on February 1, 2023. On March 21, 2023, the Commission filed a Motion to Strike certain portions of the appeal, which was denied on May 25, 2023.

Madonna v. MCAD and Fall River Police Department, Appeals Court No. 2022-P-0983. Following an evidentiary hearing, an MCAD Hearing Officer concluded that Respondent was not liable for discriminating against Madonna based on a disability related to Post-Traumatic Stress Disorder (PTSD) in violation of M.G.L. c. 151B, § 4(16). Madonna appealed to the Full Commission, which affirmed the decision of the Hearing Officer. In May 2019, Madonna filed a petition with the Superior Court seeking review of the Commission's final decision. Following briefing and argument, the Superior Court affirmed the Commission's decision. On May 26, 2022, Madonna filed a notice of appeal. Appellate briefs were filed in early 2023.

Eslinger v. MassDOT and MCAD, Appeals Court No. 2021-P-0653. In July 2020, the pro se Plaintiff filed a petition for 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 Superior Court issued its decision in accordance with c. 30A, affirming, in its entirety, the Commission's dismissal of the underlying complaint. Plaintiff appealed, and on May 6, 2022, the Appeals Court issued a Rule 23.0 decision affirming the Commission's final decision. The Supreme Judicial Court denied Plaintiff's subsequent request for Further Appellate Review on June 30, 2022. Eslinger subsequently appealed to the First Circuit Court of Appeals and the United States Supreme Court. Both courts rejected Eslinger's appeal on procedural grounds.

Tufts Medical Center v. MCAD, Marie Lunie Dalexis, Appeals Court No. 2022-P-0015. Tufts Medical Center filed an appeal in January 2022 from a judgment of the Superior Court affirming the decision and order of the MCAD, which found that Tufts discriminated against one of its nurses, Marie Lunie Dalexis, based on her disability. The MCAD's finding was based on adverse employment actions taken against Dalexis after Tufts was informed that, due to her medical conditions, Dalexis could not work overtime. The MCAD concluded, among other things, that by refusing to excuse Dalexis from the obligation to work overtime, Tufts had failed to offer Dalexis a reasonable accommodation for her disability. Oral argument held on October 13, 2022.

Lighthouse Early Learning Center v. MCAD, Appeals Court No. 2022-P-0995. In February 2019, the Lighthouse Early Learning Center (LELC or 'Lighthouse') sought to file a complaint in the Superior Court seeking judicial review of an MCAD interlocutory order pursuant to c. 30A. The Commission's Order denied Lighthouse's request to dismiss a pending case, MCAD and Lenanetta Johnson v. Arabic Evangelical Baptist Church, Inc. d/b/a/ Lighthouse Early Learning Center, MCAD Docket No. 16BEM01258. An attorney did not sign LELC's Superior Court complaint. In March 2019, the Superior Court denied Lighthouse permission to file the complaint, concluding that the complaint was defective without an attorney's signature. Lighthouse appealed, objecting to, among other procedural issues, the Superior Court's dismissal of its complaint. Briefs were submitted, and the matter was argued before the Appeals Court. On May 11, 2023, in a summary decision, the Appeals Court dismissed all issues raised by Lighthouse in its appeal.

International Longshoremens Association Local 1413-1465 v. MCAD et al., Appeals Court No. 2023-P-0083. Respondent filed an appeal of an MCAD decision in favor of a Complainant on her claim of discrimination on the basis of sex. The Superior Court issued a decision in favor of the MCAD, affirming the MCAD's Decision finding that Complainant had been refused work as a forklift operator on the docks in New Bedford because she was female. Evidence of sex discrimination included the facts that less qualified males had been picked to work as forklift operators over Complainant, and union membership that was, and always had been, entirely male. Respondent appealed the decision to the Appeals Court and filed its Brief on March 13, 2023. MCAD filed its Brief on April 25, 2023. Respondent filed its Reply Brief on April 25, 2023.



HEARINGS DIVISION

The Hearings Division is comprised of two Hearing Officers and the three MCAD Commissioners. The Hearings Division holds public hearings and issues decisions pursuant to Section 5 of M.G.L. c. 151B, M.G.L. c. 30A and 804 CMR 1.12 (2020). In addition to conducting public hearings, the Hearings Division conducts pre-hearing conferences and rules on various motions. In FY23, the Hearings Division conducted eight public hearings and issued the following five decisions after public hearing.

FY23 Hearings Decisions

MCAD and Silva v. Acushnet Co., et al., 44 MDLR 33 (2022) (Hearing Officer Barshak)

A complaint alleging violations of M.G.L. c. 151B was filed against Acushnet Co. and five individual Respondents alleging that the individual Complainant was subjected to a hostile work environment based on gender and/or age, was subjected to disparate treatment based on gender and/or age when the company terminated her employment and was retaliated against. The Hearing Officer concluded that Complainant failed to prove a hostile work environment claim based on age or gender and dismissed those claims. In assessing the disparate treatment claim, the Hearing Officer concluded that: Complainant established a prima facie case of disparate treatment based on gender and age; Acushnet Co. met its burden of producing credible evidence supporting a non-discriminatory reason for the termination of employment, poor job performance; and Complainant failed to establish that the articulated reason was a pretext for discrimination. As a result, Complainant failed to prove discriminatory animus and causation, and the disparate treatment claims were dismissed. The Hearing Officer dismissed each retaliation claim, both individually and as a single omnibus retaliation claim. The Hearing Officer concluded that there was no basis for liability against any individual Respondent.

MCAD and Fortin and Evangelista v. Marty Green Properties, LLC, et al., 44 MDLR 47 (2022) (Hearing Officer Barshak)

A complaint alleging violations of M.G.L. c. 151B was filed against the Respondents, who consisted of the property owner, property management company and property manager. The complainants were Evangelista, who was a tenant, and her then boyfriend, Fortin, who had a disability. Evangelista alleged that she was subjected to disparate treatment on the basis of her association with a person with a disability and denied a reasonable accommodation. Fortin alleged that he was subjected to disparate treatment based on his disability and denied a reasonable accommodation. Both argued Respondents retaliated against them. The Hearing Officer concluded Evangelista had standing to bring an associational discrimination disability claim of disparate treatment under Section 4(6)(b) of M.G.L. c. 151B, but failed to prove discriminatory animus, resulting in dismissal of that claim. Regarding Fortin's disability-based disparate treatment claim, the Hearing Officer concluded that even though Fortin had no contractual or property-based relationship with the owner or company, such as a lease or rental agreement, Fortin had standing to bring that claim based on the language of Section 4(6)(b) of M.G.L. c. 151B. In assessing the merits of that claim, the Hearing Officer concluded Fortin failed to establish discriminatory animus, thus requiring dismissal of that claim. As for the claims of lack of reasonable accommodation, the requested accommodation was that Respondents allow Fortin's dog to stay on the property notwithstanding a no-dogs policy. The Hearing Officer concluded Fortin had standing to bring such a claim under Sections 4(6) and 4(7A)(2) of M.G.L. c. 151B because those

provisions do not require that the charging party be a tenant, lessee or have a contractual or property-based relationship with the owner or company to receive statutory protection. The Hearing Officer concluded that Fortin prevailed on the claim. Fortin established that he had a disability, and that the manager knew or reasonably should have known that Fortin had a disability. The dog provided emotional support to Fortin, which ameliorated the emotional effects of the disability and enhanced Fortin's quality of life. A request for a reasonable accommodation was made. Rejecting the argument that the dog posed a health or safety risk to other residents, the Hearing Officer concluded that the accommodation was reasonable and did not impose an undue hardship or burden. The owner and company were found liable to Fortin pursuant to Sections 4(6) and 4(7A)(2) of M.G.L. c. 151B for failing to provide a reasonable accommodation. The Hearing Officer also concluded that the owner and company were liable to Fortin pursuant to those provisions for an independent reason – the manager's failure to engage in an interactive dialogue process. Whether Evangelista had standing to bring a claim of lack of reasonable accommodation pursuant to Sections 4(7A)(2) and 4(6) of M.G.L. c. 151B based on her association with Fortin was an issue of first impression. The Hearing Officer concluded Evangelista had standing. The Hearing Officer based his conclusion on the broad remedial purposes underlying M.G.L. c. 151B; case law under the Fair Housing Amendments Act of 1988; and the determination that a contrary interpretation would create absurd or unreasonable consequences. Having concluded Evangelista had standing to bring that claim, the Hearing Officer found the claim meritorious. The Hearing Officer also concluded that the manager unlawfully retaliated against Evangelista and Fortin subjecting the owner and company to liability. For two independent reasons, the Hearing Officer concluded the manager was individually liable to Evangelista and Fortin. Evangelista was awarded \$20,000 in emotional distress damages. Fortin was awarded \$10,000 in emotional distress damages. In addition, the manager was ordered to pay a civil penalty of \$7,500, the owner and the company were each ordered to pay a civil penalty of \$5,000. Respondents were ordered to undergo training on disability law to be conducted by a trainer approved by the Commission.

MCAD and Joseph v. Massachusetts Department of Children and Families, 45 MDLR 5 (2023)

(Hearing Commissioner George)

A complaint alleging violation of M.G.L. c. 151B was filed against the Respondent, Massachusetts Department of Children and Families ("DCF") alleging that it discriminated against the individual Complainant on the basis of her disability by failing to provide her with reasonable accommodations. Complainant also alleged that DCF retaliated against and constructively discharged her. The Hearing Commissioner concluded that two of the four claims of failure to provide a reasonable accommodation were meritorious. First, DCF rejected a request for the Complainant to return to work with certain restrictions, including no driving. The dispute was whether Complainant was a qualified disabled person. DCF claimed she was not qualified, because she was unable to drive, and driving was an essential function of a DCF social worker position. The Hearing Commissioner concluded that driving was not an essential function of the social worker position. Second, DCF rejected a later request for accommodation that included a restriction on hours and caseload. As to this request, the disputed issues were whether the Complainant was a qualified disabled person and whether granting this request would cause an undue hardship for DCF. The Hearing Commissioner rejected DCF's argument that Complainant was not a qualified disabled person because of safety concerns and concluded that DCF failed to prove that granting the request would create an undue hardship. As to the claim of retaliation, the Hearing Commissioner concluded DCF took retaliatory adverse action against Complainant

through the creation of a hostile work environment. The Hearing Commissioner held that the Commission recognizes disability based hostile work environment claims, finding that there was no reasoned basis for treating disabled status differently from other protected statuses in the context of a hostile work environment claim, whether as a standalone claim, or as part of a retaliation claim. The Hearing Commissioner also found DCF constructively discharged the Complainant noting that the working conditions Complainant faced were so intolerable given their unusually aggravated nature that a reasonable person would have felt compelled to resign and the resignation occurred after an exhaustion of other alternatives. Complainant was awarded approximately \$100,000 in lost wages, and \$35,000 in emotional distress damages. The Hearing Commissioner imposed a \$10,000 civil penalty on DCF. In addition, DCF was ordered to undergo training on disability discrimination, hostile work environment and retaliation to be conducted by the Commission's Training Unit.

MCAD and Gurnett v. Organogenesis, Inc., 45 MDLR 17 (2023) (Hearing Officer Liebman)

The individual complainant alleged that her employer, Organogenesis, Inc., discriminated against her on the basis of her disability by failing to provide a reasonable accommodation, and subsequently, constructively discharged her. Complainant, who had a condition that affected her ability to sit for long periods without breaks, requested that Respondent allow her to work remotely two days per week to alleviate and reduce the pain she suffered during her long commute. Respondent denied the request. The Hearing Officer concluded that Complainant could perform the essential functions of her position while working two days per week from home and thus was a qualified disabled person and concluded that allowing an employee to work at home may be a reasonable accommodation, as it is an adjustment to the way the job is done. The Hearing Officer further held that, in appropriate circumstances, accommodations related to commuting to and from work may constitute reasonable accommodations, reasoning that commuting is a necessary element of accessing the workplace and permitting an employee with a disability to perform the job. The Hearing Officer highlighted the importance of the interactive dialogue, noting that once a qualified individual with a disability requests a reasonable accommodation, the employer must make a reasonable effort to determine the appropriate accommodation through a flexible, interactive process that involves both the employer and the employee. The Hearing Officer determined that Complainant's supervisor and the Human Resources Department failed to engage in an interactive dialogue with Complainant, and that allowing Complainant to work two days per week remotely would not unduly burden Respondent's operations. The Hearing Officer recognized that Respondent's conduct in not providing the Complainant with an accommodation was distressing, but dismissed the constructive discharge claim, concluding that there was insufficient evidence to justify a finding that the workplace was so objectively intolerable that Complainant had no other choice but to resign. The Hearing Officer held that although a breakdown in the interactive process by an employer may, in some circumstances, cause the constructive discharge of an employee, more than a mere failure to provide a reasonable accommodation is ordinarily necessary to prove constructive discharge. The Hearing Officer ordered Respondent to cease and desist from any acts of disability discrimination and pay Complainant \$75,000 in damages for emotional distress. In addition, certain training regarding reasonable accommodations and the creation of inclusive workplaces for employees with disabilities was imposed.

MCAD and Santiago v. Caregivers of Massachusetts, Inc., 44 MDLR 61 (2023) (Hearing Officer Liebman)

The individual complainant filed a complaint against her employer (“Respondent”) charging Respondent with sexual harassment, retaliation, a violation of the Massachusetts Parental Leave Act (M.G.L. c. 149, § 105D), disability discrimination including failure to provide a reasonable accommodation, sex discrimination, and pregnancy discrimination. Complainant alleged that her co-worker subjected her to sexual harassment, that Respondent knew or reasonably should have known of the harassment, and that Respondent failed to take prompt, effective and reasonable remedial action. Several allegations comprising the claim of sexual harassment occurred beyond the 300-day statute of limitations period and would be untimely unless Complainant proved that there was a continuing violation, an exception to the 300-day statute of limitations. The Hearing Officer concluded that the continuing violation doctrine did not apply. The Hearing Officer then examined whether the timely incidents of alleged harassment constituted sexual harassment. The Hearing Officer determined that the timely incidents were not sufficiently severe or pervasive to interfere with a reasonable person's work performance and that there was no evidence that Respondent knew or should have known about the timely acts and dismissed that claim. The Hearing Officer concluded that there was no violation of the Massachusetts Parental Leave Act. The Hearing Officer found that that Respondent’s decision to transfer Complainant after she complained of sexual harassment constituted unlawful retaliation. The Hearing Officer noted that the transfer increased the Complainant’s commute and was to an office in which she had no access to the equipment necessary to do her job, and thus constituted an adverse action. Complainant further alleged that Respondent discriminated against her because of her disability in violation of M.G.L. c. 151B, § 4(16) when it failed to engage in an interactive process designed to identify a reasonable accommodation, denied her requests for an extension of leave, and terminated her employment. The Hearing Officer concluded that instead of engaging in an interactive process, Respondent terminated Complainant’s employment without attempting to discuss with Complainant or her doctor the nature of the medical condition or the length of a leave extension required. The Hearing Officer concluded that permitting Complainant to extend her leave of absence would not have imposed an undue burden on Respondent, and that Respondent’s failure to engage in an interactive process and provide a reasonable accommodation violated M.G.L. c. 151B, § 4(16). The claims of sex and pregnancy discrimination were dismissed on the basis that the articulated reasons for the termination of employment were not pretext for sex or pregnancy discrimination. The Hearing Officer ordered Respondent to pay Complainant approximately \$132,000 in lost wages, \$10,000 for the emotional distress caused by the retaliatory transfer, and \$20,000 in damages for emotional distress resulting from the discriminatory termination. Respondent was ordered to cease and desist from any acts of disability discrimination and/or retaliation; to promulgate, implement and distribute, to all employees, lawful policies on reasonable accommodation and the interactive dialogue; and to engage in training focused on disability discrimination and retaliation provided by a trainer certified by the Commission.



FULL COMMISSION DECISIONS

The Full Commission is comprised of the three MCAD 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, 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 FY23, the Full Commission issued four decisions. The decisions issued in FY23 are described below. All of the decisions are published on MCAD's website, and in the Massachusetts Discrimination Law Reporter where noted.

MCAD & Iris Quinones v. Faridoon Zamani, DMD & Faridoon Zamani, DMD, PC, 44 MDLR 25 (2022) (Sexual Harassment-Hostile Work Environment-Constructive Discharge)

The Hearing Officer's determination that both the individual Respondent and Respondent dental practice were liable for discriminating against Complainant in this sexual harassment in employment case was affirmed by the Full Commission. Respondents failed to appear for the public hearing and unsuccessfully argued that the public hearing should not have proceeded by default. The Full Commission determined Respondents had adequate notice of the public hearing and the default yet failed to timely appeal the default or demonstrate good cause to vacate the entry of default. The Full Commission also rejected Respondent's argument that acquittal of the criminal charges arising from the incidents at issue in the MCAD complaint should have resulted in the dismissal of Complainant's claims before the Commission. Additionally, the Full Commission determined that the Hearing Officer's award of \$135,000 in emotional distress damages was supported by substantial evidence. The Full Commission also awarded attorney's fees and costs to the prevailing Complainant of \$15,330.

MCAD & Yvrose Cesar v. Danvers Management Systems, Inc. d/b/a Hunt Nursing and Rehabilitation Center, 44 MDLR 29 (2022) (Race Discrimination-National Origin Discrimination-Retaliation)

The Full Commission affirmed the Hearing Officer's decision that dismissed Complainant's claims of race and national origin discrimination but found Respondent liable for retaliatory termination. Complainant, a Black woman of Haitian descent, worked as a Certified Nursing Assistant for Respondent nursing home for over 14 years, providing personal care for residents of the facility. On appeal, the Full Commission found that Respondent had notice of the racial nature of Complainant's allegations when she reported coworkers were calling her racial slurs to the Human Resource Manager and citing the same name-calling and bullying in her complaint filed with the Commission. Respondent also argued Complainant failed to prove a causal link between her protected activity and her termination because she did not sufficiently rebut the legitimate, non-discriminatory reasons it provided for its decision to terminate her employment, which the Full Commission rejected. The Hearing Officer found several circumstances supporting a finding of retaliation, including policies providing for lesser discipline in lieu of termination; the lack of discipline regarding other instances of the same conduct by other employees; favorable performance reviews; and a failure to meaningfully investigate. The Full Commission agreed with the conclusion that the totality of the circumstances supported a finding of retaliation and affirmed the Hearing Officer's award of \$12,000 in damages for backpay and \$15,000 for emotional distress. Complainant also received a reduced award of attorney's fees and costs of \$53,334.91.

MCAD & Somaira Osorio v. Standhard Physical Therapy et al., 45 MDLR 1 (2023) (Sexual Harassment, Hostile Work Environment, Retaliation)

The Hearing Officer's decision finding two managers and a physical therapy practice liable to a former female manager for sexual harassment and retaliation was upheld by the Full Commission in its entirety. The Full Commission determined there was substantial evidence to support the Hearing Officer's finding of a sexually hostile work environment where Complainant's testimony established the conduct at issue was clearly of a sexual nature, unwanted, and objectively offensive. Further, the Full Commission found the Hearing Officer's findings regarding the Respondent's witness' credibility, the timing of Complainant's termination, and an inadequate investigation were supported by the record and amounted to substantial evidence of retaliation. The Full Commission affirmed the awards of \$3,200 in lost wages, \$50,000 in damages for emotional distress, and \$15,319.32 in attorney's fees and costs. Additionally, Respondents were ordered to attend MCAD-sponsored sexual harassment training.

MCAD & Jeffrey May v. The Parish Café and Factotum Tap Room, Inc., 45 MDLR 35 (2023) (Public Accommodation, Sexual Orientation)

This Full Commission decision affirms the Hearing Officer's decision imposing liability on the Respondent restaurant for sexual orientation discrimination in a place of public accommodation. The Complainant, a male who identifies as gay, was denied access to a restroom and verbally and physically harassed by Respondent's employee. The Full Commission decision addresses whether the Hearing Officer's order for training at the Respondent's second location could stand, requiring an analysis of whether the two locations could be jointly and severally liable. The Full Commission determined that joint and several liability was proper given that, inter alia, throughout the MCAD process Respondent repeatedly held itself out as one business with two locations as opposed to separate legal entities. The Complainant was awarded \$25,000 in emotional distress damages and Commission Counsel was awarded attorney's fees and costs in the amount of \$14,846.19.



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 (adr): 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.” Delete ‘did not’ and just say ‘committed an unlawful practice.’

Mediation: Voluntary pre-disposition process in which the parties in the dispute attempt to resolve the outstanding issues and arrive at a settlement 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.”

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Tania Taveras▪
Nancy To▪
Gillian Veralli
Devin Wintemute
Paul Witham▪
Emma Wolters
Kendrick Yu
Sabrina Zafar
Michael Zeytoonian

* Employed by MCAD for a portion of FY23
▪ 10+ years of service to MCAD
~ Contract Employee

MCAD ADVISORY BOARD

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Courtney Scrubbs
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Reena Thadhani
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Richard L. Wise

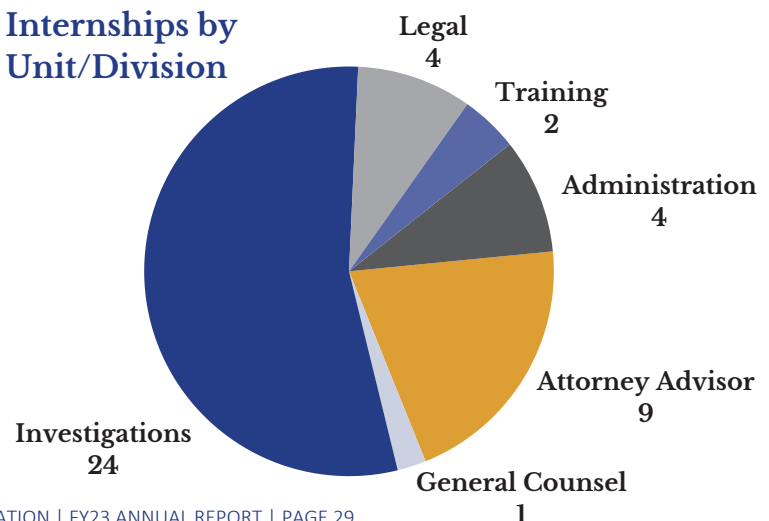
MCAD FY23 INTERNS

Haley Allbee [^]	Olivia (Olive) Lofblad
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Melissa Atocha	Sean McDonough
Kemmara Bailey	Brendan McHugh*
Riya Balachandran	Tyler Mills
Katherine Barry	Andrew Mimmo
Ann Yancey Bassett	Nicholas Moore [^]
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Jerry Chen	Elana Regan
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Tom Curran	Alexandra Robbins
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Stephen Kubick	Jessica Wong
Lindsay Lake	Savannah Wormley
Gabriella Lewis	Jacob Yezerski
Mary Lindholm	Kendrick Yu*

[^] interned for multiple semesters

* hired as full-time staff following internship by 6/30/23

**Internships by
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IN LOVING MEMORY

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Myrna Solod
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