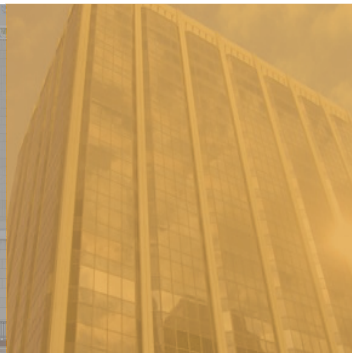


Fiscal Year 2024

ANNUAL REPORT



July 1, 2023 - June 30, 2024

MCAD Commissioners



Sunila Thomas George
(Chairwoman)



**Monserrate Rodríguez
Colón**



Neldy Jean-Francois

MCAD Executive Staff

(as of June 30, 2024)

Michael Memmolo
Executive Director

Deirdre Hosler
General Counsel

Ken Callahan
Chief of Investigations

Diane Nordbye
Deputy General Counsel

Andrew Espinosa
Deputy Chief of Investigations

Shirani Jimenez
Director of Human Resources, DEI



LETTER FROM THE EXECUTIVE DIRECTOR

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 submit the Fiscal Year 2024 (FY24) 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, 2023 – June 30, 2024.

During FY24, the MCAD made historical and transitional changes that will have an everlasting impact on the agency. First and foremost was the hiring of an Executive Director. After a thorough, open and transparent process, the MCAD Commissioners voted unanimously to hire the agency’s first-ever Executive Director at their May 6, 2024 meeting. The process saw 64 candidates from diverse backgrounds apply for the position. Short-listed candidates interviewed with a panel of MCAD staff, managers, and advisory board members, ensuring that individuals working across the agency had the opportunity to participate in the hiring of this inaugural position. The panel ultimately selected three finalists who were interviewed by the MCAD Commissioners. The MCAD Commissioners demonstrated remarkable foresight and careful consideration in establishing the Executive Director position, clearly defining its responsibilities and empowering the selected individual to fulfill them. They ensured that the hiring process adhered to the agency’s established practices, and their commitment to this thoughtful approach deserves commendation. Their dedication marks a significant step forward, ushering in a new era of leadership for the agency.

Throughout the fiscal year, the agency made substantial gains in staffing, backfilling 19 positions, including 13 investigator roles, despite experiencing 14 employee departures during this time. Notwithstanding, the agency realized a net increase in staffing for the second consecutive fiscal year. However, due to anticipated budget constraints in FY25, the agency had to scale back its hiring efforts in Q4 of FY24, eliminating five planned investigator positions that would have further expanded the agency’s workforce growth. This had a tremendous impact on the agency, particularly as the demand for the MCAD’s services increased. To manage the elimination of these five positions, the agency reduced the number of daily intake appointments to align with its capacity, which impacted filing timelines but prioritized individuals nearing their statute of limitations.

The MCAD also took important steps toward fulfilling its statutory requirement to maintain regional offices in FY24. Discussed in last year’s annual report, the previous MCAD Worcester office closed in October 2022 with expectation for the new Worcester location to open in “Q2 or Q3 of FY24.” Crediting the strong partnership between the MCAD and the Division of Capital Asset Management and Maintenance (DCAMM) staff, the entire process from posting the RFP to opening the office took only 14 months! The agency was exceptionally proud to hold its grand opening on January 19, 2024 at the new office located at 18 Chestnut Street in Worcester. This event marked a continuation of the agency’s long history of partnership with the City of Worcester dating back some 54 years and our continued commitment to providing accessible and vital anti-discrimination services to the residents of central Massachusetts. As part of an outside section to the FY24 budget, the agency’s statutory requirement to maintain an office in the city of New Bedford was changed and required that office to be maintained in Fall River. Throughout FY24, the agency worked with DCAMM on ways to meet this requirement to provide the most benefits the Commonwealth’s citizens. To that end, the agency requested that DCAMM engage state agencies who offer similar services to the MCAD, and who already have offices in Fall River, to inquire about shared space opportunities. The hope is this will prove more cost effective and provide the public with a space occupied by two agencies that serve overlapping constituencies. Progress on this initiative was made towards the end of FY24 and the MCAD hopes to announce the location of its Fall River

presence in Q2 of FY25.

One of the most transformative initiatives in FY24 was the selection of a vendor for the MCAD's new Comprehensive Case Management System (CCMS) after an RFR was issued in FY23 to replace our 22-year-old Case Management System (CMS). The RFR sought a new system that would provide staff with a current application that leverages efficiencies to reduce their administrative workload, provide the agency with the ability to track and extract data related to discrimination, and for the first time in the agency's history, allow constituents to file complaints of discrimination online. Online filing will usher in a new era for the MCAD as we will join our federal partner the Equal Employment Opportunity Commission (EEOC), as well as numerous other civil rights agencies throughout the United States, that have successfully implemented online filing. The new public facing portal will guide individuals through the complaint filing process allowing for full online filing of a complaint. This process will be accessible and inclusive as online filing will be offered in multiple languages. The MCAD's process will also evolve to allow us to review complaints in a more effective way and render decisions more efficiently. These revised processes are necessary for the agency to meet the increasing demand for its services, while remaining committed to the agency's core values. The agency has long struggled with a backlog of investigations and high investigator caseloads, necessitating a new process. As a result, the MCAD must evolve to meet the changing needs of our constituents. This project will continue into FY25 and is expected to be completed by Q1 of FY26. The agency is grateful to the Governor, Senate President, Speaker of the House, the Chairs of House and Senate Ways and Means, and the members of the Legislature who worked to allow this project to be funded through the revenue that the MCAD receives through its workshare agreement and yearly contracts with the EEOC. This decision eliminated the need to appropriate additional state funds to support this project's cost.

FY24 has indeed been the bridge to a new era at the MCAD. In addition to the above major events, other incredible work was accomplished by the MCAD team to increase efficiencies in our work and to continue to move the needle on anti-discrimination law. The agency was excited to host our peer agencies from the DC Office of Human Rights and the Pennsylvania Human Relations Commission to learn about each others' laws, operations, and to discuss best practices for investigation and adjudication of discrimination complaints. The agency was also very proud to host a delegation of LGBTQIA+ rights leaders from India who were participating in the U.S. Department of State's International Visitor Leadership Program (IVLP). Joining us on International Transgender Day of Remembrance, the delegation met with MCAD leadership to share their efforts to promote transgender empowerment across India and to learn about the mission of the MCAD. During FY24, our Training Unit contributed to our collaboration and outreach efforts by partnering with the City of Boston's Health Commission's (BPHC) Love for Latch (L4L) campaign which aims "to create a more inclusive work environment that supports breastfeeding mothers in Boston," by training on the Massachusetts Pregnant Workers Fairness Act and the role the MCAD plays in protecting workers rights in Massachusetts. MCAD staff was regularly requested to participate in a number of Massachusetts Continuing Legal Education (MCLE) programs as well as subject matter experts on panels, including at the Massachusetts Fair Housing and Civil Rights Conference.

To continue innovating its operations, the MCAD hired its first Press Secretary, Communications Director and Legislative Liaison this year. This role was created to amplify the agency's communication strategies to effectively highlight important information about the MCAD's services and educate on its critical work. Filling this role has allowed the agency to step more fully into the digital age and engage a broader audience by building a presence on social media. This position has worked with our Director of Human Resources (HR), DEI and our Director of Training to bring informative resources and training to our staff throughout the fiscal year. Included in these offerings were "Understanding Communication Access for Deaf and Hard of Hearing Individuals," "Taking Steps to Address Barriers to DEI in Dispute Resolution," and "Credit and Lending and Housing Appraisal Discrimination." Additionally, these three team members were integral in continuing, and expanding, the agency's monthly diversity celebrations. For example, the agency collaborated with the Massachusetts Asian American and Pacific Islander Commission (AAPIC) for a "Lunch and Learn" event with the AAPIC Executive

Director during Asian American and Native Hawaiian/Pacific Islander Heritage Month in May.

The MCAD is always happy to discuss the agency's successes and continues to be transparent about the challenges it faces, too. The Commission's inventory of backlogged investigations (investigations active longer than 18 months) continued to increase. In FY24, the agency made significant progress in reducing its oldest cases, achieving a 54% reduction. Despite this progress, a substantial increase in new complaints outpaced the agency's investigative capacity, resulting in a growing backlog. Regardless of the surge in new cases, the agency's aggressive efforts to reduce the backlog limited the increase to 2.8%, resulting in a total backlog of 1,851 cases. This was possible due to the substantial reduction of aged cases as well as the agency's pivot at mid-year to align intake availability with staffing capacity. Even with this reorganization the agency processed 15% more complaints in FY24 than in FY23 for a total of 3553 complaints filed. The MCAD Commissioners, managers, and staff are deeply committed to eliminating the backlog and we continue to innovate towards that end.

All of the above was made possible by the incredibly talented and mission-driven MCAD team. A special thanks to our dedicated Commissioners, the MCAD Advisory Board, and our community stakeholders. The collaborative efforts at all levels of the agency have truly transformed the MCAD in an incredible way and we are proud of the progress made during FY24. We are greatly looking forward to continuing this positive momentum in FY25.



Michael Memmolo
MCAD Executive Director

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.

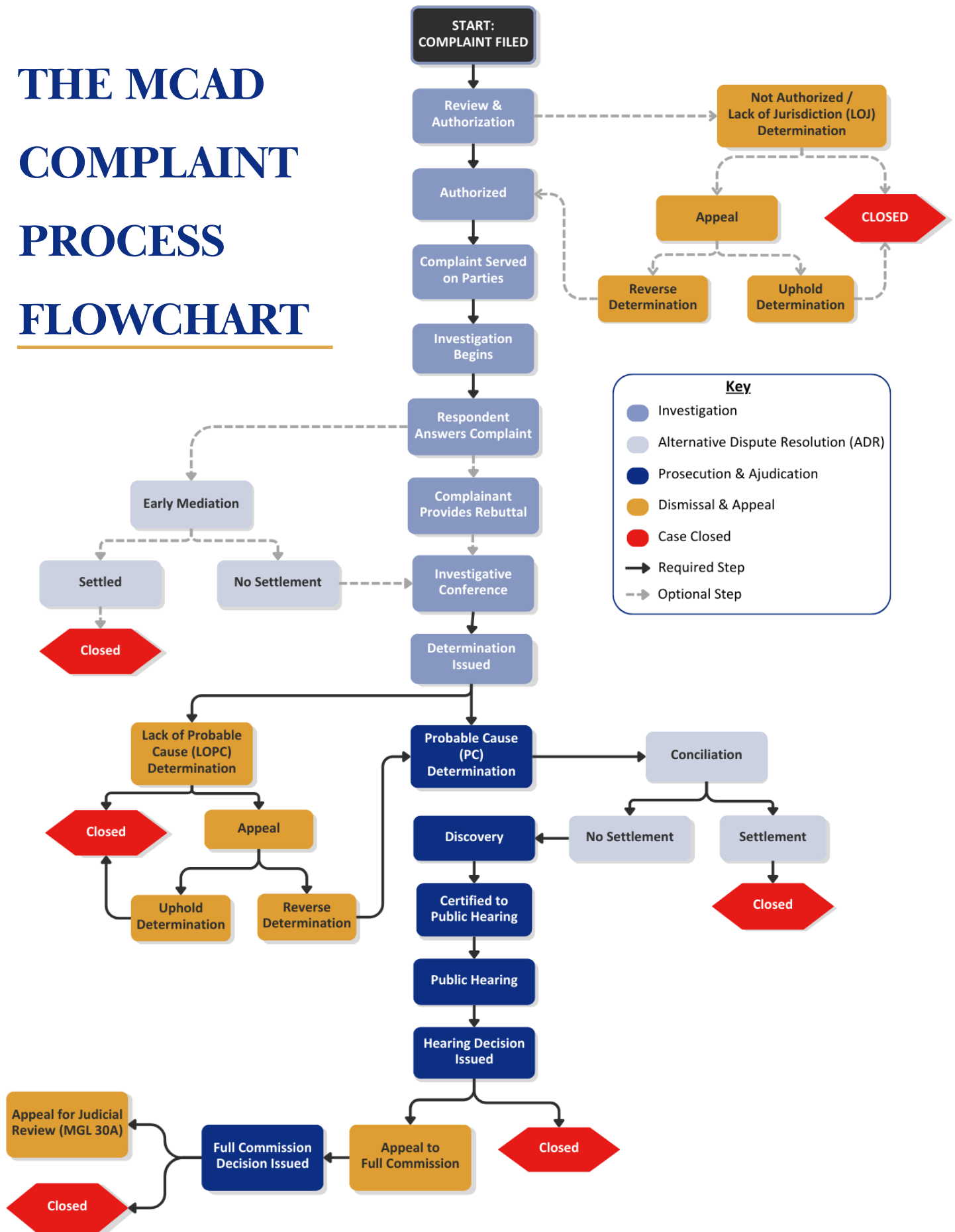
The MCAD currently has three offices open to the public, in Boston, Springfield, and Worcester, where anyone can meet with an intake specialist for a free consultation and to file a complaint.

To learn more, visit www.mass.gov/mcad.

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THE MCAD COMPLAINT PROCESS FLOWCHART



FY24 AT-A-GLANCE

<3%

growth of the
case backlog

6,877

people trained in anti-
discrimination law

640

public records
requests

10

public hearing &
attorney's fee decisions

3,553

new complaints
filed

425

mediations &
conciliations

640

consultations
completed

10,692

informational calls
conducted

16%

probable cause
investigative findings



FY24 DIVISION & UNIT REPORTS

OPERATIONS & FINANCE DIVISION

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

Fiscal/Budget Unit

The Fiscal/Budget Unit manages all 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. The unit monitors fiscal year spending to ensure spending meets planned levels, makes necessary recommendations for spending deviations, oversees all of the Commission's purchasing, procurement, and contract management and manages accounts payable, accounts receivable, and revenue activities. The Fiscal/Budget Unit is comprised of the COF and the Fiscal Officer.

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 (FMLA) requests. The HR Unit is also responsible for all posting, hiring, and recruiting of MCAD positions and recommendation and implementation of agency-wide personnel policies and procedures. The Director of Human Resources, DEI is the agency's designated Diversity Officer, overseeing all diversity considerations and professional development opportunities.

Information Technology (IT) Unit

The IT Unit oversees all 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. The IT Unit is comprised of the Director of Information Technology.

Operations Unit

The Operations Unit manages the operations of the Commission's three office locations (Boston, Springfield, and Worcester) and oversees lease management for the Commission's Springfield and Worcester offices. 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 FY24, the agency received full state funding and made significant gains by backfilling many of its vacant positions. The agency realized a net increase of six full-time employees (FTEs) accounting for staff losses due to attrition during the same timeframe. Unfortunately, the agency was unable to backfill all budgeted and vacant positions due to anticipated funding constraints in FY25. Notably, FY24 saw the hiring of the agency's first Press Secretary, Director of Communications, and Legislative Liaison—a role critical to advancing the agency's communications and legislative efforts. This role has been key in launching the agency's social media presence.

Operationally, the agency opened a new Worcester office in January, fulfilling last year's projection of opening that office during Q2 or Q3 in FY24. This was a significant undertaking by the agency and resulted in standing up a new office in record time. The entire process, from posting the RFP, evaluating bids, selecting a successful bidder, agreeing on the office design, executing a final lease agreement, and starting and finishing construction took only 14 months.

Finally, the agency completed the procurement process to replace its legacy Case Management System (CMS). This careful process took 17 months to complete from RFR posting, bid response evaluation, to vendor demonstration, to selecting a successful bidder and finalizing a contract. Work on the project began in May 2024 and is expected to last 12-16 months for project completion. This project is one of the agency's top priorities and is expected to see substantial completion in FY25.

FY24 MCAD Budget Overview

July 1, 2023 - June 30, 2024

BUDGETARY DIRECT APPROPRIATION

Line Item 0940-0100	\$199,413 [^]
State Appropriation	\$8,237,676
	<u>\$8,437,089</u>

RETAINED REVENUES COLLECTED

Line Item 0940-0101	\$21,943 [^]
HUD	\$1,005,084
Audit/Copying Fees	\$0
	<u>\$1,027,027</u>
Line Item 0940-0102	\$10,093 [^]
Training Program Total	\$209,430
	<u>\$219,523</u>

Line Item 0940-0103	
EEOC	\$1,167,200
Attorneys' Fees	\$1,200,000
	<u>\$2,367,200</u>

Retained Revenue Total	\$3,394,227
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TOTAL FY24 Appropriated Funds & Collected Retained Revenue	\$12,050,839
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Expenses	
Payroll	\$(7,351,651)
Rent	\$(147,969)
Administrative Overhead	\$(2,327,714)

Total FY24 Expenses	\$(9,827,334)
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Reversion to the General Fund	\$31,305
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[^] Collective Bargaining Agreement Draw

FY25 MCAD Budget Overview

July 1, 2024 - June 30, 2025

State Appropriation (Line Item 0940-0100)	\$8,367,000
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 FY25 BUDGET	\$11,277,888
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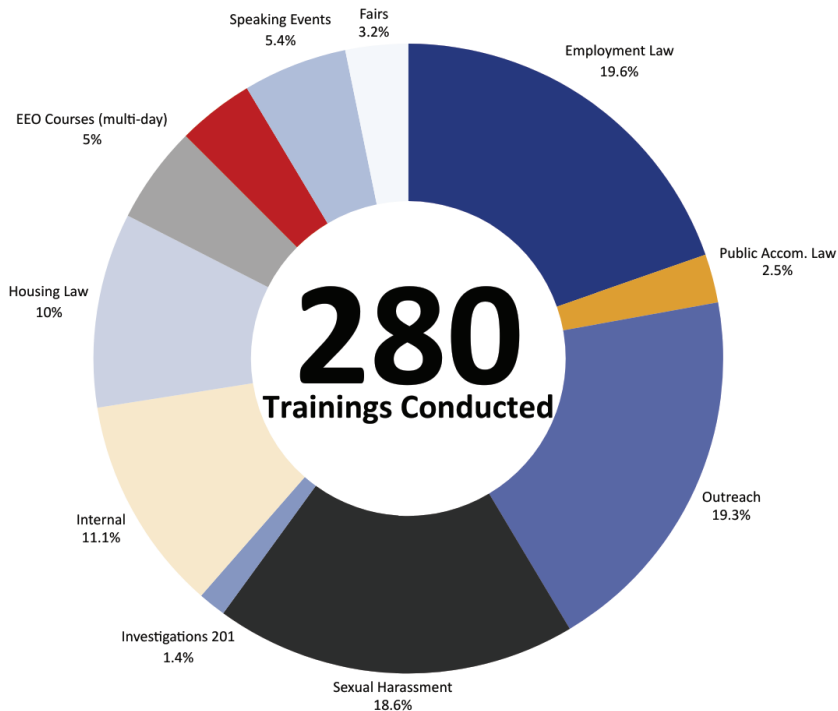
* Retained Revenue Spending Cap

TRAINING, EDUCATION, & COMMUNITY OUTREACH UNIT

The MCAD Training, Education, and Community Outreach (Training) Unit provides internal and external discrimination prevention trainings and assists with recruitment and onboarding of new agency staff and interns. The Training Unit consists of the Director of Training and two full time Trainers.

In FY24, the Training Unit conducted and attended approximately 280 discrimination prevention training sessions, community events, and career fairs across the Commonwealth impacting roughly 6,877 participants. The Training Unit offers anti-discrimination training in the subjects of employment, housing, sexual harassment, disability and religious accommodations, and conducting internal investigations. The Commission also held its 25th annual Courses for Equal Employment Opportunity (EEO) Professionals. This multi-day training includes three popular courses: Train-the-Trainer, Responding to Accommodation Requests, and Conducting Internal Discrimination Complaint Investigations.

FY24 Total Trainings Conducted



The Training Unit resumed in-person training options in November 2022, resulting in approximately 55% of events being held in-person in FY24. Virtual trainings with a live trainer continue to be a popular option for organizations. Of the 157 paid trainings the unit facilitated during FY24, 72 were required affirmative relief resulting from a complaint of discrimination, and 54% were organizations proactively training their employees. Of those trainings, 33 were “Open Enrollment” trainings which have a mixed group of organizations in attendance, allowing one or more employees of an organization to attend without the commitment of sending an entire staff. In those 33 trainings, the unit hosted 399 participants from 190 organizations—105 of the organizations were required to attend as affirmative relief from an MCAD settlement or decision.

Number of People Impacted by Trainings



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, planning, managing and performing new employee/intern training. The Unit also assists in creating the annual public awareness campaign—as outlined in the Communications Unit section.

INVESTIGATIONS DIVISION

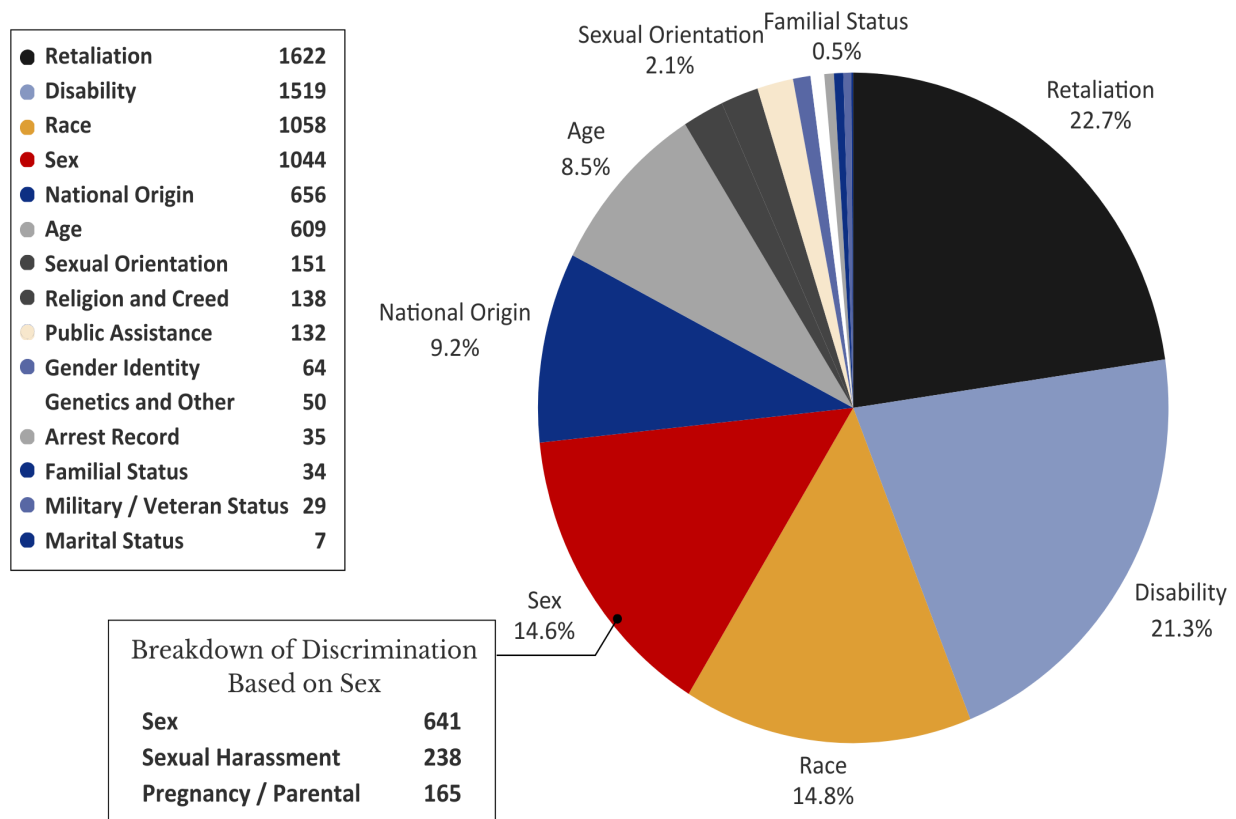
The MCAD’s Investigations Division handles complaints of discrimination in the Commission’s jurisdictional areas of employment, housing, public accommodations, higher education admissions, and credit and mortgage lending. If a complaint falls outside the agency’s jurisdiction or fails to meet the criteria for investigation, it is dismissed. Otherwise, the MCAD initiates a formal investigation process.

The Investigations Division is comprised of nine units with approximately 57 total employees, which includes administrative staff who assist with document organization and processing; Investigators and Investigative Supervisors who conduct intakes and investigate complaints of discrimination; Attorney Advisors who provide legal guidance and support to the investigative staff; and the division’s leadership: the Deputy Chief of Investigations and the Chief of Investigations who oversee personnel and operations. The Investigations Division processes approximately 3,000 complaints each year.

In FY24, the MCAD saw a 15% increase in the number of intakes being performed by the agency over FY23, resulting in 3,553 complaints filed. To ensure accessibility, the agency continues to offer both walk-in and virtual complaint filing at our Boston, Worcester, and Springfield offices. The MCAD can accommodate walk-in intakes daily across the agency’s three office locations, along with additional virtual intakes scheduled through the agency’s online portal and conducted via Zoom.

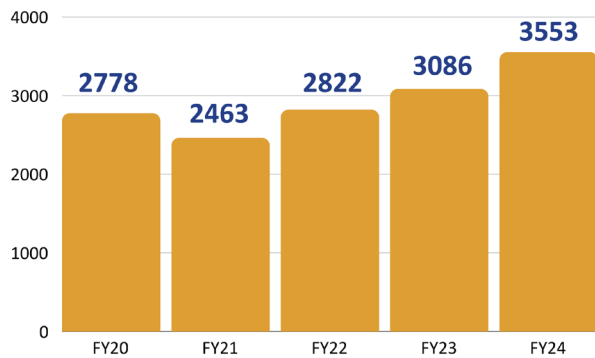
The MCAD is committed to staffing the Investigations Division to historic levels. In FY24, 17 new hires were made, increasing staffing to some of the highest levels in the agency’s history. This expansion is vital for addressing the agency’s case backlog and enhancing our capacity to serve the public effectively.

FY24 Breakdown of New Complaints by Protected Class



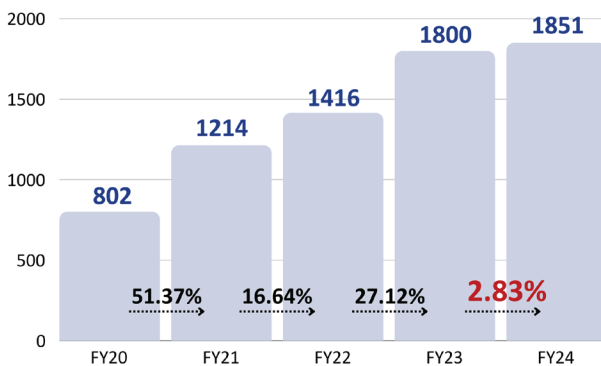
Annual Inventory of New Complaints

all cases filed during fiscal year (July 1 and June 30)



Annual Inventory of Backlog Cases

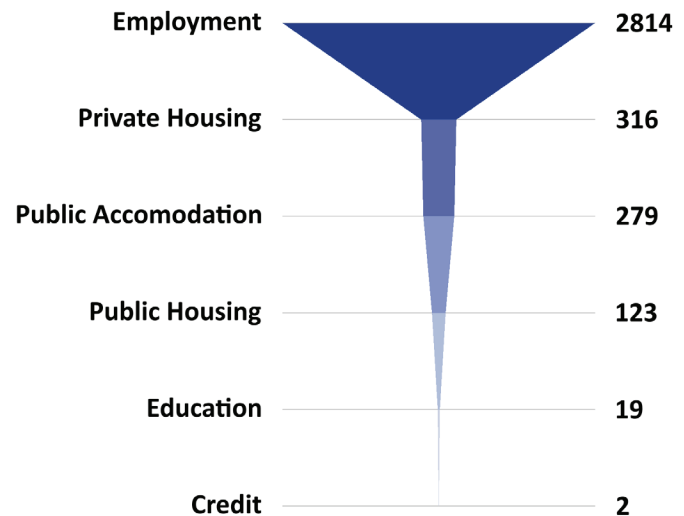
all non-housing investigations >18 months old
YOY (%) increase of cases



FY24 Investigative Findings



FY24 Complaints Filed by Jurisdiction



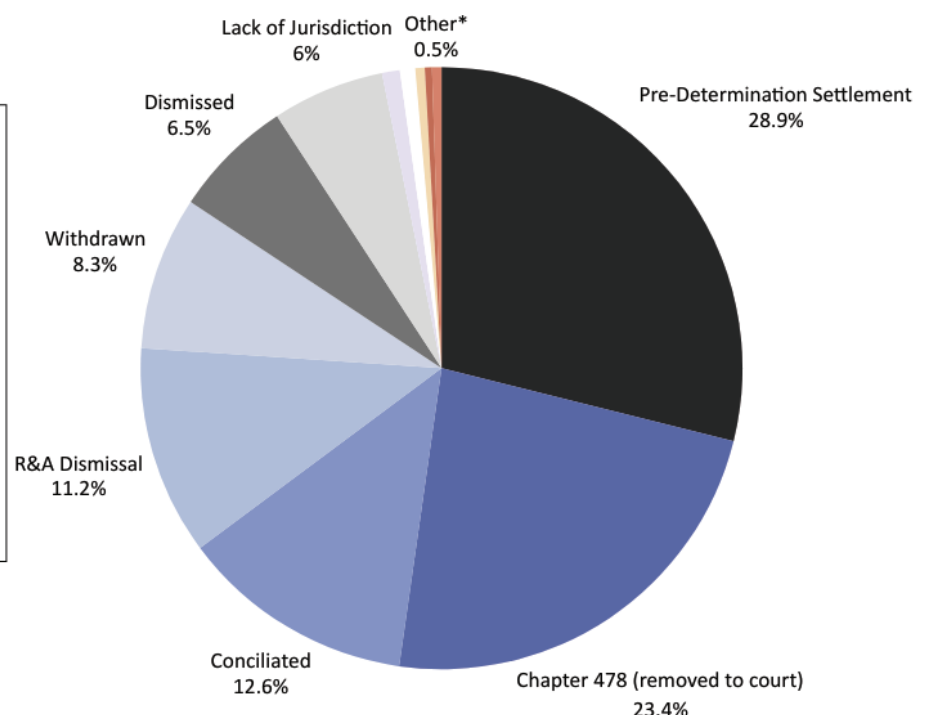
FY24 Active Case Inventory



FY24 Administrative Closures

● Pre-Determination Settlement	455
● Chapter 478 (removed to court)	368
● Conciliated	198
● R&A Dismissal	177
● Withdrawn	130
● Dismissed	102
● Lack of Jurisdiction	95
● Judicial Review	15
● Failure to Cooperate	13
● Withdrawn with Settlement	8
● No Violation	6
● Other*	8
Total Cases Closed in FY24	1575

*Violation/Enforcement (4), Housing Judicial Review (3), Bankruptcy (1)



ALTERNATIVE DISPUTE RESOLUTION (ADR) UNIT

The Alternative Dispute Resolution (ADR) Unit is comprised of the Director of Alternative Dispute Resolution and two full time mediators. In FY24, the ADR Unit continued to focus on key goals, including maintaining and enhancing the quality of the mediators' work, fostering effective communications, and ensuring consistency in practices and case processes across all the MCAD offices. The unit also prioritized regular collaboration with other MCAD units, educating attorneys on MCAD mediation and conciliation procedures, and promoting ongoing dialogue between lawyers who practice at the MCAD and the ADR Unit.

The ADR Unit's effort toward these goals included regular, weekly communication between mediators and expanded discussions during 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 ideas and experiences across the MCAD offices. Additionally, the ADR Unit invites experienced mediators and lawyers to present on relevant topics during its "Best Practices" meetings. Regular participants in these discussions include state and federal agency mediators and MCAD personnel, including Commission Counsel and the General Counsel. Such meetings educate lawyers on MCAD practices, procedures, and the updated (2020) MCAD procedural regulations, among other topics. Throughout FY24, the ADR Unit tracked quantitative data to measure the unit's case volume and the settlement success rate at the MCAD mediations and conciliations.

The ADR Unit continued to host its popular "ADR Roundtables" in FY24 with three held in the Fall of 2023. These presentations provide practical, hands-on information and advice about mediations and conciliations at the MCAD, while also serving as a forum for feedback between the bar and the ADR Unit. Lawyers who practice at the MCAD are regularly invited to attend the roundtables, which always reach full capacity. In FY24, the virtual format allowed the ADR Unit to accommodate more attendees than in previous years, though each session still had a waitlist. Due to the positive response, the ADR Unit will continue to offer the annual ADR Roundtables in the Fall of 2024. Excitingly, a webinar version of the ADR Roundtables is being developed as a resource, which is expected to be available on the MCAD website in the Fall of 2024 as well as a new webpage dedicated to the ADR unit's work.

The ADR Unit currently conducts all mediations and conciliations remotely via Zoom, unless unique circumstances require a mediation or conciliation to take place in-person. Virtual mediations and conciliations have received strong support from both the lawyers representing clients at the MCAD and the parties involved, who appreciate the convenience and time savings of attending from their offices or homes. Holding virtual dispute resolution sessions allowed for several pragmatic advantages, including time and cost saving for those the Unit served.

This year, the ADR Unit continued to offer late mediation for parties who were post-discovery or post-certification, giving an additional opportunity to resolve disputes and settle claims before going to public hearing. Mediation during this time offered parties an additional opportunity to resolve their cases when new information arose during discovery or when changing factors make it more desirable to settle the matter rather than proceeding to a public hearing.

FY24 ADR INTERVENTION TOTALS

262 Mediations
voluntary pre-disposition
resolution intervention

163 Conciliations
mandatory post-probable
cause resolution intervention

Noteworthy Settlements from the ADR Unit in FY24

Employment

- In an employment discrimination case, Complainant alleged sex, race, and age discrimination when he was denied a position through a temp agency. Complainant alleged that during the initial screening through the temp agency, impermissible questions were asked in the interview over his criminal record. The case settled for \$10,000.
- In an employment discrimination case, Complainant alleged that the employer denied him reasonable accommodation for his disability, refused to engage in any interactive dialogue, and retaliated against him by initially delaying his return to work from a medical leave and subsequently terminating the Complainant's employment. The case settled for \$60,000.
- In an employment discrimination case, Complainant claimed that his supervisor subjected him to disparate treatment and a hostile work environment on the basis of his sexual orientation when the supervisor allegedly routinely used homophobic slurs and repeatedly made offensive sexual comments in the workplace. The case settled for \$45,000.
- In an employment discrimination case, Complainant alleged that the employer refused his request for reasonable accommodation of his disability and tolerated a hostile work environment resulting from a co-worker's harassing conduct. The Complainant asserted the alleged conduct caused an exacerbation of his post-traumatic stress disorder, anxiety, and depression. The case settled for \$15,000 and a \$2,000 donation to a special education non-profit designated by Complainant.
- In an employment discrimination case, Complainant, a longtime high leadership level employee of a private school, alleged age and disability discrimination as well as retaliation as reflected in the Respondents' treatment of her over her last two years of employment including her termination. The case settled for \$230,000, approximately half of which was based on emotional distress damages.
- In an employment case, a social worker for over 12 years in a public school alleged hostile environment gender (female) and race (Black) discrimination, as well as retaliation. The alleged acts of discrimination included racial and gender-based slurs, hostile treatment including statements that Complainant was not qualified to observe classes and ostracizing her from certain events and meetings. The case settled for \$60,000 and discrimination prevention training for the appropriate school officials.
- In an employment case, Complainant, a police officer, alleged gender discrimination and retaliation. Complainant alleged she was treated differently after the Respondent learned of her pregnancy, was subjected to slurs and jokes about her pregnancy, was eventually placed on administrative leave, then given the option of either resigning, being terminated, or demoted to dispatcher. The case settled for \$72,000.
- In an employment case, Complainant was a mechanical designer in an engineering and architectural firm. She alleged gender sexual harassment and retaliation based on sexually inappropriate behavior and comments by a supervisor, and a lack of sufficient investigation and disciplinary action taken by the Respondent. As a basis for her retaliation claim, Complainant alleged that she was placed on a professional improvement plan (PIP), which led to her eventual resignation. The case settled for \$210,000.

- In an employment case, Complainant, a sales manager in a professional services company, alleged discrimination based on national origin (Arabic), disability (hypertrophic cardiomyopathy) and retaliation. Complainant alleged that he suffered adverse employment actions, a hostile environment, and was subject to comments about his hair, his use of an American first name, a suggestion that he “stop spreading [his] venom,” and critical comments due to his need for taking some medical leave, and comments about co-workers based on stereotypes about their ethnic backgrounds. The case settled for \$106,000.
- In an employment case, Complainant, a paraprofessional for 16 years in a public school system, alleged disability discrimination and retaliation based on the Respondent’s failure to provide a reasonable accommodation for her. Complainant was diagnosed with cancer and underwent several surgeries and treatments. Upon her return, she sought to continue to work remotely (the school system had been working remotely after COVID in March 2020). While some accommodations were suggested, the Complainant alleged that Respondent failed to have an interactive dialogue and ultimately failed to provide a reasonable accommodation of allowing the Complainant to work remotely. Respondent’s position was that working in person was an essential function of the job and that to allow Complainant to work fully remotely would create an undue hardship. The case settled for \$114,000.

Housing

- In a housing discrimination case, Complainant was an organization that conducted tests to ensure landlords were conforming to the fair housing laws. Complainant alleged that their testers were informed that Respondent would not get a lead certificate for their property. The case settled for \$2,000, training, testing for lead and de-leading (if lead was found), advertising changes, and policy changes.
- In a housing discrimination case, Complainant alleged that their landlord failed to grant a reasonable accommodation for their disability. Complainant alleged they had allergy issues related to certain cleaning products Respondent used on the premises. The case resolved with Respondent agreeing to pay for and provide the cleaning supplies that Complainant found acceptable as well as putting up signs making it clear to residents that smoking was not allowed on the premises.
- In a housing discrimination case, Complainant alleged that the landlord refused to timely comply with inspection and lease execution obligations and created other obstacles to her use of her Emergency Housing Choice “Section 8” Voucher. Complainant alleged that the landlord erroneously charged her rent arrears, caused her to suffer emotional distress, and subjected her to retaliatory eviction proceedings. The case settled for \$3,000, correction of the arrears ledger, training, and policy changes.
- In a housing discrimination case, Complainant, a corporation that provides housing to individuals with substance use disorders, alleged that the property owner refused to allow their application to rent their home. Complainant asserted that the property owner subjected them to disparate treatment based upon their association with persons with disabilities. The case settled for \$3,000, training, and advertising changes.

Public Accommodations

- In a public accommodation discrimination case, Complainant alleged disability discrimination when a restaurant denied Complainant service. Complainant alleged he was denied service because he was blind and needed to bring a service dog into the restaurant. The case settled for \$3,000, training, an accommodation policy being created, and a sign noting that service animals were allowed.

COMMUNICATIONS UNIT

The Communications Unit is a new unit at the MCAD as of FY24 and it is comprised of one staff member who serves as the Press Secretary, Director of Communications, and Legislative Liaison. The Communications Unit plays a key role in maintaining transparent, effective communication with both internal and external audiences. Externally, the unit manages public relations by handling media inquiries and issuing press releases to ensure the agency's activities and resources are clearly communicated to the public—monitoring media coverage and emerging issues. Additionally, the unit develops public awareness campaigns and engages in community outreach, organizing events and using digital platforms such as social media and the agency's website to keep the public informed. The unit oversees the creation of the MCAD Annual Report and other publications as well.

1963-1966

Commissioner Ruth M. Batson



Image: Black History Month social media campaign celebrated the MCAD's earliest Black Commissioners. The above post showcased Commissioner Ruth Batson who was sworn in by Governor Maurice Tobin in 1963.

Internally, the Communications Unit ensures staff remain informed about new initiatives, events, and agency updates. This involves creating a monthly internal newsletter ("Civil Writes"), coordinating the annual agency-wide staff meeting, and crafting communication for different parts of the agency. The unit also supports the agency's leadership by preparing speeches, talking points, and legislative testimonies to ensure consistent, accurate messaging when addressing the public or engaging in policy or educational efforts.

In FY24, the Communications Unit developed a comprehensive brand package for the agency, centralizing brand assets to deliver cohesion in MCAD's visual identity. The unit launched MCAD's social media channels through LinkedIn, Instagram, and Facebook this year, testing educational messaging about the agency's services, promoting job vacancies and agency events, aligning holidays and observations with the agency's mission, and showcasing the MCAD's rich history in Massachusetts. The resulted positive growth of these pages will continue and expand in FY25.

In addition to the agency's social media platforms as digital communications tools in FY24, the unit made substantial updates to the MCAD website on mass.gov, centering accessibility and user-friendliness for visitors of the site. The unit plans to partner with other MCAD units in FY25 to improve and create new pages on the website, including a page on the MCAD Alternative Dispute Resolution Unit and a large update to the Language Access page and offerings.

The MCAD's annual public awareness campaign was led by the Communications Unit this year in partnership with OUTFRONT Media and an internal, cross-departmental focus group. The multimedia campaign was published on mobile app and site advertisements, MBTA Commuter Rail platform posters, MBTA Subway triptych live boards (3-panel digital boards), traditional billboards, and digital billboards throughout the state. Using similar, well-performing graphics from the FY23 campaign,

The FY24 MCAD Annual Awareness Campaign had

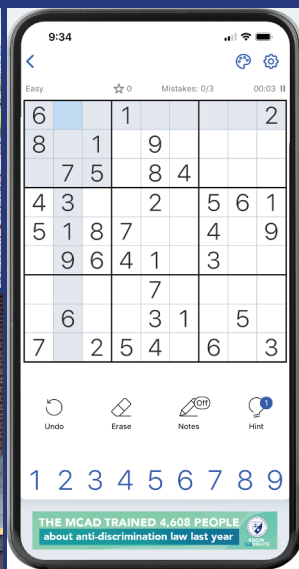
10M+ impressions

An estimation of the total number of people who saw an MCAD advertisement through one of the campaigns's digital mediums.

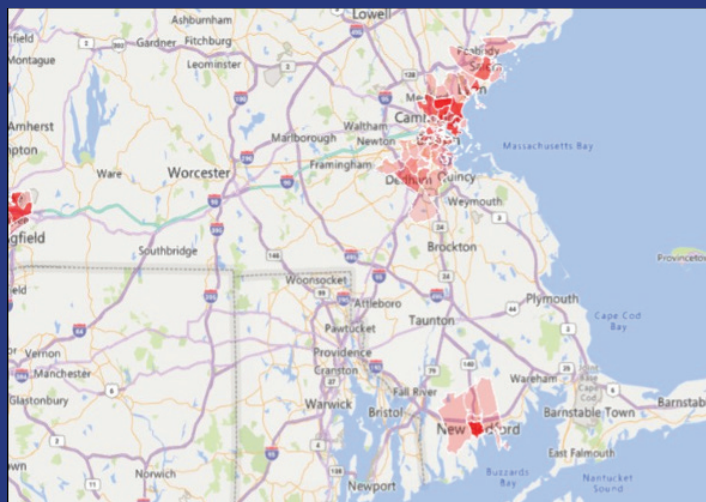
the FY24 message shifted to educate viewers on the MCAD's definition of discrimination and the services the agency provides to workers, residents, and visitors of the Commonwealth. Images that ran on the MBTA triptych live boards were translated in four languages (Haitian Creole, English, Portuguese, Spanish), chosen because they are the four top languages spoken in the City of Boston. Digital billboard advertisements displayed on interstates, as seen in the below images, gaining an impression rate of 10,000,009 alone. In addition, mobile app and site advertisements were estimated to receive 555,602 impressions delivered at a 65% click-through rate—far exceeding the 35% click-through rate benchmark set by the media group at campaign conception!

FY24 Public Awareness Campaign Graphics & Placements

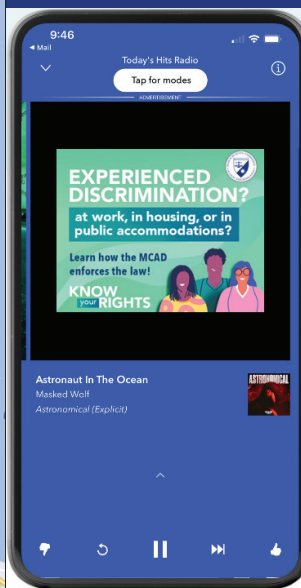
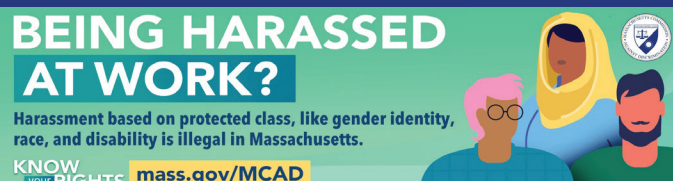
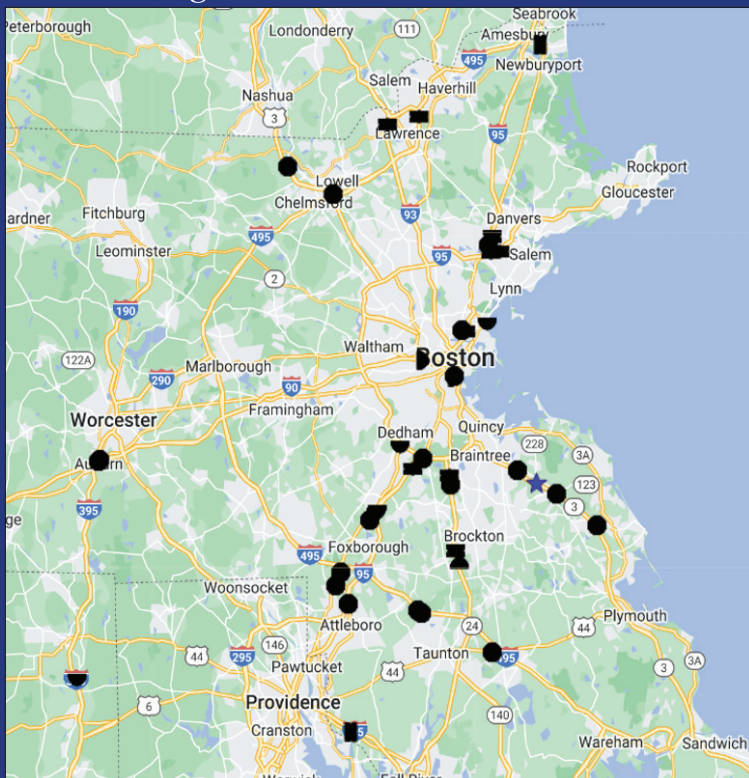
Images: (top left) MBTA Commuter Rail platform posters and MBTA Subway triptych liveboards. (top center) simple banner mobile application advertisement seen below a sudoku game. (center right) example of the digital billboard advertisements that were displayed on interstates. (bottom right) two traditional billboards and a square mobile application advertisement shown during a podcast stream.



Mobile Ad Targetting Heat Map



Digital Billboard Locations



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 advice on matters affecting the Commission, including ethical issues, personnel matters, 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 FY24, the Clerk's Office responded to 640 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 FY24, the Legal Division maintained a certification process that ensures prosecutions are certified to public hearing or otherwise resolved within 15 months post-conciliation. With input and collaboration from key staff throughout the agency, the Legal Division also prepared and brought to publication after Commissioner vote updated Guidelines on Harassment in the Workplace, replacing and improving upon the agency's workplace harassment guidelines first published in 1999. The updated guidelines reflect a myriad of important changes in the law, as well as inclusive, gender-neutral language, and sections addressing modern topics such as intersectional harassment and online harassment. The Legal Division did not experience significant staffing challenges in FY24 and filled one vacant Commission Counsel position. Moreover, at the close of FY24, there were just four cases awaiting a Full Commission decision. The following report highlights the work in the Legal Division for FY24.

FY24 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 203 cases with a probable cause determination in FY24, the Legal Division was assigned to prosecute 123 new cases filed by pro se complainants, which is 61% of all cases with probable cause findings. Additionally, Commission Counsel remained assigned to prosecute the active caseload of 93 cases that existed as of June 30, 2023.

Noteworthy Settlements by Commission Counsel

During FY24, Commission Counsel resolved 86 discrimination cases through conciliation and negotiation, recovering \$1,413,677 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 2024 fiscal year, classified by the type of alleged discrimination.

Employment

- In this complaint, a retail employee claimed she was subjected to a hostile work environment based on her sex, national origin, and race/color. Complainant alleged that her de facto supervisor and co-workers made inappropriate comments, and management failed to take prompt, effective remedial action despite having ample opportunity. After an unsuccessful conciliation conference, the parties continued good-faith negotiations and settled the matter for \$20,000. The settlement also included MCAD training for the offending employees and management and the creation and posting of an anti-discrimination policy. [Suffolk County]
- An individual with two neurodevelopmental disabilities filed a complaint after being denied a reasonable accommodation request for additional training and support during the first few weeks of employment. This support was crucial for him to acclimate to his new position. Instead, the employer dismissed his requests and directed him to ask co-workers for assistance. Despite his proven track record of successfully performing similar job functions with other employers, he was terminated shortly after his hire due to alleged performance deficiencies. The Commission's investigation revealed that the employer did not consider a reasonable accommodation and failed to engage in an interactive dialogue. The parties settled for \$25,000 and agreed to provide training for the specific individual on general anti-discrimination laws and reasonable accommodation requests. [Plymouth County]
- An administrative assistant and a senior chemical engineer, alleged that they were subjected to discrimination based on age when Respondent terminated them and six other employees over the age of 40 as part of a reduction in force and reassigned their responsibilities to employees in their 20's and 30's. The parties agreed to resolve the matters in exchange for payments to the Complainants in the amount of \$50,000 and \$115,000 respectively, and Respondent's in-house Counsel's attendance at the MCAD Train-The-Trainer course. [Middlesex County]
- A staff member at an auto-dealership, alleged that he was subjected to disparate treatment based on his sex, race, and color (Male, Half-White, Half-Black) during the course of his employment with Respondent. He alleged that he was subjected to numerous comments and an instance of unwanted touching regarding his hair and natural hairstyle. He reported the mistreatment to management, but no corrective action was taken to address his complaints. Instead, he was subjected to reprimands and requests to change or cut his hair for

allegedly violating Respondent's dress policy, while others outside his protected classes were not subjected to similar discipline for violating Respondent's dress policy. Eventually, he was constructively discharged from his position after Respondent failed to address the harassment that he experienced. The parties agreed to resolve the matter in exchange for a payment to the Complainant in the amount of \$16,800. Respondent also agreed that its managerial staff would attend anti-discrimination training. [Middlesex County]

- An individual was recruited for a Senior Software Engineer position at Respondent's business. The Complainant successfully passed the first-round interview and was informed that he advanced to a panel interview. Complainant informed the recruiter that he has a mental health-related disability, and he needs extra time during the panel interview as an accommodation. Complainant did not receive a response to his requested accommodation, nor did he receive the second interview. The parties resolved the case for a payment of \$55,000 in compensation to the Complainant and a commitment by Respondent that all of its employees in recruitment undergo training to be monitored by the MCAD Training unit. [Suffolk County]
- Complainant worked in Respondent's floral department. Complainant took a leave of absence for the birth of her child and to bond with her. While on leave, Complainant discussed her return to work with Respondent and requested a few pregnancy-related accommodations. Respondent failed to accommodate her pregnancy related conditions and then terminated her employment for requesting the same. Respondent agreed to resolve the matter for a payment of \$20,000.00 to Complainant; the owners and managerial employees will attend Employment Discrimination 101, as provided by the MCAD; Respondent will provide written notice of employees' rights under the Massachusetts Pregnant Workers Fairness Act; and Respondent will designate a private, non-bathroom space specifically for employees who are nursing for the purpose of expressing breast milk. Respondent will also update and redistribute its relevant policies, employee handbooks, and written notices to employees. [Bristol County]

Housing

- Complainant alleged that during the course of her tenancy at Respondent housing authority's property, she was subjected to unwanted sexual advances and comments by her neighbor. Complainant reported the harassment to Respondents, but Respondents failed to take prompt, effective remedial action to put an end to the harassment of Complainant, instead suggesting to the Complainant that it was not their responsibility to respond to harassment and that Complainant should simply call the local police for assistance. Complainant also alleged that Respondents unduly delayed the processing of her request for a unit transfer to a lower floor without stairs as a reasonable accommodation for her disabilities which included chronic obstructive pulmonary disease (COPD). The parties agreed to resolve the matter in exchange for payment to Complainant in the amount of \$17,500, Respondents' agreement to waive fines related to Complainant's alleged lease violations, and to not pursue alleged lease violations, and the lifting of communication restrictions on Complainant. Respondent housing authority also agreed to attend MCAD anti-discrimination training and to provide the housing authority's harassment and reasonable accommodation policies to the Commission for review. [Plymouth County]
- Complainant filed a complaint of discrimination alleging that Respondents denied her request for a reasonable accommodation for her disability in housing. Complainant suffers from multiple disabilities which collectively hinder Complainant's mobility and balance. Complainant requested that Respondents provide reasonable accommodations to enable Complainant to access Respondents' facilities, such as the trash shed and even Complainant's own unit. Respondents failed to engage in an interactive dialogue with Complainant and ultimately Complainant was forced to relinquish her apartment and seek a unit that was accommodating to her disability. Respondents agreed to resolve the matter for a payment of \$10,000.00 to Complainant, a written apology, and Respondents agreed to send all agents, property managers, and any other individual employ-

ee responsible for receiving and/or responding to reasonable accommodations requests to attend an MCAD anti-discrimination training. [Middlesex County]

- Complainant, a tenant, alleges that Respondent, Landlord, informed Complainant that he did not want to participate in a rental assistance program and thereafter refused to provide information to the program for Complainant's application. As such, Complainant was unable to obtain the rental assistance or pay rent. Respondent then served Complainant with a Notice to Quit. Complainant obtained \$2,500 in compensation and Respondent agreed to forgive all past due rent. Respondent also agreed to welcome applicants using public assistance programs to apply and submit applications, to timely respond to all requests for information from public assistance programs, and to attend MCAD approved anti-discrimination training. [Plymouth County]

- Complainant, a tenant and person with disabilities, alleges that Respondent Landlord, objected to Complainant retaining her service animal and would not meaningfully engage in an interactive dialogue. Respondent agreed to: provide written approval for Complainant's service animal; discharge any rental arrears Complainant may have incurred up to the time of conciliation; provide Complainant with compensation in the amount of \$2,127.00; provide a written neutral tenant reference for Complainant to provide to prospective Landlords; write a reasonable accommodation policy for tenants; revise the "Pets" paragraph in all tenant leases; and obtaining MCAD-approved anti-discrimination training for two individually named Respondents. [Hampden County]

- Complainant, a tenant with an infant child, asked Respondent Landlord for a certificate showing that the apartment had been de-leaded. No such certificate was available. Respondent was reticent but ultimately paid for a lead paint test, which revealed significantly high levels of lead. Complainant obtained \$25,000 as compensation from Respondent. Respondent also agreed not to make discriminatory statements, to comply with all de-leading laws, to complete MCAD-approved anti-discrimination training, and to state that families with children may apply when the property is advertised. [Essex County]

Public Accommodations

- Complainant, who is blind, alleged that he was repeatedly denied ride-share services because of his service dog. Reflecting similar litigation nationwide and in Massachusetts, the ride-share company cooperated with the Commission, identifying steps already taken to enhance driver education and re-affirm a Massachusetts-specific policy previously negotiated with the MCAD. The complainant received \$17,500 for emotional distress caused by the denial of services. [Plymouth County]

- Complainant suffers from a visual impairment. As a result, Complainant relied upon a trained service dog that helped him to navigate the community. Complainant was denied service by Respondent at its restaurant when restaurant staff refused to seat him and his fiancée after they entered accompanied by his service dog. The parties agreed to resolve the matter in exchange for a payment to Complainant in the amount of \$3,000. Respondent's owners also agreed to attend anti-discrimination training, to adopt anti-discrimination and reasonable accommodation policies which concern service animals on its premises, and to post a visible notice on or near the restaurant's entrance informing the public that service animals are welcome on premises. [Plymouth County]

- Complainant is disabled pursuant to a brain injury which causes Complainant to suffer symptoms of slurred speech and unsteady gait. Complainant visited Respondent's store to procure some wine for her mother and redeem a lottery ticket. Respondent falsely accused Complainant of being intoxicated based solely on the symptoms of Complainant's disability and failed to engage in an interactive dialogue with Complainant. The matter was resolved by receipt of \$8,500.00 in compensation by Complainant and agreement by Respondent to have all employees, supervisors, and managers attend an MCAD anti-discrimination training and implement an MCAD reviewed reasonable accommodation policy. [Essex County]

FY24 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 2024, Commission Counsel were assigned five new Superior Court cases to defend. Commission Counsel remained responsible during fiscal year 2024 for 15 cases, which were pending as of June 30, 2023. The following report describes some of the activity in cases against the Commission being defended in the Massachusetts courts.

COURT CASES

The Parish Café and Factotum Tap Room, Inc. v. MCAD & Jeffrey May, Suffolk County Superior Court Civil Action No. 2384CV01663. In 2023, the Full Commission affirmed a Hearing Officer's decision to impose liability for sexual orientation discrimination in a place of public accommodation. On appeal to the Full Commission, The Parish Café and Factotum Tap Room, Inc. argued, among other points, that the Hearing Officer's finding of joint and several liability was erroneous. In affirming the Hearing Officer's decision, the Full Commission concluded that joint and several liability was proper given that, among other things, throughout the MCAD process, Respondent repeatedly held itself out as one business with two locations as opposed to separate legal entities. On July 20, 2023, The Parish Café and Factotum Tap Room Inc. filed a complaint in Superior Court seeking judicial review in accordance with M.G.L. c. 151B, § 6 and M.G.L. c. 30A, § 14. Motions for Judgment on the Pleadings have been filed, and an oral argument will be scheduled.

Tufts Medical Center v. MCAD & Marie Lunie Dalexis, Appeals Court No. 2022-P-0015. As reported in our FY23 Annual Report, Tufts Medical Center filed an appeal in January 2022 from a Superior Court judgment that affirmed the decision and order of the MCAD. The MCAD's decision concluded that Respondent failed to accommodate a disabled inpatient nurse by refusing to excuse her from the obligation to work overtime. On September 21, 2023, the Appeals Court issued its decision, affirming the MCAD's ruling. The Court opined that the evidence supported the conclusion that overtime work was not an essential function of the nurse's job. Chief Justice Green authored the decision, with Henry J. concurring and Englander J. dissenting. The Respondent did not seek further appellate review.

Madonna v. MCAD & Fall River Police Department, Appeals Court No. 2022-P-0983. Following the Commission's dismissal of a former police officer's claim of disability discrimination, the Complainant sought judicial review under M.G.L. c. 151B § 6 and M.G.L. c. 30A, § 14. The Superior Court affirmed the Commission's decision, and the Complainant appealed. After briefing and argument, the Appeals Court remanded the matter to the MCAD, concluding that the Commission's decision required further fact-finding and analysis. With the assistance of the Commission's Alternative Dispute Resolution Department, the parties successfully resolved the matter.

Sullivan Keating and Moran Insurance Agency, Inc. v. MCAD, Hampden County Superior Court Civil Action No. 2379CV00459. In September of 2023, Respondent/Plaintiff appealed the MCAD Full Commission decision in favor of Complainant/Defendant to the Superior Court in accordance with M.G.L. c. 30A. Plaintiff argued on appeal that the Hearing Officer's findings were arbitrary, capricious, and based on a substantial error of law. Specifically, Plaintiff argued that 1) Complainant Leo Roberge's claim that he was denied a CaptionCall telephone as an accommodation for his disability was not properly certified for hearing, 2) the MCAD Hearing Officer's

finding that Complainant was subjected to discrimination when Respondent denied Complainant's request to use a CaptionCall telephone at his desk within the applicable 300 day statute of limitations was not supported by substantial evidence, and 3) the Full Commission erred when it awarded Complainant attorney's fees after the Hearing Officer declined to award Complainant any monetary damages. Commission Counsel filed the agency Administrative Record and a Cross-Motion for Judgment on the Pleadings with the Superior Court. Oral argument occurred in April 2024 and judgment entered in favor of the Plaintiff on May 24, 2024.

Suomala v. Massachusetts Commission Against Discrimination, et al., Suffolk County Superior Court Civil Action No. 2384CV02454. On January of 2024, Complainant/Plaintiff appealed the MCAD Full Commission decision in favor of Respondents/Defendants to the Superior Court in accordance with M.G.L. c. 30A. Plaintiff argued on appeal that the Hearing Officer's findings were arbitrary, capricious, and based on a substantial error of law. The Commission filed an Answer and Counterclaim as well as the agency Administrative Record with the Court. Plaintiff's Motion for Judgment on the Pleadings and the Defendants' Cross-Motions for Judgment on the Pleadings are forthcoming.

Russell Glover v. MCAD & Kevin Wiant & Venture Café, Massachusetts Appeals Court No. 2023-P-0231 Pro se Plaintiff Russell Glover ("Glover") appealed two separate orders entered by the Superior Court. Regarding the first order, the Superior Court dismissed a complaint brought by Glover against three defendants, including the Commission for failure to state a claim and for lack of subject matter jurisdiction. On February 7, 2024, the Appeals Court denied Glover's appeal and confirmed that his request for judicial review is specifically barred by M.G.L. c. 151B, § 5 and the Commission's regulations; that the remedy Appellant seeks is reserved under M.G.L. c. 30A for final and adjudicatory decisions by the Commission and the Investigating Commissioner's decision at issue is neither; and finally the decision by the single Commissioner is not subject to certiorari review under M.G.L. c. 249, § 4. *Grandoit v. Mass. Comm'n Against Discrimination*, 95 Mass. App. Ct. 603 (2019). Glover also appealed a subsequent order by the Superior Court allowing MCAD's motion for a separate and final judgment. The Appeals Court determined the superior court made no error and likewise denied Glover's appeal.

SeaView Retreat, Inc., et al. v. MCAD & Michelle A. Falzone, Massachusetts Appeals Court No. 2023-P-1272. In their appeal, Appellants seek review of a Superior Court decision and denial of relief under Mass. R. Civ. P. 60. Appellants challenge the Superior Court's order dismissing their complaint against Appellees Michele A. Falzone and the Massachusetts Commission Against Discrimination. Following a full evidentiary hearing, an MCAD Hearing Officer of the Commission determined Appellants retaliated against Falzone in violation of M.G.L. c. 151B. Appellants appealed to the Full Commission which affirmed the decision. Appellants then attempted to seek judicial review under M.G.L. c. 30A, but they never served their Motion for Judgment on the Pleadings and supporting memorandum as required by Superior Court Standing Order 1-96. This was the case despite the Court affording Appellants ample time, several opportunities, and clear warnings to prosecute their complaint. After the Court dismissed their complaint, Appellants sought to re-open the matter under Mass. R. Civ. P. 60. Appellants' request is grounded in claims for excusable neglect by their attorney. At a hearing before a Superior Court judge, Appellants' counsel explained the neglect should be excused, but the Superior Court exercised its considerable discretion and denied Appellants' request. On May 9, 2024, the parties briefed the issue which is pending before the Appeals Court panel. The Commission has taken the position that the Superior Court committed no error nor abused its discretion when it denied the request.

Megan Hamilton-McKeon v. MCAD, Barnstable County Superior Court No. 2472CV00047. Plaintiff improperly sought judicial review of an investigatory determination by the Massachusetts Commission Against Discrimination. The Superior Court granted the Commission’s Motion to Dismiss for lack of subject matter jurisdiction and failure to state a claim. Namely, because the judicial review Plaintiff sought is not available under M.G.L. c. 30A, because the Commission’s decision is neither adjudicatory nor final, and is expressly precluded by M.G.L. c. 151B, § 5. The Court entered final judgment.

ILA Local 1413-1465 v. MCAD and April Robar, Massachusetts Appeals Court No. 2023-P-0083. In the underlying decision, an MCAD Hearing Officer determined that Appellant discriminated against Ms. Robar by denying her assignments to work on fruit boats, and therefore, denying her membership in the Union, on the basis of sex in violation of M.G.L. c. 151B, § 4(2). The Superior Court dismissed Appellant’s appeal and affirmed MCAD’s decision in its entirety. Appellant (Union) appealed this decision.

The Appeals Court rejected the Union’s arguments that the Hearing Officer erred in crediting the Commission’s witnesses instead of the Union’s witnesses, and that the Hearing Officer’s findings should be put aside on the ground that she misunderstood the working conditions and Union hiring rules. The Appeals Court also rejected the Union’s argument that the relief the Hearing Officer ordered, which included an award for emotional distress damages, a civil penalty, and an Order granting Ms. Robar union membership were arbitrary, capricious, unsupported by the evidence, and not in accordance with the law.

Finally, the Appeals Court rejected the Union’s arguments that the Commission’s authority was preempted by three different Federal labor laws: § 301 of the Labor Management Relations Act (LMRA), the Employment Retirement Income Security Act of 1974 (ERISA); and §§ 7 and 8 of the National Labor Relations Act (NLRA). As Appellants raised none of these arguments to the Commission, nor to the Superior Court Judge during its briefing of the merits or at the hearing, the Appeals Court determined that the Appellants waived its LMRA and ERISA preemption defenses. The Appeals Court then rejected the Union’s NLRA pre-emption argument because the issue is controlled by **Massachusetts Elec. Co. v. Massachusetts Comm’n Against Discrimination**, 375

Mass. 160, 174 (1978). There, as in this case, the Supreme Judicial Court held that “[S]tate antidiscrimination statutes [such as G.L. c. 151B] are not preempted by Federal labor law [including the NLRA].”

The Supreme Judicial Court thereafter rejected the Union’s request for further appellate review, and the Commission has since taken steps to execute the judgment.



Photo: MCAD welcomes the DC Office of Human Rights Staff to the MCAD Boston Office to share work and best practices in October 2023.

HEARINGS UNIT

The Hearings Unit is comprised of a Senior Hearing Officer, a Hearing Officer and the three MCAD Commissioners. The Hearings Unit 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 Unit conducts status conferences and pre-hearing conferences, rules on motions and drafts orders. In FY24, the Hearings Unit conducted four public hearings, issued six decisions after public hearing and issued four decisions on petitions for attorneys' fees and costs, which are summarized as follows.^[1]

FY24 Hearings Decisions

MCAD and Johnson v. Arabic Evangelical Baptist Church, Inc., d/b/a Lighthouse Early Learning Center, 45 MDLR 47 (2023) (Hearing Commissioner Sunila Thomas-George)

Johnson alleged that her former employer, the Arabic Evangelical Baptist Church, Inc. d/b/a Lighthouse Early Learning Center terminated her employment because she was a female and/or pregnant. The Hearing Commissioner noted that to prevail on her disparate treatment claim, Johnson had to prove that she was a member of a protected class; was subject to an adverse employment action; and that the determinative cause for that action was discriminatory animus by Lighthouse toward Johnson being female and/or pregnant.

The Hearing Commissioner determined Johnson established the first two elements. However, the Hearing Commissioner in her ruling, determined that there was not credible evidence of discriminatory animus as to Johnson's sex or pregnant status and that Johnson's failure to establish such animus was fatal to her disparate treatment claim. The Hearing Commissioner determined that the claim failed for an independent reason - insufficient evidence to find that the determinative cause of the termination was other than a dispute regarding lunch break coverage. The disparate treatment claim was dismissed.

The Hearing Commissioner chose not to apply the burden-shifting paradigm set out in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), as adopted and amplified in *Wheelock College v. Massachusetts Comm'n Against Discrimination*, 371 Mass. 130 (1976). The Hearing Commissioner explained her rationale for not applying that framework as follows. Recently, in addressing a disparate treatment claim filed in court pursuant to Section 9 of M.G.L. c. 151B, the Massachusetts Supreme Judicial Court stated that the "McDonnell Douglas test is not used at trial. Instead, '[w]e encourage trial judges to craft instructions that will focus the jury's attention on the ultimate issues of harm, discriminatory animus and causation.'" (Citations omitted) A Hearing Commissioner in issuing a decision after a public hearing, acts as a fact-finder akin to a jury issuing a verdict in a case under Section 9. After a case is tried on the merits, the ultimate question of discrimination or lack of discrimination is before the finder of fact who has all the evidence needed to decide whether the employer unlawfully discriminated against the employee. After a public hearing, addressing questions inherent in the framework, such as whether the employee established a prima facie case, distracts from what should be the focal point of the fact-finder analysis - did the employer discriminate against the employee because of status in a protected class. Without the constraints of the framework, the factfinder can better focus on the ultimate question of discrimination or not.

^[1] One decision on attorneys' fees and costs was issued on July 3, 2024, but is included because it was essentially a product of work performed in fiscal year 2024.

MCAD and Jenson v. Rockdale Care & Rehabilitation Center, 45 MDLR 54 (2023) (Hearing Officer Simone Liebman)

Jenson alleged that his former employer, Rockdale Care & Rehabilitation Center (“Rockdale”), engaged in age and disability discrimination when it terminated his employment. As a result of Jenson’s withdrawal of his age discrimination claim, the sole issue at public hearing was whether Rockdale discriminated against Jenson based on his disability when it terminated his employment. The Hearing Officer concluded that Jenson had been subjected to disability discrimination.

While employed at Rockdale, Jenson experienced three to four migraines a month, along with mildly blurred vision. The migraines would last between five and twelve hours, and at times, resulted in debilitating pain. The Hearing Officer concluded that the migraines constituted a disability because they substantially impaired major life activities including thinking, concentrating and interacting with others.

Throughout his employment, Jenson could perform the essential functions of his nursing position at Rockdale. There was no evidence that Jenson had issues with attendance, or “calling out” when he worked the shift that he was hired to do. Rather, it was when Jenson tried to assume additional duties, beyond the principal objectives of his position, by working double shifts - and often, extended double shifts - that he needed to “call out.” The Hearing Officer concluded that Jenson’s “calling out” did not prevent him from performing the principal objectives of the job, based in part on Rockdale’s failure to issue any written discipline against Jenson based on “calling out.”

The Hearing Officer determined that Jenson’s supervisor had discriminatory animus towards Jenson’s disability, reasoning as follows. The supervisor knew that working long hours without sufficient breaks between shifts had an adverse effect on Jenson’s migraines; knew Jenson’s inability to keep to the schedule was the result of the confluence of his extended double shifts and the symptoms of his disability; and knew or should have known that Jenson was working exceptionally long and legally impermissible hours (pursuant to a Massachusetts law regarding permissible hours for nurses) and that Jenson’s disability made that untenable. Despite that knowledge, the supervisor expressed antipathy toward Jenson for “calling out” which reflected bias toward Jenson because of the limitations posed by his disability. The supervisor expressed hostility toward Jenson when he volunteered for fewer double shifts - an action that the supervisor was aware Jenson took because of the effect that working double, extended shifts had on his disability. The supervisor’s hostility to the “call outs” that Jenson took to manage his disability, her subsequent participation in the termination decision and the reason provided for the termination when Jenson was fired - “call outs” - evidenced the termination was based on impermissible disability bias.

The Hearing Officer concluded that the supervisor’s bias toward Jenson because of his migraines, and their inherent physical limitations, was the determinative cause of the termination.

The Hearing Officer awarded Jenson \$6,600 in lost wages and \$10,000 in damages for emotional distress. Rockdale was ordered to cease and desist from acts of discrimination based on disability.

MCAD and Ambroise v. Law Office of Howard Kahalas, et al., 45 MDLR 67 (2023) (Hearing Officer Jason Barshak)

Ambroise, an African American woman, filed a complaint against Howard Kahalas and the Law Office of Howard Kahalas (“Firm”) alleging she was subjected to a hostile work environment based on her race or color, subjected to disparate treatment based on her race or color, and retaliated against.

Regarding the hostile work environment claim, after a careful analysis of the comments and actions Ambroise claimed were based on race or color, the Hearing Officer concluded that Ambroise had not established an actionable hostile work environment and dismissed the claim.

The Hearing Officer dismissed the disparate treatment claims because Ambroise failed to prove that she suffered from an adverse employment action because of discriminatory animus towards her based on race or color. The Hearing Officer determined that Ambroise's race or color was not a factor in the Firm's two verbal warnings to Ambroise, which were issued in accordance with Firm policy. The record did not reflect that other support staff were treated differently from Ambroise regarding the policy. The Hearing Officer rejected the allegation that Ambroise's race or color was a factor in Ambroise not being considered for the available associate attorney position at the Firm. At the pertinent time, Ambroise had not passed the Bar Examination and had no experience with personal injury law, while the person who was hired into the attorney position was an attorney with over five years' experience in personal injury law.

Ambroise alleged various retaliatory adverse actions: receiving a verbal warning after complaining about one of Kahalas' comments; fired for complaining about alleged racial comments; and Respondents' interference with her efforts to obtain subsequent employment. The Hearing Commissioner dismissed the retaliation claim, reasoning as follows. Ambroise was not fired but resigned. Kahalas and the Firm took no action to affect her efforts to find subsequent employment. Ambroise failed to establish a causal link between complaining about one of Kahalas' comments and being notified approximately nine days later of receiving a verbal warning. The Hearing Officer noted that there was a significant and intervening event that occurred during the nine-days period - Ambroise left the office without permission. Just as Ambroise had received a verbal warning, before complaining about Kahalas' comment, for leaving the office without permission, Ambroise similarly received a verbal warning for again leaving the office without permission. The retaliation claims were dismissed as was the individual liability claim against Kahalas.

MCAD and Southcoast Fair Housing Center, Inc. v. Krishna Priya, Inc. et al., 45 MDLR 79 (2023) (Hearing Officer Simone Liebman)

Southcoast Fair Housing Center, Inc. ("SCFH") filed a complaint charging Krishna Priya, Inc. ("Priya Inc.") and Sushma Chopra, aka Susan Chopra ("Chopra") with housing discrimination. SCFH utilized testers to evaluate whether the Respondents were engaging in housing discrimination. SCFH claimed that its testers were discriminated against when Priya Inc. and Chopra refused to rent to them because they had children under the age of six; that its testers were discriminated against when Priya Inc. and Chopra refused to rent to them after the testers disclosed that they were recipients of "Section 8" public assistance benefits; and that its tester was discriminated against when Priya Inc. and Chopra refused to rent after requesting whether the tester's roommate was male or female.

The case raised a standing issue as the charging party, SCFH, was not a renter or tester, but instead a legal services organization alleging injury to itself. The Hearing Officer determined that SCFH had standing. Chapter 151B grants standing to any "person" claiming to be "aggrieved" by unlawful practices under c. 151B. As a corporation, SCFH was a "person." Although not actually seeking housing, its testers were "aggrieved" due to their role uncovering discriminatory acts which could, in the process, result in harm to the testers. SCFH diverted resources and paid testers to identify and address any discriminatory conduct, and after it concluded there was discriminatory conduct, devoted more resources to expanding educational efforts. As such, SCFH was an

aggrieved person under c. 151B.

The Hearing Officer determined that Chopra refused to rent an apartment to two SCFH testers because they intended to live in an apartment with a two-year-old daughter and a five-year-old grandson, respectively in violation of M.G.L. c. 151B, § 4(11) and c. 111, § 199A, finding the following. When Chopra learned that a tester had a daughter who was two years old, Chopra stated “the apartment is not de-leaded. I’m sorry”, “the landlord won’t de-lead the apartment - it’s too expensive” and “there’s no way to rent the apartment - it’s a waste of your time.” When a second tester told Chopra that her five-year-old grandson would be living with her, Chopra said there was no lead certificate and there needed to be a certificate for any child under age seven living there. The Hearing Officer dismissed that claim against Priya Inc. because SCFH did not establish that Priya Inc. owned the property.

The Hearing Officer dismissed the claim that Respondents discriminated against an SCFH tester based on receipt of Section 8 benefits due to the absence of supporting evidence. The Hearing Officer dismissed the claim that Respondents refused to rent to a SCFH tester based on sex or gender identity because the evidence supported the conclusion that Chopra was ready and willing to rent to that tester.

The Hearing Officer ordered Chopra to pay SCFH compensatory damages of \$2,270, to pay a civil penalty of \$10,000, and to immediately cease and desist from discrimination in housing based on the presence or potential presence of lead paint and/or children. Until 2026, certain advertisements of property placed by or on behalf of Chopra or her agents, were required to include the words “Families welcome.” Chopra was ordered to attend MCAD training “Housing Discrimination 101.”

MCAD and Thomas v. Stash’s Pizza, 46 MDLR 4 (2024) (Hearing Officer Jason Barshak)

Thomas, an African American woman, alleged that she was subjected to disparate treatment by Stash’s Pizza because of her race and/or color in violation of public accommodation law (M.G.L. c. 272, § 98) and was retaliated against when she complained about the discrimination. The Hearing Officer determined that Thomas was subjected to discrimination by Stash’s Pizza because of her race and/or color, finding the following. After his offer of a small cheese pizza and pizza slices in lieu of a large cheese pizza was declined, an employee of Stash’s Pizza rudely told Thomas and her cousins (who were Black) “you can take it or leave it.” Within minutes after leaving the premises, Thomas sought to talk to a Stash’s Pizza manager about the customer service, and in a series of telephone calls and a text message, was barraged by the following racial epithets and threats from the same employee whom she had interacted with inside Stash’s Pizza: (a) called a “nigger” or “fucking nigger” and asked “why don’t you come here” so “I can put a bullet in your head”; (b) twice told to “stop calling me you fucking nigger”; (c) asked if she knew “how many niggers like you get hung” at Franklin Park; (d) asked where she was, by a person who stated he was “off work” and “ready to hang a nigger;” and received (e) a text message that said “Fucking nigga.”

The Hearing Officer determined that, for purposes of liability, it did not matter that Thomas was not physically inside Stash’s Pizza when the telephone comments were made and the text message sent, because they flowed from the customer service that she had received from Stash’s Pizza and was seeking to address with its manager. The Hearing Officer reasoned that to bifurcate events taking place inside Stash’s Pizza from those taking place outside Stash’s Pizza would limit, without authority, the declaration in M.G.L. c. 272, § 98 that all persons shall have the right to the full and equal accommodations of any place of public accommodation. The Hearing Officer determined that Stash’s Pizza was vicariously liable for the actions of its employee reject-

ing the argument that the telephone comments and text message were not made within the scope of employment. The Hearing Officer noted that the comments and message were made during a patron's attempt to speak to a manager about customer service and that interacting with a patron about customer service falls within the scope of employment duties.

Regarding the retaliation claim, Stash's Pizza implicitly argued that a retaliation claim by a patron against a place of public accommodation cannot be actionable under M.G.L. c. 272, § 98. The Hearing Officer rejected that position, reasoning that prohibiting a place of public accommodation from engaging in retaliatory action against a customer who has engaged in protected activity by opposing discriminatory treatment received from that place falls within the reason of Section 98 and is embraced by its provisions. The Hearing Officer found that the retaliation claim was meritorious, and applying vicarious liability, determined that Stash's Pizza was liable to Thomas for retaliation.

Thomas sought remedies of back pay, front pay and emotional distress damages. The Hearing Officer determined that Thomas failed to prove that the incident caused, or would cause, her to be unable to work, and thus was not entitled to back pay or front pay. The Hearing Officer awarded Thomas \$105,000 in damages for emotional distress and ordered Stash's Pizza to cease and desist from acts of discrimination based on race and/or color.

MCAD and Vincenti v. The Plymouth Exchange et al., 46 MDLR 23 (2024) (Hearing Officer Simone Liebman) Vincenti filed a complaint charging The Plymouth Exchange ("The Exchange") and Peter Smith ("Smith") with sexual harassment, sex discrimination and retaliation. At the outset, the Hearing Officer addressed whether The Exchange had six or more employees, a requisite to being deemed an "employer" under M.G.L. c. 151B. The Hearing Officer determined that the relevant timeframe to analyze that question was the period in which Vincenti worked for The Exchange, noting that a contrary framework focusing on a particular date, would run afoul of the liberal construction to be applied to c. 151B and incentivize an employer on the cusp of employing six persons to discriminate against an employee and subsequently increase its workforce to six or more employees. The Hearing Officer determined that there were periods during Vincenti's employment when six individuals worked at The Exchange and ruled that The Exchange was an "employer."

The Hearing Officer determined that Vincenti was subjected to a sexually hostile work environment, finding that Smith targeted Vincenti with sexual conduct throughout her employment. The Hearing Officer determined that Smith's conduct was particularly severe, intimidating and threatening because Vincenti was in a uniquely financially dependent relationship with Smith and his wife, who were paying Vincenti's salary and providing her access to transportation (use of the Smiths' car). The Hearing Officer noted that Smith's conduct created a formidable barrier to Vincenti's full participation in the workplace and negatively altered the conditions of employment of a reasonable employee under the circumstances.

The Hearing Officer found that because Smith was an owner and a supervisor, The Exchange was strictly liable for his creation of a sexually hostile work environment. The Hearing Officer found that as an individual perpetrator of sexual harassment, Smith was individually liable for sexually harassing Vincenti. The Hearing Officer dismissed a claim of quid pro quo sexual harassment.

The Hearing Officer determined that The Exchange and Smith had retaliated against Vincenti. Vincenti had a reasonable and good faith belief that Smith's conduct was unlawful sexual harassment. Vincenti acted reason-

ably in response by taking steps to protest and oppose the harassment. There was a causal connection between her complaint to Mrs. Smith about Smith's conduct and the termination of her employment and discontinuation of her use of the Smiths' car. Within 24 hours of Vincenti's complaint to Mrs. Smith, Smith terminated Vincenti's employment and took away her use of the Smiths' car. The determinative factor in Smith's decision was Vincenti's protest to Mrs. Smith about the sexual harassment.

The Hearing Officer found that Smith acted in deliberate disregard of Vincenti's right to have a workplace free from sexual harassment as reflected by his extreme acts of harassment, refusal to stop such conduct when confronted, and decision to terminate her employment and cease her use of the car because she opposed his conduct.

The Hearing Officer awarded back pay of \$2,172.30, emotional distress damages of \$80,000, and ordered The Exchange and Smith to immediately cease and desist from sexual harassment, sex discrimination and retaliation in employment. Smith was ordered to attend training on sexual harassment and retaliation.

DECISIONS ON PETITIONS FOR ATTORNEYS' FEES AND COSTS

MCAD and Joseph v. Massachusetts Department of Children and Families, 46 MDLR 18 (2024) (Hearing Commissioner Sunila Thomas George)

Joseph alleged her former employer, the Massachusetts Department of Children and Families ("DCF"), discriminated against her based on her disability by failing on four occasions to provide her with a reasonable accommodation; retaliated against her; and she was constructively discharged. After a public hearing, the Hearing Commissioner issued a decision, finding in favor of Joseph on two of the four reasonable accommodation claims, the retaliation claim and the constructive discharge claim. See underlying Joseph decision at 45 MDLR 5 (2023) Joseph sought attorneys' fees and costs. The requested costs were awarded.

The Hearing Commissioner applied the "lodestar" methodology for attorneys' fee computation explaining that by that method, one calculates the number of hours reasonably expended to litigate the claim and multiplies that number by an hourly rate deemed reasonable. The resulting figure, known as the "lodestar," can (but need not be) adjusted upward or downward.

Joseph sought an hourly rate for lead counsel of \$500 and for supporting counsel of \$600 relying in part upon the Wolters Kluwer 2022 Real Rate Report ("WK Report") and the U.S. Attorney's Office's Fees Matrix (2015-2021). The Hearing Commissioner decided not to rely upon the matrix because it "has not been adopted ... for use outside the District of Columbia." (Citation omitted) The Hearing Commissioner relied upon the WK Report. The Hearing Commissioner determined that the average hourly rate of the pertinent data points in the WK Report was \$503, adjusted that result for inflation, considered the attorneys' years of experience, and determined that a reasonable hourly rate for services performed by the supporting counsel (who had more years of experience) was \$528 and a reasonable hourly rate for services performed by the lead counsel was \$475.

The Hearing Commissioner reduced the number of compensable hours on two grounds including finding that the requested 93.1 hours for the post-hearing brief was excessive and determining that 50 hours for the brief was reasonable.

The Hearing Commissioner did not reduce the number of compensable hours because Joseph failed to prevail

on two reasonable accommodation claims. One of the two claims upon which Joseph did not prevail, was part of a larger pattern of discriminatory behavior towards Joseph, which was inextricably linked to the retaliation and constructive discharge claims upon which she was successful. The remaining unsuccessful claim - “a minor issue in this case” - did not justify a reduction in hours.

The Hearing Commissioner determined that the unadjusted lodestar was \$157,327 and declined to adjust that number. The Hearing Commissioner determined that interest on an award of fees and costs after a public hearing pursuant to Section 5 of M.G.L. c. 151B was post-judgment interest and that sovereign immunity barred recovery of post-judgment interest on attorneys’ fees and costs against DCF.

MCAD and Thomas v. Stash’s Pizza, (Hearing Officer Jason Barshak) (2024)

Thomas, an African American woman, alleged that she was subjected to disparate treatment by Stash’s Pizza because of her race and/or color in violation of public accommodation law and was retaliated against when she complained about the discrimination. After a public hearing, the Hearing Officer found in Thomas’ favor on both claims. See underlying Thomas decision at 46 MDLR 4 (2024). Thomas filed a petition seeking attorneys’ fees and costs. Thomas requested an hourly rate for the lead counsel of \$895 and an hourly rate for the other counsel of \$495.

The Hearing Officer allowed the request for costs. As to the fees request, the Hearing Officer applied the lodestar methodology. As to the number of hours reasonably expended to litigate the claim, after reviewing the contemporaneous time records, the Hearing Officer did not have any objection as to the entries or times listed in those records.

Regarding hourly rates, the Hearing Officer pointed out that the petition contained limited support for the requested hourly rates, noting that the petition did not contain any benchmarks against which the requested hourly rates could be compared, nor did it contain any affidavits from other attorneys regarding market rates for attorneys in the Boston area and/or the reasonableness of the rates requested in the case. The Hearing Officer determined that it was necessary to examine MCAD and Massachusetts court decisions regarding petitions for attorneys’ fees but cautioned that applying prior decisions regarding fees to the petition was not a straightforward comparison. Solo practitioners or attorneys from small firms, like the subject counsel, commanded a lower hourly rate than their counterparts in medium or large firms. Other factors -- such as differing levels of complexity between cases, whether the rates were contested in other cases, and the degree of factual support for the requested rates -- demanded caution when applying rates awarded in other cases.

The Hearing Officer noted the benefit of having a reliable, non-case specific, benchmark to apply as a cross-check in assessing hourly rates. The Hearing Officer noted that a Hearing Commissioner had recently utilized a survey (the WK Report) in deciding a petition for attorneys’ fees in Joseph and Massachusetts Commission Against Discrimination v. Massachusetts Department of Children and Families, 46 MDLR 18 (2024). The Hearing Officer found the Hearing Commissioner’s analysis persuasive and determined that utilizing the WK Report as a cross-check against hourly rates awarded in MCAD and court decisions would assist in determining reasonable hourly rates. The Hearing Officer determined a reasonable hourly rate for services performed by the lead counsel was \$585 and for the other counsel was \$438.75.

The Hearing Officer determined that the unadjusted lodestar was \$231,996.38 and declined to adjust it. The

Hearing Officer determined that interest on an award of fees and costs after a public hearing pursuant to Section 5 of c. 151B was post-judgment interest that accrues on the date of the decision awarding the fees and costs and that Thomas was entitled to such post-judgment interest.

MCAD and Vincenti v. The Plymouth Exchange et al., (Hearing Officer Simone Liebman) (2024)

After public hearing, the Hearing Officer found Respondents liable for hostile work environment sexual harassment and retaliation in violation of M.G.L. c. 151B, found Respondent Smith liable for interfering with the exercise of rights protected under c. 151B, awarded Vincenti back pay and emotional distress damages and ordered Smith to undergo training on sexual harassment and retaliation. See underlying Vincenti decision at 46 MDLR 23 (2024)

Vincenti sought fees for work performed by a team of attorneys, paralegals, and administrative professionals including the two attorneys present at public hearing. The Hearing Officer noted that except for the lead attorney, the petition did not provide information about the attorneys' years of experience. As a result, the Hearing Officer reviewed the public information on the Massachusetts Board of Bar Overseers' website to obtain the years in which the attorneys became licensed to practice law in Massachusetts (as a proxy for years of experience). Because the Hearing Officer could not identify the date that one of the attorneys was admitted to the Massachusetts Bar, the Hearing Officer declined to award fees for services provided by that attorney.

The Hearing Officer described what should be included regarding hourly rates in a fee petition: (1) information about the attorneys' experience - both number of years practicing and type of work performed; (2) specific information about the average rate in the community for similar work by attorneys with similar years' experience; and (3) materials that corroborate the fees requested such as model fee charts, matrices, reports, other reliable sources, and/or affidavits from other attorneys with knowledge of rates charged by attorneys in the community with similar years of experience performing similar work. Based on a review of hourly rates approved by the Commission and her experience and familiarity with reasonable rates, the Hearing Officer identified reasonable hourly rates for the attorneys, administrative and paralegal staff.

The Hearing Officer noted that awarding fees to two attorneys for their time spent at a hearing where both had active roles at the hearing was appropriate, but in cases like the present where the "second chair" attorney did not have a role in questioning witnesses, did not handle objections or evidentiary issues, and did not present an opening statement, it was appropriate to reduce the compensable hours for the "second chair" attorney for time spent at the hearing.

The Hearing Officer explained that in appropriate circumstances, attorneys' fees may be reduced where the complainant was not successful on all claims and pointed out that Vincenti was not successful on the quid pro quo sexual harassment claim. However, in this case, where the facts in support of the quid pro quo claim and hostile work environment claim were highly interrelated and intertwined, the Hearing Officer declined to reduce compensable hours.

The Hearing Officer determined that the unadjusted lodestar was \$53,498.90 and declined to adjust that figure. The Hearing Officer awarded Vincenti post-judgment interest on the fees for the period commencing on the date of the decision on the petition for fees.

MCAD and Jenson v. Rockdale Care & Rehabilitation Center, (Hearing Officer Simone Liebman) (as amended,

March 20, 2024)

After public hearing, the Hearing Officer issued a decision finding Respondent liable for disability discrimination in violation of M.G.L. c. 151B. See underlying Jenson decision at 45 MDLR 54 (2023) Jenson filed a petition for costs and attorneys' fees. The Hearing Officer applied the lodestar methodology and determined that the requested rate of \$250 per hour for services performed was "reasonable, commensurate with [the attorney's] experience, and well within the range of rates charged by employment lawyers in eastern Massachusetts." The Hearing Officer determined the hours that the attorney expended in the case was a reasonable number of hours to spend. The Hearing Officer awarded Jenson \$6,091 in attorneys' fees and costs with post-judgment interest for the period commencing on the date of the decision on the petition for fees.



Photos: MCAD Worcester Office Grand Opening Event on January 19, 2024, which included special guests like Senator Robyn Kennedy, Representative Mary Keefe, Worcester Mayor Joe Petty, Worcester City Manager Eric Batista, and Healy Administration Policy and Cabinet Affairs Liaison Rubby Wuabu.

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 FY24, the Full Commission issued seven decisions. The decisions issued in FY24 are described below. All of the decisions are published on MCAD's website, and in the Massachusetts Discrimination Law Reporter where noted.

TIA & MCAD v. Herb Chambers 1186, Inc., 46 MDLR 53 (2024) (Sexual Harassment-Retaliation-Credibility Determinations-Prohibited Evidence)

Complainant appealed to the Full Commission following the Hearing Officer's decision that the Respondent employer was not liable for discrimination based on creed, sex, sexual harassment, and retaliation under M.G.L. c. 151B, § 4(1), (4), and (16A). On appeal, Complainant argued that the Hearing Officer improperly credited evidence presented by the Respondent and, generally, did not credit evidence presented by Complainant. In support of her position concerning her own credibility, Complainant attempted to introduce new evidence of conciliation and settlement offers. In affirming the hearing decision in favor of Respondent, the Full Commission relied on the longstanding principle that credibility determinations are solely within the province of the Hearing Officer and reinforced the Commission's procedural regulations prohibiting the introduction of evidence presented as part of conciliation efforts.

MCAD & Leo H. Roberge v. Sullivan, Keating & Moran Insurance Agency, 45 MDLR 43 (2023) (Disability-Reasonable Accommodation)

The Respondent employer appealed a hearing decision partially in favor of the Complainant who alleged in 2013, he was denied a reasonable accommodation of a Caption Call phone for his disability (deaf/hard of hearing) because the claim was untimely. Respondent argued that the investigative disposition issued in the case noted that allegations arising before May 2014 were outside of the 300-day statute of limitations for M.G.L. c. 151B claims and therefore time-barred. Notwithstanding the investigative disposition, the entire complaint, including the claim Complainant was denied a reasonable accommodation for the Caption Call device, was certified as an issue to be considered at public hearing. As noted in the Full Commission decision, pursuant to the Commission's procedural regulations, the certification order is the operative document identifying the issues to be considered at public hearing, not the investigative disposition. The Full Commission considered Complainant's testimony at public hearing that the accommodation request at issue occurred in 2014, and that Respondent did not impeach Complainant's testimony or raise timeliness as an affirmative defense prior to or during the public hearing but raised the issue for the first time in their post-hearing brief. By failing to timely raise this objection to the Hearing Officer, the Full Commission deemed this objection to be waived. Finding in favor of the Complainant, the Full Commission upheld the Hearing Officer's training order and awarded Commission Counsel reduced fees in the amount of \$7,714.24. Respondent sought judicial review of the Full Commission decision in the Hampden County Superior Court pursuant to M.G.L. c. 30A. The Superior Court disagreed with the Full Commission's position that certification of the complaint as filed provided adequate notice and supplanted the investigative disposition and entered judgment in favor of the Respondent.

MCAD & Patricia Suomala v. Massachusetts Society for the Prevention of Cruelty to Animals, Ann Marie Manning, And Kathleen Collins, 45 MDLR 63 (2023) (Retaliation)

The Full Commission affirmed the Hearing Officer's decision that Complainant's termination as the Director of Inpatient Services at the MSPCA was not in retaliation for engaging in the protected activity of reporting a subordinate employee's conduct toward a coworker as sexual harassment and for urging Respondents to terminate the offending employee for such behavior. On appeal, Complainant argued that the Hearing Officer overlooked evidence that the non-retaliatory reasons Respondents presented for her termination were pretextual and erred by crediting portions of Respondents' testimony and failing to consider evidence of Complainant's good performance. The Full Commission relied on the longstanding principle that credibility determinations are solely within the province of the Hearing Officer, and the Hearing Officer is responsible for weighing the evidence presented. Respondents presented credible evidence that Complainant initially performed well as Director of Client Services, but this performance deteriorated over time, escalating to unprofessional interactions with MSPCA staff and undermining members of management in meetings with colleagues and external vendors. Complainant received an oral warning for this behavior. Complainant urged the Full Commission to consider that she received an annual raise as evidence that Respondent's reasoning for the termination was pretextual. However, Respondents presented evidence that Complainant's disrespectful behavior continued after receiving the annual raise. The Full Commission affirmed the Hearing Officer's decision and determined it was supported by substantial evidence.

MCAD & Cleveland Coats v. Massachusetts State Police, 46 MDLR 1 (2024) (Age-Race-Emotional Distress)

The Full Commission upheld the Hearing Officer's damages award to Complainant for lost wages and emotional distress following successful claims of discrimination based on age and race (African American). Complainant was a police officer and served in the lucrative and prestigious Executive Protection Unit ("EPU"), protecting the Governor and Lt. Governor. Despite his positive performance Complainant was removed from the unit while younger white officers were allowed to remain, and he was transferred to a less prestigious unit unsuited to his skillset. The Hearing Officer awarded Complainant \$148,000 in lost overtime wages and \$250,000 in emotional distress damages. On appeal, Respondent contested the emotional distress award as disproportionate to the harm and the lost wages award as inaccurate based on an inappropriate comparator and improper evidence. The Full Commission found substantial evidence to support both damage awards. Emotional distress awards are determined on a case-by-case basis considering several criteria, including the nature and severity of the harm or mitigation efforts. Respondent argued that the emotional distress award should be reduced based on Complainant's failure to seek medical or spiritual mitigation of the emotional harm. However, as discussed by the Full Commission, mitigation is only one of several criteria to be considered in determining an emotional distress award and is not mandatory due to the highly personal nature of emotional distress and how an individual processes that distress. With regard to the lost wages award, the Full Commission did not find convincing Respondent's argument that the Hearing Officer improperly considered a comparator (another sergeant assigned to the EPU) and chalks of payroll record summaries. Because the EPU is a selective unit, Complainant was limited by the number of comparators of similar rank and experience. Complainant was able to illustrate that fluctuations in the chosen comparator's overtime opportunities were proportional to his own. The Full Commission also found that Respondent failed to demonstrate that consideration of the payroll checks was improper where there were no inaccuracies identified, and the underlying payroll records they were based on were also admitted into evidence. As such, the Full Commission affirmed the Hearing Officer's \$250,000 emotional distress award and \$148,000 in lost overtime wages. The Full Commission also affirmed the Hearing Officer's award of reduced attorney's fees in the amount of \$497,963 and costs in the amount of \$12,379.22.

MCAD & Cleveland Coats v. Massachusetts State Police, 46 MDLR 38 (2024) (Supplemental Attorney's Fees) Complainant's counsel filed a Supplemental Petition for Attorney's Fees and Costs along with an affidavit and time records for \$145,470.00 in attorney's fees arising out of Respondent's appeal and post-hearing decision motions. Chapter 151B, § 5 allows prevailing complainants to recover reasonable attorney's fees, and 804 CMR 1.23(12)(c) specifically provides for the award of attorney's fees and costs accrued as an appellee litigating a respondent's appeal to the Full Commission. The case was zealously litigated by the parties, including significant post-hearing motion practice. The parties stipulated to supplemental fees in the amount of \$100,000. Despite the parties' stipulation, the Full Commission maintained the discretion to determine whether the fees sought were reasonable. The Full Commission identified duplicative, excessive, and unnecessary work in the time records filed with the petition and reasoned that the reduction of fees, as agreed to by the Respondent, reasonably accounted for those items.

MCAD & Elena Borosky and Bianca Wallen v. Professional Fitness, 46 MDLR 15 (2024) (Sexual Harassment-Retaliation-Constructive Discharge)

The Full Commission upheld the Hearing Commissioner's decision finding Respondent was not liable to Complainants for sexual harassment and dismissing Complainant Borosky's claims of retaliation and constructive discharge. Complainants, who were trainers at a health club, alleged they were subjected to a sexually hostile work environment because a regional manager made comments concerning their appearance including advising them to wear tight fitting clothing, show off their bodies, and to target male clients to sign them up for personal training services. The Full Commission agreed with the Hearing Commissioner that the manager's comments about Complainants having "fit bodies" were not necessarily sexual in nature and can be deemed to be related to the requirements of the job and the marketing goals of selling personal training sessions and marketing physical fitness generally. In evaluating whether conduct is objectively hostile, the Full Commission noted that consideration of the type of workplace - in this case, a fitness center - is a factor. Additionally, while some of the manager's commentary was sexual in nature, it was not sufficiently severe or pervasive to constitute a hostile work environment. For similar reasons, Borosky's constructive discharge and retaliation claims failed.

MCAD & Joshua Fortin and Nicole Evangelista v. Martin Green, Marty Green Properties LLC, and Hang Ngo a/k/a Ngo Hang, 46 MDLR 41 (2024) (Housing-Disability-Reasonable Accommodation-Assistance Animal – Associational Discrimination)

This Full Commission decision highlights the lack of clearly defined labels with respect to animals as the subject of requests for reasonable accommodation in housing under M.G.L. c. 151B and affirmed the Hearing Officer's decision, except for the labeling of the dog that was the subject of the request for accommodation as an "emotional support animal." The Full Commission found there was sufficient evidence in the record to label the dog as an "assistance animal" where, despite the lack of formal training that is required of a service animal, the subject animal's behaviors went beyond emotional support and actually helped Complainant manage his disability (diabetes). The Full Commission clarified that because service animals and support animals both fall under the umbrella of assistance animals, the term "assistance animal" can reasonably include untrained dogs or other animals who provide disability related-assistance other than (or in addition to) emotional support. Complainants presented credible evidence that despite the lack of formal training, Sam was able to perform behaviors that caused Fortin to check his blood sugar and ameliorated symptoms of his disability-related anxiety, making his support of Fortin more than just emotional. Respondents' liability for retaliation against Complainants and Green's individual liability were also affirmed by the Full Commission. The Full Commission affirmed the Hearing Officer's training order; emotional distress damages awards to Fortin for \$10,000 and

Evangelista for \$20,000; civil penalties assessed to Green for \$7,500, Marty Green Properties, LLC for \$5,000, and Ngo for \$5,000; and \$41,077.10 in Commission Counsel fees. Additionally, the Full Commission awarded Commission Counsel fees in the amount of \$10,324.00 for work performed on the appeal.



Photo: MCAD panel members at the 26th Annual Massachusetts Continuing Legal Education (MCLE) Employment Law Conference 2023.

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.”

MCAD STAFF LIST

Yasin Adow	Kevin Earl*	Kline Moore
Eric Allbright	Ashley Edwards*	Carol Mosca▪*
Melissa Atocha	Andrew Espinosa	Carol Murchison▪
Darrell Augustin	Jillian Fisher	Pamela Myers▪
Margaret Austen*	Cynthia Garcia	Narineh Nazarian
Kemmara Bailey	Sunila Thomas George▪	Nathalie Nemours
Philip Banaszek~	David Gottschalk	Helene Newberg
Ruthy Barros	Scott Graziano~	Mary Nicholls
Jason Barshak	Mayrose Gravalec-Pannone	Diane Nordbye
Andrew Berthiaume	Joseph Greenhalgh*	Shannon O'Brien
Sarah Biglow▪	Eugenia Guastaferri~	Carly O'Connell
Brandon Blomgren	Marzella Hightower▪	Cliff Orelus
Kelly Burgess	Deirdre Hosler	Yudelka Pena▪
Kenneth Callahan II	Fabiolle Jean	Sh'Nardria Peterson
Wendy Cassidy▪	Neldy Jean-Francois	Melissa Prosky
Alison Caton	Shirani Jimenez	Lila Roberts▪
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Joseph Cohen	Aleksia Kleine	Alexander Smith*
Brandon Coimbra*	Paul Lantieri	Abigail Soto-Alvira▪
Monserate Rodríguez Colón	Justine LaVoye	Naiara Souto
William Cooney	Sangyeol Lee	Harry Taub*
Ethan Crawford	Nicole Leger	Tania Taveras▪
Mary Crittenden	Gina Leonard	Nancy To▪
Brianna Cullins*	Theresa Lepore	Gillian Veralli
Kristen Dannay▪	Simone Liebman▪	Devin Wintemute
Julie Dascoli	Ashley Longmoore	Paul Witham▪
Elizabeth Davey	Melanie Louie-tso▪	Emma Wolters*
Vanessa Davila▪	Matthew Marotta	Kendrick Yu
Edith Demont-Rosenthal	Brendan McHugh	Sabrina Zafar*
Sabrina Drumond	Michael Memmolo	Michael Zeytoonian
Amanda Dupuis*	Lynn Milinazzo-Gaudet▪	
Juanita Duvall	Peter Mimmo	
Alethea Dys-Peirce	Ying Mo▪	

* Employed by MCAD for a portion of FY24

▪ 10+ years of service to MCAD

~ Contract Employee

MCAD ADVISORY BOARD

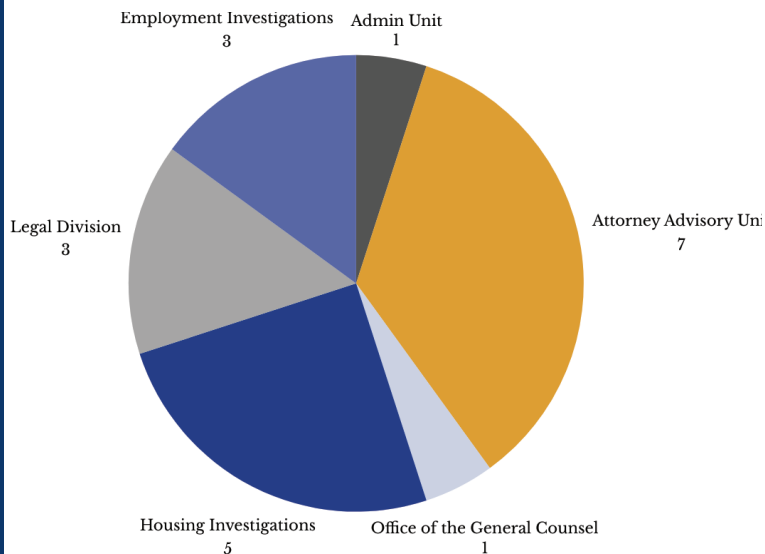
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MCAD FY24 INTERNS

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Jordana Harper	Katherine White
Harper Hutchins	Jessica Wong
Hannah Justus	Savannah Wormley
William McCabe	Jacob Yezerksi

[^] interned for multiple semesters

**FY24 Breakdown of
Interns by Unit/Division**





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