804 CMR 1.00: RULES OF PROCEDURE

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1.01: Scope and Purpose

804 CMR 1.00 establishes rules for procedure and practice before the Massachusetts Commission Against Discrimination. The purpose of 804 CMR 1.00 is to achieve a just, speedy and fair determination of matters before the Commission in the service of the public interest. In the interests of justice, the Commission, through its staff and ~~individual~~ Commissioners, may exercise its discretion and relax the application of 804 CMR 1.00. The Commission shall issue such orders and fashion such relief as shall effectuate the purposes of the statutes enforced by the Commission.

1.02: Definitions

As used in 804 CMR 1.00:

Administrative Dismissal means a case dismissal that may occur at any time in the processing of a complaint for which no preliminary appeal is available.

Chair means the Commissioner designated by the Governor responsible for presiding over Commission meetings and performing duties authorized by statute, regulation and Commission procedure, or their designee.

Commission means the Massachusetts Commission Against Discrimination (MCAD).

Commissioner means one of ~~three~~ five members of the Commission appointed ~~by the Governor of the Commonwealth of Massachusetts~~ in accordance with M.G.L. c. 6, § 56, which includes ~~a~~the Chair~~person~~ of the Commission, or their designees.

Complainant means any person who files a ~~verified~~ complaint with the Commission.

Complaint means a document containing ~~the~~ allegations of unlawful discrimination filed with the Commission. ~~and includes HUD housing complaints, absent a special rule or exception.~~

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Counsel for the Commission means an attorney employed by the Commission who prosecutes a complaint on behalf of the public interest and represents the Commission in judicial and administrative proceedings.

Document means any paper document or electronically stored information, including but not limited to writings, drawings, books, records, graphs, charts, photographs, sound recordings, video recordings, images and other data or data compilations, stored in any medium from which information can be retrievedobtained ~~either directly or, if necessary, after translation~~ and made into a reasonably usable form.

Duly Authorized Representative (DAR) means any person who is not an attorney and authorized by a party to act and communicate on their behalf with the Commission pre-determination, primarily through the MCAD Case Portal. ~~, including an attorney in good standing, who has filed a notice of appearance in a matter before the Commission.~~

Ex Parte means without notice to or argument from the ~~adverse~~ other party or parties.

Filing means the submission of a document or information through the MCAD Case Portal unless alternative means of filing are specified in 804 CMR 1.00 or allowed by the Commission on a case-by-case basis.

Full Commission means at least ~~two but sometimes~~ three Commissioners.

Hearing Commissioner means the Commissioner designated by the Chair~~person~~ of the Commission to adjudicate complaints of discrimination, or ~~their~~ other designee of the Chair, including a person found to be qualified by the Commission as a Hearing Officer, or the Full Commission in the event the Full Commission orders and presides over a public hearing.

~~HUD Housing Complaint means any complaint alleging discrimination in housing under M.G.L. c. 151B which is dual filed with the U.S. Department of Housing and Urban Development.~~

~~Investigating Commissioner means the Commissioner designated by the Chairperson of the Commission to investigate a complaint of discrimination, or their designee.~~

Investigative Disposition means the official document issued by the Commission upon conclusion of the investigation containing the determination of the ~~Investigating Commissioner~~Commission.

MCAD Case Portal means the online access point to the Commission's case management system available through its website, which provides parties and representatives with the ability to file complaints, motions, and other documents, access case information, make requests, and communicate with the Commission after completion of a user registration process.

Moving Party means the party who files a written motion at any time ~~with the Commission~~, or moves for relief verbally during a ~~at public hearing~~Commission proceeding.

Order means ~~a~~instruction, ruling, direction, or decision of the Commission or a Commissioner.

Party means the complainant, respondent and any person permitted to intervene in a Commission proceeding; after a complaint is certified to public hearing, the Commission ~~also becomes~~ is the primary ~~a~~ party to the proceeding and complainant becomes the intervening party in accordance with M.G.L. c. 151B, § 5.

Person means any natural person, corporation, trust, partnership, incorporated or unincorporated association, limited liability company, and any ~~other~~ legal entity, and shall not mean artificial intelligence. ~~.~~

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Personal Service means actual delivery of the notice or process to the person to whom it is directed, which in the case of a natural person means, either by delivery in hand or by leaving copies at the last and usual place of abode of such person, and in the case of a legal entity, means delivering notice or process in hand to an officer, managing or general agent or person in charge of the business at the principal place of business, or by delivering such copies to any other agent authorized by appointment or by law to receive service of process.

Post-determination means the period of time beginning with the issuance of an investigative disposition.

Pre-determination means the period of time between the filing of a complaint and the issuance of an investigative disposition. during which the Commission is investigating the complaint.

Preliminary ~~Hearing~~ Appeal means a~~n~~ complainant's informal appeal ~~hearing held at the Commission upon written request of a complainant or their attorney within ten days of service of an adverse investigative disposition~~ of an investigative disposition where probable cause is not found, except for administrative dismissals, as provided for in ~~under~~ M.G.L. c. 151B, § 5 and otherwise known as a preliminary hearing.

Probable Cause means there is sufficient evidence upon which a fact-finder could form a reasonable belief that it is more probable than not that a respondent committed an unlawful practice under any statute enforced by the Commission.

Pro Hac Vice means admission of an attorney who is not a member of the Massachusetts bar to appear and practice at the Commission for a particular case only.

Pro Se means a person appearing on their own behalf and without a representative~~who is not represented by an attorney~~.

Pseudonym means a fictitious name used to conceal the identity of a complainant.

Public Hearing means the adjudicatory hearing held at the Commission pursuant to M.G.L. c. 151B, § 5 in which the respondent answers the charges of the complaint certified to hearing by the Chair. ~~by the Investigating Commissioner.~~

Representative means an attorney ~~in good standing~~ with a notice of appearance on file at the Commission, or a DAR.

Respondent means the person, business, employer, labor organization, employment agency, housing provider, real estate broker or agent, lender, appraiser or any other person or entity alleged to have committed unlawful discrimination in a complaint filed with the Commission.

Sua Sponte means an action taken by the Commission or a Commissioner of ~~its~~ their own accord which does not require a motion or request from ~~prompting or suggestion by~~ a party.

Subpoena Duces Tecum means an order commanding the production of ~~evidence including specified books,~~ documents or tangible things~~, or records~~; such order ~~command~~ may be included in a *subpoena* commanding testimony or it may be issued independent of or in *lieu* of testimony.

1.03: Commissioner Authority

In all matters involving the administration of complaints filed with the Commission, ~~pursuant to M.G.L. c. 151B, and unless otherwise specifically noted in~~ where Commissioner authority is specified in 804 CMR 1.00, ~~one~~ any Commissioner, including the Chair, may act for the Commission. Where authority of the Chair is specified in 804 CMR 1.00, the Chair has exclusive authority to act for the Commission, absent designation of the matter to another Commissioner or MCAD staff member. Where neither Commissioner nor Chair authority is specified in 804 CMR 1.00, Commission staff have exclusive authority to act.

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1.04: Complaint Filing, Amendment and Withdrawal

(1) Who May File. A complaint alleging violations of the statutes enforced by the Commission may be filed at the Commission by any of the following:

(a) A person claiming to be aggrieved by the alleged violation(s) or a parent or guardian filing on behalf of an aggrieved minor child;

(b) ~~The duly authorized~~A representative of a person claiming to be aggrieved by the alleged violation(s);

(c) An organization whose purpose includes the elimination of the unlawful practice(s) which is the subject of the complaint and whose members include one or more persons claiming to be aggrieved by the alleged violations, provided that the injured person(s) shall be named if the complaint seeks victim-specific relief;

(d) The Attorney General or their authorized representative provided that the injured person shall be named if the complaint seeks victim-specific relief; or

(e) The Commission, pursuant to 804 CMR 1.18.

(2) Manner of Filing.

(a) By MCAD Case Portal. All complaints filed pursuant to 804 CMR 1.04(1) by persons and organizations other than the Commission shall be filed through the MCAD Case Portal subject to the following provisions and exceptions:

1. DARs shall file complaints pursuant to 804 CMR 1.04(1)(b) by providing assistance to complainants with filing through the MCAD Case Portal on their own behalf under 804 CMR 1.04(1)(a). Upon filing a complaint, the complainant may then formally authorize the DAR to act on their behalf pursuant to 804 1.15(13).

2. Persons filing a complaint pursuant to 804 CMR 1.04(1)(a) may file through the MCAD Case Portal with the assistance of the Commission by visiting any of the Commission's offices during regular business hours.

3. Persons filing a complaint pursuant to 804 CMR 1.04(1)(a) may file a complaint with the Clerk's Office by U.S. Mail although such filings are strongly discouraged and may cause delay in the processing of the complaint. Upon the filing of a complaint by U.S. Mail, the complainant shall be required to comply with 804 CMR 1.15(16).

4. The filing of a complaint pursuant to 804 CMR 1.04(1)(a) by any method other than the MCAD Case Portal may be allowed as a reasonable accommodation for disability.

5. Pseudonym complaints shall not be filed through the MCAD Case Portal. A complainant who wishes to proceed by pseudonym shall follow the procedures outlined in 804 CMR 1.04(7) and may only file such complaints with the Clerk's Office by U.S. Mail or by delivery of the complaint to any of the Commission's offices during regular business hours. Pseudonym complaints filed through the MCAD Case Portal shall be administratively dismissed.

~~(a) By Delivery: A complaint may be filed by delivering a copy in person during regular Commission business hours or by U.S. mail to any of the Commission's offices.~~

~~(b) By Intake. A complaint may be filed at any of the Commission's offices by participating in the intake process with a Commission representative and signing the complaint. A complainant who, because of a disability, is unable to visit a Commission office may request an accommodation to conduct the intake process by telephone and may return the signed complaint to the Commission by U.S. mail for filing.~~

(3) Time of Filing. A complaint shall be filed within 300 days after the alleged unlawful conduct; provided, however, that a complaint alleging violations of M.G.L. c. 151C shall be filed within the time limits required by M.G.L. c. 151C. The period in which to file a complaint under any statute within the Commission's jurisdiction commences on the date that the Complainant knew or should have known of the alleged unlawful conduct.

(4) Exceptions to Time of Filing. A complaint may be filed beyond the time limits within 804 CMR 1.04(3) under the following circumstances:

(a) Collective Bargaining Agreement Grievance. When a grievance on behalf of an individual is filed pursuant to a collective bargaining agreement, the individual may file a complaint based on the same facts within 300 days of when they knew or should have known that the matters raised in the grievance would support a claim of discrimination.

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The Commission may stay its investigation until any such grievance proceedings have concluded.

(b) Continuing Violation. When facts are alleged which indicate unlawful conduct is of a continuing nature and part of an ongoing pattern of discrimination, the complaint may include actions outside of the statutory filing period so long as the last discriminatory act in the pattern occurred within the statutory filing period.

(c) Mediation Prior to Filing of Complaint. When an aggrieved person enters into an agreement to voluntarily mediate the alleged discriminatory acts prior to filing a complaint at the Commission but within the statutory filing period, the time for filing may be tolled subject to the following conditions:

1. ~~The parties are represented by counsel~~Every party is represented by an attorney;

2. The parties execute an agreement, signed by the parties, their attorneys, and the mediator, which states the nature of the dispute, the intent to mediate the dispute, a request to toll the statutory filing deadline to pursue mediation, a commitment by the attorneys and mediator to conduct the mediation within 90 days, and an agreement to promptly report the outcome of the mediation to the Clerk's Office;

3. The parties submit the agreement executed pursuant to 804 CMR 1.04(4)(c)2. to the Clerk's Office via email or U.S. Mail within the statutory filing deadlines provided for in 804 CMR 1.04(3). The agreement shall only be available to the parties and not the public consistent with all mediation documents on file with the Commission per the confidentiality outlined in 804 CMR 1.06; and

~~4. The Commission shall toll the statutory filing deadline for 90 days from the date the agreement is submitted to the Clerk's Office, or until the mediator and parties have reported that they are unable to resolve the matter through mediation, whichever date is sooner; and~~

~~5.~~4. If the parties are unable to resolve the matter through mediation the ~~person~~ complainant ~~claiming to be aggrieved by the alleged violation~~ shall file a complaint using the MCAD Case Portal within ~~21~~ 120 days of ~~reporting that the mediation was unsuccessful~~filing the agreement to mediate with the Clerk's Office, and the complaint~~. The filing date shall~~ will be deemed filed ~~to be~~ on the date the agreement to mediate was filed with the Commission. The complainant shall notify the Commission of the previous filing of the agreement to mediate in order for the Commission to adjust the filing date of the complaint.

(d) Equitable Tolling. The statute of limitations for filing a complaint may be equitably tolled in those cases where the complainant is excusably ignorant of the statutory filing period, or where respondent, the Commission, or a third-party has affirmatively misled the complainant, or otherwise prevented the complainant from filing, as determined by the ~~Investigating Commissioner~~Commission.

~~(e) Discovery Rule. The deadline for filing a complaint begins at the time the complainant knew or should have known about the allegedly unlawful conduct.~~

(5) Form. ~~The~~ All complaints shall be in writing. Complaints filed under 804 CMR 1.04(1)(a)~~, and~~ shall be signed and verified by the complainant. Verification consists of a signed statement, under the pains and penalties of perjury, by the complainant that they have read the complaint and that the allegations contained therein are true to the best of their knowledge. Complaints filed pursuant to 804 CMR 1.04(1)(b), (c), and (d) may be signed by an attorney without verification by the complainant.

(6) Content. The complaint shall contain:

(a) The date(s) on which the unlawful discriminatory acts occurred; or, when the acts are of a continuing nature, the period of time during which acts occurred and the specific date of the last discriminatory act;

(b) A concise statement of the alleged discriminatory acts committed by specific persons~~;~~ sufficient to enable the Commission to investigate the claims, and provide notice to the respondent(s) of potential liability;

(c) If appropriate, a statement indicating that the complaint is on behalf of a proposed class based on the criteria provided in 804 CMR 1.15(4)(a)~~;~~.

(d) Appropriate identification of the complainant(s) and the person(s) alleged to have committed unlawful discriminatory acts, unless proceeding by use of pseudonym pursuant to 804 CMR 1.04(7); and

(e) Factual allegations sufficient to support each~~the~~ claim.

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(7) ~~Use of~~ Pseudonym Complaints. In exceptional circumstances, the ~~Investigating Commissioner~~Commission may determine that the public interest requires allowing a complainant ~~, including a parent or legal guardian filing on behalf of a minor child,~~ to proceed before the Commission under a pseudonym, which shall not impact the ~~Commission's~~ ability to issue protective orders. Any complainant may request to proceed via pseudonym, including a parent or legal guardian filing on behalf of a minor child, or complainants who were minor children at the time of the alleged discrimination. ~~The use of a pseudonym is not permitted after certification of the complaint to public hearing, except where noted otherwise.~~ The use of a pseudonym may be permitted when a specific overriding reason for confidentiality unique to complainant and substantial safety or privacy interests are demonstrated. The following requirements apply to pseudonym complaints:

(a) A complainant who wishes to proceed by pseudonym shall simultaneously file with the Commission a pseudonym complaint along with an *ex parte* motion to allow the use of a pseudonym, and the filing shall be by U.S. Mail to the Clerk's Office or hand delivery at a Commission office only;

(b) The pseudonym complaint shall conform to 804 CMR 1.04(1) through (6), except that it shall not include the identity of the complainant.~~, and the pseudonym complaint shall be docketed and submitted for review and authorization in accordance with 804 CMR 1.05(2);~~

(c) The motion to allow the use of a pseudonym shall be filed under automatic protective order by the ~~Investigating Commissioner~~Commission and shall thereafter be unavailable to the public or the respondent(s) pursuant to 804 CMR 1.21(3);

(d) The motion to allow the use of a pseudonym shall contain the complainant's full name ~~and conform to 804 CMR 1.13(1)~~, and shall articulate with specificity the reasons why the use of a pseudonym should be allowed;

~~(e) The motion to allow the use of a pseudonym shall conform to 804 CMR 1.13(9)(b) except that the motion may be filed *ex parte*;~~

~~(f)~~(e) If the ~~Investigating Commissioner issues an order granting the~~ motion to allow the use of a pseudonym is granted:

1. The complaint shall be docketed and an order allowing the use of a pseudonym shall be served with the complaint ~~accordingly~~upon authorization to formal investigation pursuant to 804 CMR 1.05(3);
2. If the respondent is unable to identify with sufficient assurance the identity of the complainant, the respondent shall notify the Commission in writing within ten days of its receipt of the order, and the Commission shall determine and provide the information it deems necessary to permit the respondent to file a position statement;
3. The parties shall omit the identity of the complainant in documents filed with the Commission or move for a protective order to prevent public disclosure of the filing.

~~(g)~~(f) If the ~~Investigating Commissionerissues an order denying the~~ motion to allow the use of a pseudonym is denied, the complaint shall not be docketed and the complainant shall have 30 days from receipt of the order denying the request to ~~amend~~ file a complaint using their own name. If the complainant files such complaint within 30 days the Commission shall deem the complaint filing date as ~~allow the complaint to include the identity of the complainant by written communication with the Clerk's Officeand the original docket number assigned to the pseudonym complaint; failure to amend~~ allow the complaint ~~to proceed without a pseudonym within 30 days shall result in the dismissal of the complaint pursuant to 804 CMR 1.08(1)(d);~~the date the motion to allow the use of a pseudonym was filed with the Commission, upon request by the complainant.

~~(h)~~(g) ~~An Investigating Commissioner~~Pre-determination, the Commission may grant a request for a pseudonym complaint or *sua sponte* require the use of a pseudonym in a complaint. The Chair may *sua sponte* require the use of a pseudonym or grant a request to use a pseudonym post- determination or in any complaint~~, including those~~ initiated pursuant to 804 CMR 1.18.~~,~~ The Commission and the Chair ~~and~~ may issue protective orders and amendments to the complaint as necessary to accomplish ~~that~~ these purposes.

(8) Amendments to the Complaint in General.

(a) How Made. A complaint may be amended at any time, either by motion from the complainant, *sua sponte* ~~sua sponte~~ by the Commission or in response to an order for a more definite statement in accordance with 804 CMR 1.05(11).
(b) Amended Content. A complaint or any part thereof may be amended to cure technical defects or omissions, including failure to swear to the complaint, to clarify and amplify allegations made therein, to add or remove respondents, to allege additional acts constituting unlawful discriminatory practices or claims related to or arising out of the subject matter of the original complaint., ~~, including claims or respondents~~ Ppreviously dismissed claims or respondents may be reinstated by amendment *sua sponte* or when supported by a motion for reconsideration of probable cause under 804 CMR 1.08(4)(a). ~~. if supported by evidence discovered during the prosecution of the remaining claims.~~ Regardless of how made, amendments shall relate back to the original filing date of the complaint.

(9) Procedure for Amending Complaint.
(a) *Sua Sponte* Amendments by the Commission. Pre-determination *sua sponte* ~~A~~amendments ~~may~~ shall be made by the ~~Investigating Commissioner~~Commission except that amendments relating to complaints initiated pursuant to 804 CMR 1.18 shall be made by the Chair. Post-determination and ~~at any time~~ prior to certification to public hearing, *sua sponte* amendments shall be made by the Chair. After certification to public hearing, *sua sponte* amendments shall be made ~~and~~ by a Hearing Commissioner ~~at any time after certification to public hearing~~by amending the certification order. ~~In each instance prior to public hearing,~~ The Commission shall serve each party an amended complaint or certification order whenever *sua sponte* amendments are made. ~~the amendment(s) or order permitting the amendments shall be served by the Commission upon each party.~~
(b) Amendments by Motion from Complainant. Motions to amend the complaint are governed by 804 CMR 1.13., ~~, and shall include a copy of a proposed amended complaint for filing and service~~.
(c) Amendments to ~~HUD~~ Housing Complaints. Amendments to ~~An amended HUD~~ housing complaints shall be filed within 45 days of the initial filing of the complaint or no later than five days after service of the position statement, whichever is later, unless good cause is shown to enlarge the time. H~~HUD h~~ousing complaints may be amended at the discretion of the Commission~~Investigating Commissioner.~~ Events occurring after amending a ~~HUD~~ housing complaint may be the subject of a new complaint.
(d) Response to Order for a More Definite Statement. A complainant shall ~~amend the complaint in accordance with~~respond to an order ~~by the Investigating Commissioner Chair~~ issued pursuant to 804 CMR 1.05(11) with the information required by the order. The response must be within ten days of receipt of the order. An amended complaint incorporating the response shall be served by the Commission upon each party.
~~(e)~~ Response to Amendments. ~~The Investigating Commissioner or Hearing Commissioner may request a response to an amendment from any named or proposed party.~~

1. Pre-determination ~~A~~amendments. If a position statement has already been filed, the respondent may amend the position statement within 14 days of receipt of amendments to the complaint. Where no position statement has yet been filed, respondent shall file a position statement in response to amendments in accordance with 804 CMR 1.05(8).
2. Post-determination ~~A~~amendments. The ~~Unless otherwise ordered by the Commission, the~~ respondent may not amend the position statement post-determination, although they may oppose a post-determination motion to amend the complaint in accordance with 804 CMR 1.13 or in response to an order by ~~request from~~ the Chair or a Hearing Commissioner~~Commission~~.

(10) Standard for Allowance of Amendments after Certification to Public Hearing. Motions to amend a complaint after certification to public hearing may be granted if the amendment arises out of the subject matter of the initial complaint and there is no undue prejudice to a party ~~or individual~~. Nothing in 804 CMR 1.04(1) limits the discretion of the Hearing Commissioner to amend the complaint to conform to the evidence adduced at hearing.

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(11) Notice to the Parties. The Commission shall serve a copy of the original complaint and any amended complaints upon complainant and respondent except where the ~~Investigating Commissioner~~Commission dismisses the complaint pursuant to 804 CMR 1.05(2).

(12) Withdrawal of Complaint. Withdrawal of a complaint for any reason is subject to the following provisions:

(a) Within the first 90 days of filing a complaint, t~~T~~he complainant may request withdrawal of the complaint for the purpose of removing it to court pursuant to M.G.L. c. 151B, § 9 or for other reason, including settlement, ~~within the first 90 days of filing a complaint~~, and such request shall be in writing and shall set forth the reasons therefor.

(b) The ~~Investigating Commissioner~~Commission may grant or deny ~~in writing~~ a request to withdraw within the first 90 days of filing a complaint as the public interest requires.

(c) After 90 days of filing the complaint, the complainant may withdraw the complaint as of right for any reason, including removal to court pursuant to M.G.L. c. 151B, § 9 or settlement, upon written notice to the Commission.

(d) If a complainant files a complaint in court pursuant to M.G.L. c. 151B, § 9 without first withdrawing the complaint pursuant to 804 CMR 1.04(12)(a) or (c), the Commission may consider the complaint withdrawn as of the court filing date.

(e) Withdrawal of a complaint at any time shall not affect the Commission's right to initiate a complaint based upon the same allegations, and such Commission initiated complaint shall relate back to the date of filing of the individual complaint.

(13) Additional Requirement for Withdrawal of Complaint by Removal to Court. Any person who has withdrawn a complaint before the Commission to file an action in any court of the Commonwealth or in any federal court, which includes a claim under M.G.L. c. 151B, M.G.L. 151C, or M.G.L c. 272, §§ 92A, 98, or 98A, or any other statutes under the jurisdiction of the Commission, shall promptly provide the General Counsel of the Commission with a copy of the complaint filed in court.

1.05: Investigation and Answer of Complaint

(1) Preservation of Evidence. Upon notice of the complaint, parties shall preserve all manner and forms of information and documents that are or may lead to evidence relevant to the complaint ~~charge~~ of discrimination. Failure to so preserve may result in a rebuttable presumption concerning the evidence against the party failing to make such preservation. The Commission may issue sanctions pursuant to 804 CMR 1.22 related to the failure to preserve evidence. For purposes of the duty to preserve evidence, notice of the complaint may occur during preliminary investigation pursuant to 804 CMR 1.05(2)(a) or after formal service of the complaint pursuant to 804 CMR 1.05(3).

(2) ~~Review and Authorization~~Preliminary Investigation. The Commission ~~may~~ shall undertake a preliminary ~~review~~ investigation of a complaint to determine if further investigation utilizing the process within 804 CMR 1.04(4) through (10) would serve the public interest and may dismiss a complaint after preliminary investigation ~~at such stage~~ subject to the following provisions:

(a) Manner of Investigation. A~~The~~ preliminary investigation shall be undertaken to decide whether to authorize a complaint for formal investigation or to dismiss the complaint pursuant to 804 CMR 1.05(2)(b). The Commission shall have discretion to investigate complaint details in any manner necessary to achieve these purposes, which may include outreach to the parties, witnesses, and other persons, reviewing documents and gathering additional information.

(b) Grounds for Dismissal. The Commission may dismiss a complaint after preliminary investigation for any of the following reasons:

1. ~~determine that further investigation is unwarranted due to a~~ lack of standing,
2. ~~-~~lack of jurisdiction;~~,~~
3. u~~U~~ntimeliness;~~,~~
4. failure to state a claim of discrimination;~~,~~
5. frivolous claims~~, or~~;
6. ~~where~~ allegations are facially implausible,~~ or~~ incapable of verification, or vague;~~.~~

7. allegations of monetary and non-monetary harm appear *de minimus*, moot, or mitigated during preliminary investigation;
8. allegations contain tenuous nexus between protected class and allegedly discriminatory conduct; or
~~1.~~9. The public interest requires focusing Commission resources on complaints with greater impact on the mission to eradicate discrimination.

~~(b)~~(c) Notice of Dismissal. If the Commission determines that ~~further~~ authorization of a formal investigation would not serve the public interest pursuant to 804 CMR 1.05(2)(a), the Commission shall state the reasons for the determination in a dismissal notice served upon complainant only. Such dismissal notice, whether issued within the first 90 days of the filing of the complaint or later, shall constitute authorization to the complainant ~~under 804 CMR 1.04(12)(b)~~ to pursue a civil action pursuant to M.G.L. c. 151B, § 9.

~~(c)~~(d) Appeal of Dismissal. The complainant may appeal a dismissal issued pursuant to 804 CMR 1.05(2)(b) by filing ~~with the Clerk's Office a written request for a preliminary hearing pursuant~~a notice of appeal to 804 CMR 1.08(4)(b).

(3) Notice of Authorization of Formal~~ed~~ Investigation. Upon the authorization of a formal investigation, the Commission shall serve ~~notify complainant and~~ respondent ~~of the filing of~~ with the complaint. Service ~~Notice~~ to respondent shall include ~~a copy of the complaint and~~ notice of their procedural rights and obligation to respond.

(4) Manner of Formal Investigation. Upon authorization pursuant to 804 CMR 1.05(3), the ~~Investigating Commissioner~~Commission may undertake investigation of the complaint by field visit, written or oral inquiry, review of evidence submitted, conference, or any other method deemed suitable within the discretion of the Commission, none of which shall be subject to 804 CMR 1.10. Such investigation may include, but is not limited to:

(a) ~~Witness i~~Interviews of parties, witnesses or other person;

(b) Requests for production or inspection of documents~~, papers~~ and other tangible things;

(c) Issuance of *subpoenas* requiring the attendance of persons or the production for examination of documents and other tangible things in accordance with 804 CMR 1.14.

(d) ~~Service of interrogatories on either~~Requests for information from any party;

(e) Conducting depositions; and

(f) Soliciting and receiving input from parties in preparing formal information requests or conducting investigative conferences.

~~(g) Considering the input of the parties in developing its requests for information. Accordingly, parties may request that the Commission seek certain information or conduct an investigative conference as part of its investigation.~~

(5) Prompt Investigation.

(a) ~~HUD~~ Housing Complaints. The investigation of a complaint alleging discrimination in housing ~~dual filed with HUD~~cases shall be completed in no more than 100 days after receipt of the complaint, unless it is impracticable to do so.

(b) Complaints Other than ~~HUD~~ Housing Complaints. The investigation of a complaint alleging discrimination in all areas within the jurisdiction of the Commission other than housing complaints ~~dual filed with HUD~~ shall be completed in no more than 18 months following receipt of the complaint, unless it is impracticable to do so.

(c) Notification of Delay. The Commission shall notify the parties if it is unable to complete the investigation within the time periods in 804 CMR 1.05(5)(a) and (b).

(6) Commission's Right to Investigate. No waiver or other agreement signed by any individual shall affect the Commission's right to investigate any complaint filed before it or to initiate a complaint to enforce the Commonwealth's anti-discrimination statutes. The Commission may investigate information related to allegations of unlawful discrimination prior to initiating proceedings under 804 CMR 1.18.

(7) Deferral of Investigation. Whenever the ~~Investigating Commissioner~~Commission has reason to believe that another forum, having jurisdiction over the parties and subject matter contained in a complaint filed with the Commission, is conducting a prompt and thorough investigation of such complaint in a manner consistent with the requirements and standards of the Commission, the ~~Investigating Commissioner~~Commission may defer the

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investigation of the complaint until such other forum has completed its investigation or resolved the complaint, subject to the following provisions:

(a) The Commission shall notify the parties in writing of any decision to defer investigation of a complaint until after investigation or resolution of such complaint by another forum.

(b) Upon the conclusion of the investigation or resolution of the complaint by another forum, the ~~Investigating Commissioner~~ Commission shall make a determination in accordance with 804 CMR 1.08(1)(a).

(8) Answer to the Complaint: Position Statement.

~~(a)~~ Form and Timing. Each respondent shall file an answer to the complaint in the form of a position statement as follows:

~~(b)~~(a) ~~Complaints Other than HUD Housing Complaints.~~ The position statement shall be filed either within 21 days of receipt of the notice of authorized formal investigation or within 21 days of receipt of an amended complaint filed pursuant to 804 CMR 1.04(9)(d) if the amended complaint is received before the filing of the position statement. Upon written request by the respondent, and for good cause shown, the Commission may grant an extension in which to file the position statement not to exceed 21 days absent exceptional circumstances.

~~1. HUD Housing Complaints.~~

~~a. A respondent in a housing discrimination case dual filed with HUD shall file a position statement within 14 days of receipt of the notice of authorized investigation.~~

~~b. Due to the 100-day period in which to investigate HUD housing complaints under 804 CMR 1.05(5)(a), respondents to HUD housing complaints are strongly discouraged from requesting extensions of time in which to file position statements. Upon written request by the respondent, and for good cause shown, the Commission may grant an extension of not more than seven days in which to file the position statement.~~

~~c. A respondent who fails to file a position statement in accordance with 804 CMR 1.05(8)(a)2.a. or within an extension of time granted pursuant to 1.05(8)(a)2.b. remains obligated to file the position statement.~~

~~(c)~~(b) Failure to File. Upon failure to provide a position statement, the Commission may issue a notice of consequences in accordance with 804 CMR 1.07(1).

~~(d)~~(c) Service. Each respondent shall serve the position statement upon the Commission, the complainant, and any attorney of record. ~~for a complainant~~.

~~(e)~~(d) Content. The position statement shall assert all jurisdictional and other defenses which the respondent wishes to raise and shall also contain a full and complete description of the respondent's positions in response to all allegations of the complaint. The position statement shall be signed and affirmed by the respondent. Signature and affirmation shall include:

1. A signature under the pains and penalties of perjury by each respondent, which in the case of a corporate respondent shall be a principal of respondent, or a person, other than its attorney, authorized to act for the respondent; and
2. If a respondent is represented by an attorney, the position statement shall also be signed by respondent's attorney.

~~(f)~~(e) Amendments. A position statement may only be amended in accordance with 804 CMR 1.04(9)(e).

(9) Rebuttal to the Position Statement.

(a) Rebuttal Encouraged. Rebuttals to the position statement are not required, but are strongly encouraged and may be requested by the Commission to assist in the investigation of the complaint.

~~(b)~~ Form and Timing.

~~(c)~~(b) ~~Rebuttals to Position Statements for Complaints Other than HUD Housing Complaints.~~ Within 21 days of service of a position statement or a request for rebuttal from the Commission, a complainant may file a rebuttal to the respondent's position statement. Rebuttals shall be in writing, except that pro se complainants may be permitted by the ~~Investigating Commissioner~~Commission to provide a verbal rebuttal. Upon written request of the complainant, and for good cause shown, the Commission may grant an extension of not more than 21 days to file the rebuttal absent exceptional circumstances.

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~~1. Rebuttals to Position Statement for HUD Housing Complaints. Rebuttals to the position statement may be made in writing or verbally, but shall be made within ten days of service of the position statement or request by the Commission. Upon request of the complainant, and for good cause shown, the Commission may grant an extension of not more than five days to file the rebuttal absent exceptional circumstances.~~

~~(d)~~(c) Service. A complainant shall serve a copy of the written rebuttal on a pro se respondent or on respondent's ~~representative, attorney~~, unless the rebuttal is subject to a protective order pursuant to 804 CMR 1.05(12).

(10) Investigative Conference.

(a) Notice. The Commission may convene one or more ~~an~~ investigative conferences for the purpose of obtaining evidence, identifying issues in dispute, ascertaining the positions of the parties, and exploring the possibility of settlement. Notice of the investigative conference shall be provided to all parties at least 14 days prior thereto and may identify the individuals requested to attend on behalf of a party.

(b) Rescheduling. Parties may request to reschedule the investigative conference for good cause by submitting a written request to the ~~Investigating Commissioner~~Commission, which shall be granted at the discretion of the ~~Investigating Commissioner~~Commission.

(c) Participants. A party may be accompanied at an investigative conference by their ~~a~~ representative~~n attorney or other duly authorized representative~~. An attorney for a party not previously having entered an appearance shall do so at the beginning of the investigative conference. Participation by any other person other than a representative shall be at the discretion of the ~~Investigating Commissioner~~Commission.

(d) Conduct. The ~~Investigating Commissioner~~Commission shall conduct the investigative conference and control the proceedings. Parties and ~~or~~ their representatives may be questioned by the ~~Investigating Commissioner~~Commission about the issues under investigation, and may be permitted to make a brief statement. No audio, visual, digital, or other verbatim recording of the conference may be made. The ~~Investigating Commissioner~~Commission shall decide who shall be heard and the order in which they are heard. The ~~Investigating Commissioner~~Commission may exclude witnesses and other persons from the investigative conference.

(e) Failure to Attend. The failure of a complainant to attend the investigative conference after due notice may result in an adverse disposition in accordance with 804 CMR 1.08. The failure of a respondent to attend the investigative conference after due notice may result in investigative default in accordance with 804 CMR 1.07. The Commission may sanction any party failing to attend or requesting more than one continuance without good cause as provided for in 804 CMR 1.22.

(11) Motion for More Definite Statement. If a complaint is so vague or ambiguous that the respondent cannot reasonably be expected to take an informed legal position concerning the relevance of evidence sought, the ~~Investigating Commissioner~~ Commission may *sua sponte*, or upon motion, order a more definite statement. A motion for a more definite statement is subject to 804 CMR 1.13 and shall be filed within ten days of receipt of the complaint. Such motion shall describe the defects complained of and details desired. The complainant's response to an order for a more definite statement is governed by 804 CMR 1.04(9)(d).

(12) ~~Motion~~ Request for Protective Order. A party may ~~move~~ request~~for~~ a protective order to prevent the disclosure of information provided during the investigation for good cause shown, and the ~~Investigating Commissioner~~Commission may allow such ~~motion~~ request if the public interest and other circumstances warrant such order. The ~~Investigating Commissioner~~Commission may seek a response from the non-~~moving~~ requesting party. Information that is subject to a protective order shall not be disclosed during the investigation of the matter, but, unless otherwise provided, may be subject to discovery by the parties after an investigative disposition.

~~(13) Predetermination Discovery Conducted by the Parties. The parties do not have a right to conduct discovery during the investigation of the complaint. If both parties are represented by counsel, they may be permitted to conduct discovery by *sua sponte* order of the Investigating Commissioner or upon motion by a party. Any such discovery shall~~

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~~focus solely on the allegations of the complaint and any defenses thereto, and shall be conducted in accordance with 804 CMR 1.10, subject to the following limitations and additional provisions:~~

~~(a) Limited Discovery.~~

~~1. Absent a specific contrary order of the Investigating Commissioner, discovery by each party shall be limited to 15 interrogatories, including subparts, 15 requests for production of documents, and six hours of deposition by each side;~~

~~2. Parties shall respond to interrogatories and requests for production of documents within 30 days of service;~~

~~3. Notice of depositions shall be served at least 14 days prior to the date of deposition;~~

~~4. Unless a different time frame is granted, discovery shall be completed within six months of issuance of discovery order; and~~

~~5. The parties may not alter the limitations in 804 CMR 1.05(13)(a) by agreement under 804 CMR 1.10(9).~~

~~(b) Failure to Conduct Discovery. Failure to conduct predetermination discovery in good faith, when ordered by the Investigating Commissioner, may be deemed cause for:~~

~~1. Administrative dismissal of the matter pursuant to 804 CMR 1.08(1)(d) for unreasonable refusal by complainant to cooperate with the processing of the matter;~~

~~2. Investigative default pursuant to 804 CMR 1.07 for unreasonable refusal by respondent to appear and cooperate with the processing of the matter; and~~

~~3. The Investigating Commissioner may order the party failing to conduct discovery in good faith, or the attorney advising him or her, or both, to pay the requesting party's reasonable expenses, including attorney's fees and costs, and the Commission's expenses caused by the failure.~~

~~(c) Discovery Submission. Parties permitted to conduct predetermination discovery shall file with the Commission and serve each other party with a memorandum describing facts relevant to a causal determination, including any agreed upon facts. The memorandum shall not exceed 15 double-spaced pages, and shall be filed within 30 days of the end of the discovery period. Upon request by the Investigating Commissioner, the party shall provide copies of answers to interrogatories, relevant documents produced and deposition transcript testimony which support the facts relevant to the determination.~~

1.06: Mediation

(1) Mediation. The Commission may offer the parties mediation aimed at resolution of the complaint prior to the issuance of an investigative disposition or a final decision. Mediation offered to the parties by the Commission is subject to M.G.L. c. 233, § 23C, and the following conditions:

(a) ~~The mediation of a complaint shall be performed by the Investigating Commissioner~~Mediation may be offered to the parties at the discretion of the Commission or the Chair.

(b) The Commission does not abrogate its obligation to vindicate the public interest by offering mediation to the parties.

(c) Pursuant to 804 CMR 1.06(1)(a) and (b), the confidentiality required by M.G.L. c. 233, § 23C applies to the Commission as a whole. Details of a mediation remain confidential within the Commission and confidential mediation materials not otherwise discoverable shall not be disclosed in any judicial or administrative proceeding, including public hearings held pursuant to 804 CMR 1.12, 1.18 or 1.19.

(d) The Commission may cancel or terminate its efforts to mediate a complaint if: any party fails or refuses to confer with the Commission; any party fails to make a good faith effort to resolve any dispute; the complainant fails to accept a reasonable settlement offer as provided in 804 CMR 1.09(11); the mediation does not serve to vindicate the public interest; or the Commission finds, for any reason, that voluntary agreement is not likely to result.

(e) All parties shall attend mediation with authority to settle the matter.

~~(f) At a predetermination mediation, a party may be represented by a duly authorized representative~~Representation for the parties at a mediation shall be consistent with 804 CMR 1.15(14).

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~~(2) Additional Provisions Applicable to Mediation of HUD Housing Complaints. The Commission encourages the parties to resolve HUD housing complaints through voluntary settlement prior to the issuance of an investigative disposition through mediation, subject 804 CMR 1.06(1)(a) through (f) and to the following additional provisions:~~

~~(3)~~(2) ~~The Investigating Commissioner~~Commission ~~shall~~ may ~~seek the parties' voluntary participation in pre-determination mediation at the Commission within 30 days of the filing of the complaint, unless impracticable to do so.~~

~~(a) Any party who declines to participate or seeks postponement of a pre-determination mediation shall provide written notice to the Investigating Commissioner~~Commission ~~within 48 hours of the scheduled mediation date. Failure to provide such notice without good cause may result in sanctions against the party failing to give notice.~~

1.07: Investigative Default Procedure

(1) Notice of Consequences for Failure to Answer or Participate. If a respondent fails to answer a ~~verified~~ complaint or otherwise fails to participate in the investigation, the ~~Investigating Commissioner~~Commission may serve upon respondent a notice of consequences. The notice of consequences shall list available sanctions for failing to answer or participate, which include, but are not limited to:

(a) The issuance of a probable cause determination in accordance with the allegations of the complaint; and

(b) A waiver of respondent's right to pursue reconsideration of the probable cause determination pursuant to 804 CMR 1.08(4)(a).

(2) Response to Notice of Consequences. The respondent shall file a position statement with the Commission within ten days of receipt of the notice of consequences or take any other action required by the notice of consequences to avoid an order and entry of default imposing sanctions pursuant to 804 CMR 1.07(3).

(3) Order and Entry of Investigative Default.

(a) If respondent fails to respond to the notice of consequences as required by 804 CMR 1.07(2), the ~~Investigating Commissioner~~Commission may issue an order and entry of investigative default, imposing one or more of the sanctions available under 804 CMR 1.07(1).

~~(b) If sanctions are imposed, the Investigating Commissioner~~Commission ~~may also order the payment of reasonable costs and attorney's fees associated with the failure to cooperate, to be paid by the defaulting party to the Commission and other parties.~~

~~(c)~~(b) After the imposition of sanctions, the ~~Investigating Commissioner~~Commission may take the following additional actions:

1. Order that a matter be processed pursuant to 804 CMR 1.19;
2. Seek relief in the Superior Court for a violation of M.G.L. c. 151B, § 8, pursuant to M.G.L. c. 214, § 3(12) or (13); and
3. Any other relief against the defaulting party~~ies~~ or its ~~counsel~~ representative as is necessary and appropriate to enforce the provisions of M.G.L. c. 151B, § 5.

(4) Removal of Default. Within 14 days of the order and entry of investigative default, the respondent may petition the ~~Investigating Commissioner~~Commission for the removal of investigative default, for good cause shown. The respondent's assertion of good cause shall be in affidavit form and shall include all information sought by the Commission. ~~The respondent shall include~~including a position statement ~~in the petition to remove default~~if required by the Notice of Consequences.

1.08: Investigative Dispositions, Complaint Dismissals and Appeal

(1) Types of Investigative Dispositions. In addition to an investigative disposition issued under 804 CMR 1.05(2), ~~T~~the Commission may conclude the investigation of a complaint as follows:

(a) Substantial Weight Granted to Investigation by Another Forum. After deferral of an investigation pursuant to 804 CMR 1.05(7), if it appears that the Commission's requirements and standards have been met, the Commission may accord substantial weight to the findings or resolution of the other forum and close the investigation or prosecute the complaint pursuant to 804 CMR 1.08(1)(f)1. ~~or 3.~~

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(b) Withdrawal of Complaint. The Commission shall dismiss a complaint properly withdrawn pursuant to 804 CMR 1.04(12), although the Chair ~~it~~ may decide to file a Commission initiated complaint based on the same allegations pursuant to 804 CMR 1.18.

(c) Lack of Jurisdiction. Whenever the ~~Investigating Commissioner~~Commission determines that the Commission lacks jurisdiction over the parties or subject matter of the complaint, the ~~Investigating Commissioner~~Commission shall dismiss the complaint and shall notify the parties in writing, stating the reasons therefor.

(d) Administrative Dismissal. If the public interest so requires, the ~~Investigating Commissioner~~Commission may administratively dismiss a complaint for reasons including, but not limited to, bankruptcy, death of a party, inability to locate a party, adjudication by another forum, unreasonable refusal by complainant to cooperate with processing the case and other conduct providing grounds for sanctions in 804 CMR 1.22, failure to participate, or refusal to accept a reasonable settlement offer pursuant to the criteria of 804 CMR 1.09(11). Administrative dismissal shall be subject to the following provisions:

1. Before dismissing a matter because of inability to locate a party, the Commission shall provide notice to the party stating that the matter shall be dismissed if a response is not received within 30 days. Such notice shall be provided to the last address reported to the Commission by the party. The ~~Investigating Commissioner~~Commission shall allow 30 days for response before administratively dismissing the matter.
2. Unreasonable refusal by complainant to cooperate with processing of the case may include, but is not limited to, failure to provide information, materials or responses which are necessary for investigation of the complaint, failure to cooperate with counsel for the Commission in the prosecution of the complaint, or failure to comply with an order issued by the ~~Investigating Commissioner~~Commission.
3. When practicable, in any matter administratively dismissed, written notice shall be provided to the complainant, including the reasons for the dismissal.
4. An administrative dismissal shall not constitute a final order for purposes of exercising rights provided under M.G.L. c. 151B, § 6 or M.G.L. c. 30A.
5. The ~~Investigating Commissioner~~Commission may reopen an administratively dismissed case for good cause shown within six months of dismissal.

(e) Settlement. The Commission may dismiss a complaint due to settlement of the complaint under the following conditions:

1. Notification to Commission. Parties shall promptly notify the Commission in writing upon reaching a settlement.
2. Review and Availability of Settlement Terms.
   a. The ~~Investigating Commissioner~~Commission may require the parties to submit the terms of such settlement in writing to the Commission for review.
   b. Except in ~~HUD~~ housing complaints dual filed with the U.S. Department of Housing and Urban Development or in complaints filed against Commonwealth executive branch agencies, the Commission may keep settlement terms confidential at the request of the parties.
   c. If it appears from the facts of the complaint and the terms of settlement that the public interest has been served, the ~~Investigating Commissioner~~Commission or the Chair may dismiss the complaint without a determination as to whether probable cause existed to credit the allegations of the complaint, and shall so notify the parties in writing.

(f) Causal Determinations.

1. Probable Cause. A determination of probable cause shall be made when the ~~Investigating Commissioner~~Commission concludes after formal investigation of the complaint that there is sufficient evidence upon which a fact-finder could form a reasonable belief that it is more probable than not that respondent committed an unlawful practice, and the Chair authorizes the probable cause determination.~~Disputes involving genuine issues of material fact shall be reserved for a fact-finder at public hearing.~~ ~~Right to Elect Judicial Determination.~~ If the ~~Investigating Commissioner~~ Chair finds probable cause to credit the allegations of any housing complaint, ~~including those dual filed with HUD,~~ the ~~Investigating Commissioner~~Commission shall immediately serve notice upon complainant and

respondent of the right to elect judicial determination of the complaint pursuant to M.G.L. c. 151B, § 5.

2. Lack of Probable Cause. If the ~~Investigating Commissioner~~Commission determines after investigation of the complaint that there is insufficient evidence to support a determination of probable cause to credit the allegations of the complaint, a lack of probable cause determination shall be issued and the complaint shall be dismissed. Notice of a lack of probable cause determination shall be issued within ten days from such determination.

~~3. Multiple Determinations. Where the complaint contains claims of more than one unlawful practice, the Investigating Commissioner shall make a determination of probable cause or lack of probable cause with respect to each claim.~~

(2) Complaint Dismissals A~~a~~fter a Probable Cause Determination. ~~Investigative Disposition~~. The Commission may dismiss a complaint utilizing the procedures within 804 CMR 1.08(1)~~(b),~~ (c), (d) or (e) at any time after the issuance of a probable cause determination pursuant to 804 CMR 1.08(1)(f)1. ~~and 3.~~, including that the Commission shall dismiss the complaint upon referral to the Attorney General after a party's election of judicial determination of a housing practice pursuant to M.G.L. c. 151B, § 5. The Chair may dismiss a complaint utilizing the procedures within 804 CMR 1.08(1)(b), (c), (d), (e) at any time after the issuance of a probable cause determination pursuant to 804 CMR 1.08(1)(f)1. An administrative dismissal ordered by the Chair pursuant to 804 CMR 1.08(1)(d) may only be reopened by order from the Chair upon a showing of good cause.

(3) Notice of Investigative Disposition. The Commission shall provide written notice of the investigative disposition to the parties, including whether the complaint has been dismissed or remains open and subject to further process.

(4) Reconsideration or Appeal of Investigative Disposition.

~~(a)~~ Motion for Reconsideration of Probable Cause Determination.

~~(b)~~(a) A~~n~~y party ~~respondent~~ may move for reconsideration of a probable cause determination for good cause at any time prior to the certification conference scheduled pursuant to 804 CMR 1.11(3) or issuance of a certification order if no conference is held, or within 30 days of the close of discovery, whichever is later, ~~or within 45 days of certification to public hearing pursuant to 804 CMR 1.12 if no certification conference is held,~~ subject to the following requirements:~~.~~

1. Grounds for a motion for reconsideration of a probable cause determination filed by a complainant shall be limited to argument that the pre-determination removal of claims or respondents from the complaint was in error or based on evidence obtained in discovery that supports reinstatement of a previously dismissed claim or respondent.

~~1.~~2. A motion for reconsideration from a respondent which is based on the absence of a genuine issue of material fact shall be filed after the close of discovery.

~~2.~~3. Motions for reconsideration shall be served in accordance with 804 CMR 1.13.

~~3.~~4. The ~~Investigating Commissioner~~Chair shall render a decision on the motion for reconsideration, as soon as reasonably practicable.

~~4.~~5. The ~~Investigating Commissioner~~Chair may issue an order reversing the probable cause determination, reopening the matter for further investigation, modifying the probable cause determination, amending the complaint, or taking such other action as is deemed necessary in the interests of justice.

~~5.~~6. Upon reversal or modification of a probable cause determination, complainant does not have a right to a preliminary ~~hearing~~ appeal pursuant to 804 CMR 1.08(4)(b) or a right to review under M.G.L. c. 151B, § 6 or M.G.L. c. 30A.

~~(c)~~(b) Preliminary Appeal ~~of Disposition: Preliminary Hearing~~. The complainant may appeal an investigative disposition entered under 804 CMR 1.08(1)(c) and (f)2. ~~and 3.~~ as well as a dismissal pursuant to 804 CMR 1.05(2) by filing a ~~written request for a preliminary hearing with the Clerk's Office~~notice of appeal within ten days after receipt of the notice of investigative disposition or dismissal. Notices of appeal filed beyond ten days after the receipt of the notice of investigative disposition shall not be allowed. The ~~Clerk's Office~~Commission shall notify all other parties of the appeal~~schedule a hearing and~~, except for appeals filed pursuant to 804 CMR 1.05(2)~~, shall notify all other parties of the appeal~~. The following provisions apply to all preliminary ~~hearings~~appeals:

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~~1. The hearing may be held in person or in writing at the discretion of the Investigating Commissioner.~~

~~2.~~1. All appeals shall be made in writing unless a live hearing, whether virtual, telephonic, or in person is necessary to accommodate disability. No audio, visual, digital, or other verbatim recording of the ~~conference~~ live hearing may be made.

2. Written appeals are due within 14 days of the filing of the notice of appeal. Extensions of time to file written appeals are strongly disfavored and will not be granted without a showing of good cause. Upon a showing of good cause, the Commission shall allow no more than one extension.

3. The Commission shall not consider written appeals filed after the original or extended deadline.

4. Only appeals that comply with 804 CMR 1.08(b) will be sent to a Commissioner for their decision.

5. Written or oral appeals shall include reasons why the determination was made in error and supporting evidence.~~.~~

~~3.~~6. The ~~hearing~~ preliminary appeal shall not be subject to the requirements of M.G.L. c. 30A and the determination shall not be subject to Full Commission or judicial review under M.G.L. c. 151B, § 6 or M.G.L. c. 30A.

~~4.~~7. ~~The Investigating Commissioner shall preside at the hearing and may permit the complainant to present oral or written reasons why the determination is in error, and present supporting evidence as appropriate.~~ Except for appeals filed pursuant to 804 CMR 1.05(2), the respondent may also be permitted to present ~~oral or written~~ reasons why the determination should be sustained along with supporting evidence as appropriate.

~~5.~~8. In assessing the appeal, ~~T~~the ~~Investigating Commissioner~~Commission may request additional information and evidence ~~at or following the preliminary hearing~~.

~~6.~~9. A ~~The Investigating Commissioner~~Commissioner may, upon review of evidence presented:

a. affirm the disposition ~~or dismissal~~;

b. reverse the disposition ~~or dismissal~~ and issue a probable cause determination;

c. ~~reopen the case for further~~reverse the disposition and authorize or continue a formal investigation;

d. modify the disposition ~~or dismissal~~; or

e. take such other action as deemed necessary in the interest of justice.

1.09: Conciliation

(1) Conciliation Required after Determining Probable Cause. Upon a determination of probable cause pursuant to 804 CMR 1.08(1)(f)1. ~~or 3.~~, the ~~Investigating Commissioner~~ Chair shall endeavor to eliminate the unlawful practice complained of through conference, conciliation and persuasion in accordance with M.G.L. c. 151B, §5. In conciliating a complaint, the Chair ~~ommission~~ shall attempt to achieve a just resolution of the complaint and to obtain assurances that the respondent shall satisfactorily remedy any violations of the rights of the aggrieved person, and take such action as shall assure the elimination of discriminatory practices, or the prevention of their occurrence in the future.

(2) Party Obligations.

(a) Attendance at a scheduled conciliation is mandatory, and all parties shall attend conciliation with authority to settle the matter.

(b) The case in support of the complaint at conciliation shall be presented either by ~~private counsel~~an attorney retained by complainant or by counsel for the Commission. A complainant may not proceed ~~*pro se*~~ at conciliation without private counsel or without counsel for the Commission in attendance. A complainant's failure to retain counsel or cooperate with counsel for the Commission shall be grounds for dismissing the matter.

(c) At least ten days prior to the conciliation, counsel for complainant or counsel for the Commission shall send a written settlement proposal to respondent.

(d) At least five days prior to the conciliation, the parties shall hold preliminary settlement discussions for the purpose of making a good faith effort to resolve the complaint.

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(3) Continuances. Continuances shall not be granted except upon written motion filed in accordance with 804 CMR 1.13 demonstrating good cause, including emergency motions. Non-emergency motions to continue shall be assented to by all parties or filed jointly. ~~.~~

(4) Consequences for Failing to Attend Conciliation. Failure to attend conciliation may result in the imposition of sanctions ~~for costs incurred by the Commission or the opposing party~~ in accordance with 804 CMR 1.22. A respondent's failure to attend may result in the immediate certification to public hearing pursuant to 804 CMR 1.11, and complainant's failure to attend may result in the administrative dismissal of the complaint pursuant to 804 CMR 1.08(1)(d).

(5) Provisions Sought for the Public Interest. The provisions which may be sought for the vindication of the public interest, include but are not limited to:

(a) Elimination of the discriminatory practice;
(b) Prevention of future discriminatory practices;
(c) Remedial affirmative activities to overcome discriminatory practices;
(d) Apologies;
(e) Reporting requirements;
(f) Monitoring and enforcement activities;
(g) Consent orders or decrees; and
(h) Educational and training efforts.

(6) Relief Sought for Aggrieved Persons. The relief sought for aggrieved persons in conciliation may include, but is not limited to:

(a) Monetary relief in the form of compensatory damages for back pay, front pay, and emotional distress, and attorney fees and costs;
(b) Equitable relief including, but not limited to, reinstatement to employment, promotion, letters of recommendation or reference, access to the dwelling at issue (or to a comparable dwelling), the provision of services or facilities, an apology and a promise to refrain from engaging in the same or similar discriminatory conduct, reasonable accommodation, or other specific relief; and
(c) Injunctive relief appropriate to the elimination of discriminatory practices affecting the aggrieved person or persons.

(7) Termination of Conciliation Efforts. The ~~Commission~~ Chair may terminate ~~its~~ efforts to conciliate a complaint if the respondent fails or refuses to confer with the Commission; the complainant or the respondent fail to make a good faith effort to resolve any dispute; or the ~~Commission~~ Chair finds, for any reason, that voluntary agreement is not likely to result.

(8) Information Obtained during Conciliation. Nothing that is said or done in the course of conciliation can be used as evidence in a subsequent public hearing held pursuant to 804 CMR 1.12 or in civil actions under M.G.L. c. 151B, § 9.

(9) Review of Compliance with Conciliation Agreements. The ~~Commission~~Chair~~, through its individual Commissioners, from time to time,~~ may review compliance with the terms of any conciliation agreement. Whenever there ~~Commission has~~ reasonable cause to believe that a respondent has breached a conciliation agreement, the ~~Investigating Commissioner~~ Chair may take appropriate action, including reopening of the matter before the Commission, and the filing of a civil action for enforcement of the terms of the conciliation agreement and seeking appropriate sanctions under M.G.L. c. 151B, § 8.

(10) Conciliation Agreement. A conciliation agreement shall be an agreement between the respondent and the complainant and shall be subject to the approval of the ~~Commission~~Chair. ~~It may include any or all remedies available under 801 CMR 1.00~~. Such agreement shall be in writing, shall set forth the terms of the agreement, and shall be signed by the parties. In accordance with M.G.L. c. 151B, § 5, the Commission may make public the terms of conciliation when the complaint has been so disposed of.

(11) Failure to Accept Reasonable Settlement Offer. When a formal offer of settlement by a respondent is acceptable to the ~~Commission~~Chair, but not to the complainant, the ~~Commission~~ Chair may dismiss the complaint and, if timely, the complainant may proceed in the appropriate court of competent jurisdiction under M.G.L. c. 151B, § 9. In making

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this determination, offers of settlement by a respondent shall be reviewed by the ~~Investigating Commissioner~~Chair to determine whether the public interest would be served by the continuation of the proceedings. The Chair ~~Investigating Commissioner~~ may consider the following non-exhaustive criteria in making this determination:

(a) Probability of success after public hearing;
(b) Reasonableness of offer;
(c) Reasonableness of complainant's refusal, if any;
(d) The amount of the complainant's economic loss, and respondent's degree of responsibility thereof;
(e) Evidence of any emotional distress suffered by the complainant, and respondent's degree of responsibility;
(f) The egregiousness of the discrimination charged; and
(g) Whether the time for filing a civil action, under M.G.L. c. 151B, § 9, has expired.

1.10: Discovery

(1) When Allowed. Discovery may only be conducted pursuant to a discovery order from the ~~Commission~~Chair. Discovery orders ~~may issue predetermination pursuant to 804 CMR 1.05(13), and discovery orders~~ may issue ~~post-determination~~ if a matter does not resolve at conciliation conducted pursuant to 804 CMR 1.09.

(2) Contents of Discovery Order. A discovery order shall set forth the time period in which all discovery shall be completed~~served~~. Permitted discovery may include, but is not limited to, interrogatories to parties, requests for the production of documents~~, papers~~ and other tangible things, depositions, *subpoenas*, requests for site examination, and requests for admissions.

(3) Scope of Discovery. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter in the complaint, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any ~~books,~~ documents or~~, or other~~ tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not grounds for objection that the information sought shall be inadmissible at a public hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(4) Interrogatories.

(a) No party shall serve upon any other party as of right more than 30 interrogatories, including interrogatories subsidiary or incidental to, or dependent upon, other interrogatories, however grouped or combined; but the interrogatories may be served in two or more sets, as long as the total number of interrogatories served does not exceed 30. All interrogatories shall be numbered consecutively.

~~(b)~~ Each interrogatory shall be answered separately and fully in writing under the pains and penalties of perjury, unless it is specifically objected to, in which event the reasons for objection shall be stated in lieu of the answer; each answer or objection shall be preceded by the interrogatory to which it responds.

(b) General objections to interrogatories are prohibited. Each objection to an interrogatory shall be specific to that interrogatory and shall have a good faith basis. If a party refuses to answer an interrogatory, the party shall so state and identify each objection asserted to justify the refusal to answer. If a party, after having asserted an objection, answers the interrogatory, the answer shall state either:

1. notwithstanding the objection no information has been withheld from the answer, or
2. information has been withheld from the answer because of the objection. Where information has been withheld from the answer, the objecting party shall describe the nature of the information withheld and identify each objection asserted to justify the withholding.

(c) The answers are to be signed by the person making them under the pains and penalties of perjury, the objections by the person or attorney making them.

(d) The party upon whom the interrogatories have been served shall serve answers and objections, if any, within 45 days after the service of the interrogatories.

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(5) Requests for Production or Inspection of Documents, Papers and Other Tangible Things.

(a) The party upon whom the request is served shall serve a written response within 30 days after the service of the request. The response shall state, with respect to each item or category, that inspection and related activities shall be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified.

(b) Unless otherwise stipulated or ordered by the Commission:

1. A party shall produce documents as they are kept in the usual course of business or shall organize and label them to correspond to the categories in the request;

2. The producing party may produce copies of the documents, including by electronic means, provided that, if requested, the producing party affords all parties a fair opportunity to verify the copies by comparison with the originals;

3. If a request does not specify a form for producing electronically stored information, a party shall produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and

4. A party need not produce the same electronically stored information in more than one form.

(c) The written response accompanying production shall state either:

1. All responsive documents or things in the possession, custody, or control of the responding party have been produced;

2. After diligent search no responsive documents or things are in the possession, custody, or control of the responding party; or

~~1.~~3. A specific objection made to the request. When specific objection is made, the response shall describe the nature of all responsive documents or things in the possession, custody, or control of the responding party that have not been produced because of the objection.

(6) Depositions.

(a) A party desiring to take the deposition of any person upon oral examination shall include in the notice the time and place for taking the deposition, the name and address of each person to be examined and the manner in which the deposition shall be recorded.

(b) The notice of deposition shall be served at least 14 days prior to the date of the deposition, and the parties shall receive the same notice for third party depositions.

(c) The parties shall be given 14 days notice, and an opportunity to quash, prior to the service of a third-party *subpoena*.

(d) A party may name as a deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. The named organization shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which they shall testify. The persons so designated shall testify as to matters known or reasonably available to the organization. If the corporation, partnership or association does business in Massachusetts, it must produce its designee(s) for deposition in Massachusetts.

(e) If a *subpoena duces tecum* is to be served on a person to be examined, the designation of the material to be produced as set forth in the *subpoena*, shall be attached to the notice.

(f) The party requesting a deposition shall make all necessary arrangements for the taking and recording of depositions, including the cost thereof.

(g) The testimony at a deposition may be recorded by other than stenographic means. The party conducting the deposition shall ensure that the recorded testimony is accurate and trustworthy.

(h) All objections made at the time of the deposition shall be noted by the person taking the deposition. Evidence objected to shall be taken subject to the objection. Counsel for a witness or a party may not instruct a deponent not to answer except where necessary to assert or preserve a privilege or protection against disclosure, to enforce a limitation on evidence directed by the ~~Commission~~ Chair or stipulated in writing by the parties, or to suspend the deposition for the purpose of bringing a motion to terminate or limit the examination where it is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party.

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(i) Subject to valid objections to admissibility, depositions or any part thereof may be used for any purpose with respect to witnesses who are unavailable at the hearing or to contradict or impeach the credibility of witnesses who ~~are available to~~ testify at p~~P~~ublic h~~H~~earing.

(j) The ~~Investigating Commissioner~~Chair may order the filing of any deposition transcript with the Commission.

(7) Admissions.

(a) A party may serve upon another party a written request for admission of the truth of matters within the scope of discovery that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents attached to the request.

~~(j)~~(b) Each matter of which an admission is requested shall be separately set forth and is deemed admitted unless within 30 days after its service, the party to whom the request is directed serves upon the party requesting the admission:

1. A written statement signed by the party under the pains and penalties of perjury denying the matter or setting forth in detail why it cannot truthfully admit or deny it; or

2. A written objection addressed to the matter, signed by the party or representative. If an objection is made, the reasons shall be stated.

~~(k)~~(c) When good faith requires that a party qualify the answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. A party may not give lack of information or knowledge as a reason for failure to admit or deny the request unless the party states that it has made reasonable inquiry and the information known or readily obtainable by such party is insufficient to enable the party to admit or deny. Each response shall be preceded by the request to which it responds. Any admission made is for the purpose of the pending case only and is not an admission for any other purpose nor may it be used in any other proceeding. The maximum number of admissions as of right shall be 50.

~~(7)~~(8) Protective Orders. Upon motion by a party or by a person from whom discovery is sought, and for good cause shown, the ~~Commission~~ Chair may issue a protective order limiting discovery ~~as justice requires~~ to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. If the motion for a protective order is denied, the ~~Commission~~ Chair may order that any party shall comply with the discovery requests.

~~(8)~~(9) Failure to Comply with Discovery. Failure to comply with discovery may result in any of the following orders from the ~~Commission~~ Chair *sua sponte* or upon motion from a party:

(a) An order to comply with discovery containing consequences for further noncompliance;

(b) An order that matters upon which discovery is sought or any other designated facts shall be taken to be established for the purpose of supporting a claim or defense of the party seeking discovery;

(c) An order refusing to allow the noncomplying party to support or oppose designated claims or defenses, or prohibiting them from introducing designated matters in evidence;

~~(c)~~(d) An order prohibiting a party from calling witnesses or introducing documents at the public hearing;

~~(d)~~(e) An order dismissing the action or ~~rendering a judgment by default~~immediate certification to public hearing pursuant to 804 CMR 1.11; and

~~(e)~~(f) ~~In *lieu* of any of the foregoing orders or in addition thereto,~~ an order requiring the noncomplying party or the attorney advising the noncomplying party or both to pay monetary sanctions and reasonable expenses, including attorney fees and Commission expenses caused by the noncompliance, in accordance with 804 CMR 1.22.

~~(9)~~(10) Stipulations Regarding Discovery Procedure. Unless the ~~Commission~~ Chair orders otherwise, after the issuance of a discovery order pursuant to 804 CMR 1.10(1), the parties may by written stipulation and agreement modify the procedures provided by 804 CMR 1.10(4-7).

1.11: Certification of ~~Issues~~ Claims to Public Hearing

(1) Certification. When the ~~Investigating Commissioner~~Chair determines that the public interest requires a certification of ~~issues~~ claims to public hearing, the ~~Investigating Commissioner~~Chair shall issue a certification order in the name of the Commission pursuant to M.G.L. c. 151B, § 5.

(2) Certification Process. The ~~Investigating Commissioner~~Chair may issue a certification order identifying the claims that shall be certified to public hearing ~~*sua sponte* or upon notification that discovery is complete, or, if circumstances so warrant,~~ T~~t~~he ~~Investigating Commissioner~~Chair may schedule a conference pursuant to 804 CMR 1.11(3) prior to issuance of such order to determine which ~~issues~~claims, if any, shall be certified to public hearing.

(3) Certification Conference. The ~~Investigating Commissioner~~Chair shall serve notice of the certification conference upon all parties and counsel of record. The ~~Investigating Commissioner~~Chair may issue an order requiring written submissions by the parties in advance of the certification conference, and failure to provide all written submissions as ordered shall be cause for sanctions in accordance with 804 CMR 1.22. The written submissions shall contain the following:

(a) List of proposed ~~issues~~ claims to be certified to public hearing;
(b) Affirmative defenses;
(c) Parties, including definition of proposed classes;
(d) Pending motions (e.g., discovery issues, motions for certification, motions for reconsideration of probable cause);
(e) All relief sought, including any monetary and equitable relief and description of the bases on which damages are calculated;
(f) Settlement efforts; and
(g) Any other matter which in the judgment of the ~~Investigating Commissioner~~Chair is likely to expedite the preparation and presentation of the case.

(4) Certification Order. The certification order shall be in writing, served upon all parties and counsel of record and may provide the following:

(a) Certification of ~~issues~~ claims to be considered at a public hearing before a Hearing Commissioner;
(b) Certification of one or more questions of law to the Full Commission; and
(c) Address any other matters the ~~Investigating Commissioner~~Chair deems appropriate in the public interest, including a denial of certification and reversal of the probable cause determination.

1.12: Public Hearings

(1) Who May Adjudicate. The public hearing shall be governed by M.G.L. 151B, § 5 and 804 CMR 1.12, and shall be conducted by a Hearing Commissioner.

(2) Substitution of Hearing Commissioner. In the event of the unavailability of the Hearing Commissioner to issue a written decision pursuant to 804 CMR 1.12(18), the Chair~~person~~ shall assign another Hearing Commissioner to hear any remaining evidence and to review the record, including the hearing transcript, resulting in one of the following outcomes:

(a) In the event the resolution of disputed issues of material fact rests on findings of witness credibility, and a decision cannot be rendered without such findings, the case shall be reassigned for a new hearing. Prior to scheduling a new hearing, the ~~Commission~~ Chair shall hold a status conference with the parties and make good faith efforts at resolving the matter.
(b) In cases where the decision does not rest on credibility findings, a substitute Hearing Commissioner may render the decision. Prior to the issuance of a final decision, the parties may make written requests for proposed findings of fact and conclusions of law and an ~~order, and~~order and shall be afforded a reasonable opportunity to file objections thereto. Any proposed findings of fact and conclusions of law or proposed orders shall be ~~submitted in paper and electronic form, unless otherwise~~filed as ordered by the Hearing Commissioner.

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(3) Waiver Required. M.G.L. c. 151B, § 9 makes available to the complainant a trial in court as an alternative to public hearing before the Commission. Accordingly, the complainant shall waive the right to remove all claims certified to public hearing ~~the complaint~~ prior to the commencement of the public hearing.

(4) Conduct. All parties, witnesses, ~~counsel~~ representatives and others present at a public hearing shall conduct themselves in a manner consistent with the standards of decorum commonly observed in the courts of the Commonwealth. Where such standards are not observed, the Hearing Commissioner ~~Commission~~ may take such action as they ~~it~~ deem~~s~~ appropriate, including assessing monetary sanctions against a non-complying person pursuant to 804 CMR 1.22, and adjourning the proceedings.

(5) Request for Clarification. The Hearing Commissioner, upon written request of a party or *sua sponte*, may seek clarification of the complaint and certification order. In the event there remains a dispute about which claims ~~issues~~ are certified to hearing, the Hearing Commissioner may proceed to hear evidence on any and all claims presented and may amend the certification order ~~complaint~~ to conform to the evidence as established at the hearing.

(6) Continuance. Any party requesting a continuance shall make such request in writing to the Hearing Commissioner by motion pursuant to 804 CMR 1.13. Continuances shall be granted only upon a showing of ~~changed circumstances or~~ good cause. In any instance in which a continuance results in fees or costs to the Commission or another party, the party requesting the continuance may be required by the Hearing Commissioner ~~Commission~~ to incur such costs.

(7) Settlement after Commencement of Public Hearing. If after the commencement of a public hearing the matter in dispute before the Commission is settled between the parties and the settlement is acceptable to the ~~Chair~~Chair~~Commission~~, the Hearing Commissioner shall dismiss the matter.

(8) *Ex Parte* Communications. In any proceeding held pursuant to 804 CMR 1.12 or in any appeal therefrom, no party or counsel of record, including counsel for the Commission, ~~neither a party nor a party's authorized representative~~ shall communicate *ex parte* with the Hearing Commissioner for any reason on any matter related to the proceeding prior to the issuance of a final decision of the Commission pursuant to 804 CMR 1.24 or 1.25.~~hearing decision.~~

(9) Protective Orders. Upon motion or *sua sponte*, a Hearing Commissioner may issue ~~A party may move for~~ a protective order to prevent the public disclosure of information at public hearing or within the record of public hearing for good cause shown, and ~~the Hearing Commissioner may allow such motion~~ if it is in the public interest. A protective order may provide for the exclusion, limitation, redacting or impounding of documentary or testimonial evidence at public hearing or within the public hearing record.

(10) ~~Public Hearing Default Rules.~~Failure to appear at Public Hearing: Whenever a party duly notified of the time and place of a public hearing fails to appear at the hearing either in person or by representative, the Hearing Commissioner shall enter the party's default on the record and serve it with written notice of the default within ten days of the entry of default. If the defaulting party is the complainant, the Hearing Commissioner shall dismiss the complaint. If the defaulting party is the respondent, the Hearing Commissioner shall conduct the hearing on its scheduled date, and the complainant shall continue to have the burden of establishing liability and remedy notwithstanding the entry of default. Within ten days of receipt of notice of entry of default, the defaulting party may petition the Hearing Commissioner to vacate the default and reopen the case upon a showing of good cause established through affidavit signed under the pains and penalties of perjury. The other parties may file a response to the request for removal of default within ten days of receiving a copy of it. If the case is reopened, the party in default may be ordered to bear the reasonable costs incurred as a result of the default.

~~(a) Entry of Default. Whenever any party duly notified of the time and place of a public hearing fails to appear at the hearing either in person or by appearance of counsel, the Hearing Commissioner shall enter the party's default on the record. Written notice of the~~

~~entry of default and of the consequences shall be served upon the defaulting party within ten days of the entry of the default.~~

~~(b) Consequences of Default. If the party in default is the complainant, the Hearing Commissioner shall dismiss the complaint, for which there shall be no remedy other than a petition for removal of default. If the party in default is the respondent, the Hearing Commissioner shall conduct a default hearing on the date scheduled for the public hearing.~~

~~(c) Default Hearing. At a default hearing, the Hearing Commissioner shall receive any relevant evidence proffered by the complainant, shall decide liability, and, where appropriate, shall determine the amount of any damages or other relief to be ordered. After the default hearing, the Hearing Commissioner shall enter a final decision and order.~~

~~(d) Removal of Default. Within ten days of receipt of the notice of entry of the default, the party in default may petition the Hearing Commissioner to vacate the entry of default, remove the consequences of the default and reopen the case for good cause shown. The assertion of good cause of the party in default shall be in affidavit form under the pains and penalties of perjury. In any instance in which a case is reopened after entry of default, the party in default may be ordered to bear the reasonable costs incurred as a result of the default.~~

(11) Transcript and Record of Public Hearing.

(a) The record of the public hearing shall consist of the exhibits and either an electronic recording or a transcript of the hearing. If a party arranges to have a stenographer at the public hearing, the stenographic record shall be the official record of the public hearing, the Commission shall not create an electronic recording, and the party arranging for the stenographer shall furnish the Commission at no charge with a certified copy of the transcript within ten days of receipt of the transcript from the stenographer. If there is no stenographer at the public hearing, the Commission shall make an audio recording of the public hearing. A party desiring a copy of the recording shall make a request in writing to the Commission and shall pay the cost thereof. A transcription of the electronic record made by a party may be cited if the Commission and all parties agree to accept the transcription as the official record of the public hearing, with a party waiving any objection to the accuracy of such transcript if not made within 20 days of its filing.

(b) The administrative record for the purpose of judicial review under M.G.L. c. 30A, § 30A shall be the record of public hearing in accordance with 804 CMR 1.12(11)(a), together with the certification to public hearing, the complaint as amended, and any post-determination motions and orders disposing of such motions at issue in the complaint for judicial review.

~~The record shall consist of either an electronic recording or a transcript of the hearing, as well as the exhibits in evidence including, if submitted, the certification to public hearing, complaint, stipulations, motions and the dispositions thereof. Testimony offered at a public hearing shall be either transcribed by stenographer retained by a party or parties or electronically recorded by the Commission, subject to the following provisions:~~

~~(e) If a party arranges to have a stenographer present at the public hearing, the Commission and the parties shall agree that the stenographic record shall be the official record of the proceedings and that the Commission shall not create an electronic recording.~~

~~(f) The party arranging for the stenographer shall furnish the Commission with a certified copy of the transcript within ten days of receipt of the transcript from the stenographer.~~

~~(g) In the case of an electronically recorded hearing, a party desiring a copy of the recording shall make a request in writing to the Clerk's Office in Boston~~Commission and agree to pay the cost thereof.

~~(h) Any transcription of the electronic record made by a party subsequent to the hearing shall be filed with the Clerk's Office in Boston~~Commission ~~and may be cited if the Commission and all parties agree to accept the transcription as the official record. A party waives any objection to the accuracy of such transcript if not made within 20 days of its filing.~~

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~~(11)~~(12) Stipulations. Written stipulations of facts may be introduced in evidence, if signed by the persons sought to be bound thereby, or by their authorized representatives. Oral stipulations may be made on the record during the course of a public hearing.

~~(12)~~(13) Evidence. The Commission shall not be bound by the rules of evidence observed by courts except for the rules of privilege. The Commission may permit the admission of records, reports, statements or data compilations of public agencies setting forth factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information indicate lack of trustworthiness. Evidence unrelated to the ~~issues~~ claims certified to public hearing may be deemed irrelevant or not probative of the ~~issues~~ claims to be decided and, therefore, inadmissible.

~~(13)~~(14) Administrative Notice. The Hearing Commissioner may take administrative notice of matters as might be judicially noticed by the courts of the United States or of the Commonwealth, and of technical or general facts within its specialized areas of knowledge.

~~(14)~~(15) Oral Argument. The Hearing Commissioner may allow a reasonable time to the parties for oral argument.

~~(15)~~(16) Post-Hearing Briefs. ~~and Proposed Findings of Fact and Conclusions of Law~~. The parties, and any interested person upon approval by the Hearing Commissioner, shall file a post-hearing brief containing ~~Briefs and~~ proposed findings of fact and conclusions of law and other information as required by the Hearing Commissioner. The timing of the filing of the brief, its page limit, format and filing method shall be determined by the Hearing Commissioner. ~~and a proposed order may be filed by parties or by any interested person before or during the course of a hearing, or within such time thereafter as the Hearing Commissioner may designate. Any brief or proposed findings of fact and conclusions of law and proposed order shall be submitted in paper and electronic form, unless otherwise~~filed as ~~ordered by the Hearing Commissioner .~~

~~(16)~~(17) Other Post-Hearing Submissions. The Hearing Commissioner may allow the parties, after a showing of good cause, to file additional evidentiary documents or exhibits within a reasonable time subsequent to the completion of the hearing. ~~If a request for such filing is granted, on or before the date set for filing, the requesting party shall send copies of all documents or exhibits to all other parties. If providing copies is impracticable, the~~ The Hearing Commissioner may ~~, in the alternative,~~ allow reasonable inspection of ~~the~~ original documents or tangible things by all parties. The Hearing Commissioner may also require that the parties file additional evidentiary documents or exhibits, including stipulations concerning damages, subsequent to the completion of the hearing.

~~(17)~~(18) Hearing Decision. ~~Finding and Order.~~ The Hearing Commissioner shall issue a decision in writing either dismissing the complaint or granting relief to the aggrieved party for the purposes of effectuating the laws under its jurisdiction, pursuant to M.G.L. c. 151B, § 5. The decision shall contain all findings of fact and conclusions of law necessary to address each and every claim ~~issue~~ certified to public hearing ~~or addressed at the public hearing~~. The parties shall be notified in writing of their rights to appeal such decision to the Full Commission. A copy of the decision shall be served upon each party and~~,~~ the attorneys of record. ~~, and the Attorney General.~~

~~(18)~~(19) Request for Award of Attorneys' Fees and Costs. Where the complainant prevails at public hearing, the complainant may, within 15 days of receipt of the hearing decision, petition the Hearing Commissioner for an award of reasonable attorney's~~'~~ fees and costs. Such petition shall include detailed, contemporaneous time records, a breakdown of costs and a supporting affidavit from every attorney for whom fees are sought. The petition shall also include information about average hourly rates for attorneys with similar experience, which may be in the form of affidavits from attorneys with knowledge of such hourly rates or model fee charts, or other documentation. A respondent may file a written opposition within 15 days of receipt of said petition. The Hearing Commissioner shall decide the matter. To the extent that the respondent appeals an order on a petition for attorney's fees and costs pursuant to 804 CMR 1.23(1)(a), such appeal shall be consolidated with any pending appeal ~~on the merits~~ to the Full Commission of the underlying hearing decision issued pursuant to 804 CMR 1.12(18). ~~, if any.~~ A Hearing Commissioner decision

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on a request for award of attorney's fees and costs is a final decision appealable to the Full Commission pursuant to 804 CMR 1.23(1)(a), regardless of whether a party has appealed the underlying hearing decision to the Full Commission.

1.13: Motions and Requests

(1) Requests. The Commission shall allow parties to make specific requests in lieu of motions through the MCAD Case Portal, and all parties and representatives shall use the MCAD Case Portal to make such requests. Such requests include, but are not limited to, requests for reasonable accommodation, requests for language assistance services, requests to withdraw the complaint, requests for mediation, pre-determination requests for extensions of time, and pre-determination requests for protective orders. If a specific request is available through the MCAD Case Portal, a motion shall not be filed addressing such request.

(2) Motions in General.

(a) Content. Motions shall be made in writing, state with particularity the grounds therefor, set forth the relief sought, and may include a proposed order. Motions shall contain a statement of the reasons, including supporting authorities, why the motion should be granted and may include a request for a hearing. Motions ~~shall~~ may contain affidavits and other documents setting forth or evidencing facts on which a motion is based.

~~(a)~~(b) Filing. All motions filed at the Commission shall be managed and processed by the Clerk's Office.

~~(b)~~

(c) Format and Length for Motions, Oppositions, Replies and Memoranda. All motions, oppositions, replies, memoranda and other documents, except for exhibits, shall be filed on 8 ½" by 11" paper, when not filed electronically, and be typed in no less than 12-point type and double spaced, provided that the case caption, footnotes and quotations may be single spaced. The margins shall be at least one inch. The title of each document shall appear on the first page thereof. Unless leave of the Commission is provided in advance, all motions, oppositions, and memoranda shall not exceed 20 pages, and any reply or sur-reply shall not exceed ten pages.

~~(c)~~(d) Sanctions for Noncompliance. The Commission need not act on any motion that fails to comply with the requirements of 804 CMR 1.13.

(3) Pre-determination Motions.

(a) Motion Authority. Predetermination motions shall be decided by the Commission.

(b) Recognized Motions. Predetermination motions slow the investigative process and interfere with the timely investigation of complaints. Accordingly, and as required by 804 CMR 1.13(1), parties and representatives shall make specific requests recognized by 804 CMR 1.00 using the MCAD Case Portal in lieu of motion practice. Predetermination motions recognized by the Commission are limited to those enumerated herein, and are required where recognized. The following motions may be filed pre-determination:

1. Motion for a More Definite Statement;
2. Motion for Substitution, Joinder, or Amendment of Parties;
3. Motion to Amend Complaint; or
4. Motion to Dismiss. Predetermination motions to dismiss may be filed in lieu of the position statement or after a position statement has been filed. Grounds for a pre-determination motion to dismiss are limited to showing that:
    a. Claims are filed in court or are being investigated by another forum;
    b. Claims or respondents are outside of the jurisdiction of the Commission;
    c. Claims are precluded, or moot for any reason including settlement; or
    d. Claims are untimely filed.

(c) Procedure for Filing Pre-determination Motions, Oppositions, and Replies. All pre-determination motions, oppositions, and replies shall be filed independently in the MCAD Case Portal and are subject to the service rules within 804 CMR 1.16(2). A party opposing a motion may file an opposition to the motion within 14 days of service of the motion. The memorandum in opposition shall include a statement, with any supporting authorities, why the motion should not be allowed. Affidavits and other documents

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setting forth or evidencing facts on which the opposition is based shall be served with the opposition. ~~Opposing parties shall serve on the moving party an original and a copy of the opposition, and serve a copy on every other party.~~ The moving party may serve a reply within seven days of service of the opposition, following which any opposing party may serve a sur-reply within seven days of service of the reply. Reply and sur-reply memoranda are strongly disfavored pre-determination and shall be limited to addressing matters raised in the opposition or the reply that were not, and could not have been, addressed previously.

(d) Motion Conferences. In the event the Commission determines that a conference is necessary or shall aid in the disposition of a pre-determination motion, the Commission may order the parties to appear to answer questions and present oral argument in support of their respective positions.

(4) Post-determination Motions.

(a) Motion Authority. Motions filed post-determination at any time prior to certification of a complaint to public hearing shall be decided by the Chair. Motions filed after certification of a complaint to public hearing other than a motion for reconsideration of a probable cause determination shall be decided by the Hearing Commissioner.

(b) Motions at Public Hearing. Motions made during the public hearing may be stated orally on the record. The Hearing Commissioner may require oral or written supplementation if deemed necessary.

~~(d)~~

~~(e)~~(c) Parties Required to Confer Prior to Filing. ~~When the parties are represented by counsel or counsel for the Commission is prosecuting the matter, p~~Prior to any post-determination motions being filed, the parties are required to confer in good faith to attempt to reach resolution of the issues raised and relief being sought. The moving party shall be responsible for arranging said conference. Conferences may be conducted by telephone or other electronic means. All motions filed shall contain a certificate affirming compliance with the requirement to confer. Motions unaccompanied by such a certificate may be denied without prejudice to renew when accompanied by the required certificate.

~~(f)~~(d) Procedure for Serving and Filing Post-determination Motions, Oppositions and Replies.

1. Original Motion. ~~Where both parties are represented by counsel, t~~The moving party shall first serve a copy of the motion and the other supporting documents on every other party or ~~counsel~~attorney, including counsel for the Commission who has entered an appearance.
2. Opposition to Motions. A party opposing a motion may serve the moving party with a memorandum in opposition within 14 days of service of the motion. The memorandum in opposition shall include a statement, with any supporting authorities, why the motion should not be allowed. Affidavits and other documents setting forth or evidencing facts on which the opposition is based shall be served with the opposition. Opposing parties shall serve on the moving party an original and a copy of the opposition, and serve a copy on every other party.
3. Reply and Sur-reply. Following receipt of the memorandum in opposition, the moving party may serve a reply within seven days of service, following which any opposing party may serve a sur-reply within seven days of service. Reply and sur-reply memoranda shall be limited to addressing matters raised in the opposition or the reply that were not, and could not have been, addressed previously.
4. Filing of Motion Packet
   a. Upon receipt of the opposition or a sur-reply, if one is made, the moving party shall attach the original opposition and any reply and sur-reply to the original motion and shall file with the Commission the combined documents and a document listing the title of each paper in the motion packet within ten days of service of the opposition or, if a reply was served, within ten days of service deadline for sur-reply, unless the moving party has notified all parties that the motion has been withdrawn within ten days of service of the opposition or sur-reply.
   b. If the moving party does not receive an opposition within three business days after expiration of the time permitted for service of an opposition, the

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moving party shall file the motion with the Commission and include an affidavit reciting compliance with 804 CMR 1.13(5)(a) and no receipt of a timely opposition.

c. The moving party shall give prompt notice of the filing of the motion to all other parties by serving a notice of filing which should include a listing of the title of each paper filed and the date the motion packet is filed with the Commission. Motions, oppositions and replies shall include the attorney's name, address, telephone number and an email address.

5. Service. Motions, oppositions and replies may be served electronically, by U.S. mail or via personal service. If a motion, opposition, reply, or sur-reply is served by U.S. Mmail, any time period identified in 804 CMR 1.13(53) and (4) shall be increased by three days.

~~(g)~~

~~(h) Sanction for Noncompliance. The Commission need not act on any motion that fails to comply with the requirements of 804 CMR 1.13.~~

~~(i)~~

(e) Motion Conferences. In the event the ~~Commission~~ Chair or Hearing Commissioner determines that a conference is necessary or shall aid in the disposition of a motion, the ~~Commission~~ Chair or Hearing Commissioner may order the parties to appear to answer questions and present oral argument in support of their respective positions.

~~(j)~~

(f) Certificates of Service. The final page of every document served in accordance with 8043 CMR 1.13 shall contain a certificate of service noting the date of service and the manner in which service was made on every party. ~~The statement may be in the following form:~~

~~I hereby certify that a true copy of the above document was served upon (each party appearing pro se and) the attorney of record for each (other) party (and counsel for the Commission) (by hand) (by email) (by mail) on (date). (Signature.)~~

~~(2) Special Requirements/Exceptions from Filing Requirements.~~

~~(a) Pro Se Parties. When one or more parties are unrepresented, all parties are exempt from 804 CMR 1.13(5)(a) through (d) and the requirement to confer in advance of filing a motion as provided in 804 CMR 1.13(4). Pro se parties are encouraged to respond in writing to any motion they oppose, and shall:~~

~~1. Serve all motions, oppositions, replies and sur-replies on opposing parties;~~

~~2. File oppositions within 14 days of service of the original motion;~~

~~3. Limit replies and sur-replies to matters raised in the opposition; and~~

~~4. File replies within seven days of service of the opposition and sur-replies within seven days of service of the reply.~~

~~(b) Predetermination Motions. Motions seeking an order from the Investigating Commissioner prior to the issuance of an investigative disposition shall be filed with the Investigator assigned to the matter.~~

~~1. Motions to amend a complaint pursuant to 804 CMR 1.04(9)(b) and motions for extensions of time pursuant to 804 CMR 1.17(2)(a) filed prior to an investigative disposition need not comply with 804 CMR 1.13(4) or (5)(a) through (d), except such motions shall be served upon any opposing party.~~

~~2. Motions for protective orders pursuant to 804 CMR 1.05(12) seeking to prevent disclosure to a party of information submitted during the investigation need not comply with 804 CMR 1.13(4) or (5)(a) through (d), except such motions shall be served upon any opposing party.~~

~~3. Generally, investigation of a complaint shall not be stayed pending the ruling on a motion. However, where the Commission's jurisdiction or authority to proceed is challenged by a motion filed with the Commission, the Investigating Commissioner may stay investigation of the merits of the charge pending a ruling on the motion.~~

~~(c) Post-determination, Pre-certification Motions. Motions to the Investigating Commissioner filed after an investigative disposition has issued, but prior to the certification to public hearing, shall be filed with the Clerk's Office.~~

~~(d) Post-certification Motions. Motions seeking an order from the Hearing Commissioner following certification to public hearing shall be filed with the Clerk's Office in Boston.~~

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~~(3)~~(5) Appeal of Order Granting or Denying a Motion.

(a) Appeal to Full Commission. The Full Commission may entertain an interlocutory appeal of a ruling by the Hearing Commissioner if such appeal is related to the jurisdiction of the Commission or its authority to proceed on a matter. Prior to the issuance of a hearing decision, an appeal to the Full Commission is not available for any other rulings by the Hearing Commissioner or for any rulings ~~made by the Investigating Commissioner~~or orders from the Commission or the Chair, except as provided in 804 CMR 1.15(54)(g). ~~Requests for relief addressed to the Full Commission shall be filed with the Clerk's Office in Boston.~~ An order of the Full Commission issued in accordance with 804 CMR 1.13(10) is not a final order of the Commission and is not subject to judicial review pursuant to M.G.L. c. 151B, § 6 or M.G.L. c. 30A.

(b) Motion for Reconsideration of an Order by a Hearing Commissioner. In the absence of new evidence proffered, motions for reconsideration of an order by a Hearing Commissioner shall be denied.

~~(4)~~(6) Emergency Motions.

(a) Motions for emergency relief shall contain a cover page bearing the heading "Emergency Motion" in large, bold type. ~~Such motions shall be filed with the Investigating Commissioner prior to issuance of an investigative disposition, and with the Clerk's Office in Boston thereafter.~~

(b) Motions for emergency relief shall set forth the facts showing the existence and nature of immediate and irreparable harm.

(c) The moving party shall serve a copy of the motion seeking emergency relief on all other parties, ~~counsel~~ and attorneys of record including counsel for the Commission, simultaneous with the filing at the Commission. Such motions are exempt from 804 CMR 1.13(4~~5~~)(d).

(d) Emergency motions are exempt from 804 CMR 1.13(4)(c), although the Commission encourages all ~~counsel of record~~parties to confer in good faith prior to filing any such motion in order to narrow or obtain agreement upon the relief sought.

1.14: *Subpoenas*

(1) General Provisions. *Subpoenas* shall be issued in the name of the Commission and in accordance with M.G.L. c. 151B, § 3 and M.G.L. c. 30A, § 12, subject to the following provisions:

(a) *Subpoenas* may require the attendance and testimony of witnesses and the production, copying, and photographing of any evidence including, but not limited to, ~~books, records, correspondence~~ documents, other tangible things, or electronically stored information.

(b) A *subpoena* may be served by any person who is not a party and who is 18 years of age or older.

(c) Service of a *subpoena* upon a person named therein shall be made by personal service.

(d) When a *subpoena* is issued at the request of a party other than the Commission, the cost of the service as well as witness and mileage fees shall be those as in civil cases before the courts and shall be borne by the moving party. The Commission, Chair or Hearing Commissioner may waive such fees upon a showing of economic hardship.

(e) Upon a showing of economic hardship and in the interest of justice a party may move that a *subpoena* be issued by the Commission. Any such motion is exempt from 804 CMR 1.13(4)(c) and (d), ~~and (5),~~ although it shall be served on all counsel of record including ~~for all other parties to the proceeding before the Commission including, but not limited to,~~ counsel for the Commission.

(f) Any party issuing a *subpoena* to a non-party shall give 14 days notice to the Commission and all parties prior to service, and the *subpoena* may not be served pending any motion served pursuant to 804 CMR 1.10(7) or 804 CMR 1.14(4).

(g) A party may not serve subpoenas pre-determination unless authorized by the Commission.

(h) A party may serve subpoenas post-determination once a discovery order has been issued by the Chair.

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(i) Following certification to public hearing, a party may issue subpoenas compelling the attendance and testimony of witnesses and the production of documents and tangible things at public hearing.
(j) All subpoenas shall identify the name and address of the party at whose request the subpoena was issued.

~~(2) Prior to Certification to Public Hearing. The Investigating CommissionerPre-determination, the Chair or the Commission may issue *subpoenas* relating to any matter under investigation or in question before them. Any party may move for the issuance of a *subpoena* from the Investigating CommissionerChair. The Investigating CommissionerChair may, through a discovery order, delegate the authority to issue *subpoenas* to counsel for the parties.~~

~~(3) Following Certification to Public Hearing. Following certification to public hearing, counsel for any party may issue *subpoenas* compelling the attendance and testimony of witnesses and the production of documents at public hearing. The *subpoena* shall identify the name and address of the party at whose request the *subpoena* was issued.~~

~~(4)~~(2) Vacation or Modification of *Subpoenas*. Any non-party subject to *subpoena*, counsel for any party to the proceeding, pro se party, or counsel for the Commission may move to vacate or modify a *subpoena* in accordance with 804 CMR 1.13, except that non-parties are exempt from 804 CMR 1.13(5)(a) through (d). The ~~Investigating CommissionerChair~~ or, in the event the complaint has been certified to public hearing, the Hearing Commissioner, shall review the *subpoena* to determine whether it should be vacated or otherwise modified and issue an order ~~decision forthwith~~.

~~(5)~~(3) Enforcement of *Subpoenas*. Upon the failure of any person to comply with a *subpoena* issued pursuant to 804 CMR 1.14 and not subsequently vacated or modified by the Commission, the Commission may, either through one of its attorneys or through a private ~~counsel~~ attorney so designated, apply to the Superior Court for an order requiring compliance with the *subpoena* pursuant to M.G.L. c. 30A, § 12(5) and M.G.L. c. 151B, § 6. The Commission may seek an order for costs and attorney fees from the Superior Court when enforcing *subpoenas* pursuant to 804 CMR 1.14(5), as well as appropriate sanctions under M.G.L. c. 151B, § 8.

1.15: Parties and ~~Counsel~~Representatives

(1) Duty to Provide Contact Information. Parties and representatives are required to provide the Commission with contact information in the form of a current mailing address, email address, and telephone number, and shall update such information when there is a change to any such information. Parties and representatives are required to provide and update contact information in the MCAD Case Portal. A party that is allowed alternative means of case access pursuant to 804 CMR 1.15(15) shall provide and update contact information with the Commission in writing.

~~(1)~~(2) Intervention. Any person or organization not originally a party to a complaint may move to intervene in a complaint post-determination, and shall be permitted to intervene, if, in the judgment of the ~~Commission~~Chair prior to certification to public hearing, or the Hearing Commissioner after certification to public hearing, that person or organization has a material interest in the outcome of the complaint, and asserts a claim or defense which has common questions of law or fact with the complaint.

~~(2)~~(3) Substitution, Joinder, or Amendment of Parties. The Commission may *sua sponte*, or upon motion of any party, make such substitution, joinder, or amendment of parties as justice or convenience may require pre-determination. Post-determination and before certification to public hearing, or in complaints initiated pursuant to 804 CMR 1.18, the Chair may take such action, and the Hearing Commissioner may take such action after certification to public hearing. All parties shall be notified of any substitution, joinder or amendment.

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~~(3)~~(4) Consolidation. The Commission may *sua sponte*, or upon motion of a party, order complaints involving a common question of law or fact to be consolidated~~ for investigation~~. Post-determination and before certification to public hearing, or in complaints initiated pursuant to 804 CMR 1.18, the Chair may take such action. The Hearing Commissioner may take such action after certification to~~, conciliation or~~ public hearing.

~~(4)~~(5) Class Action.

(a) The ~~Investigating Commissioner~~Chair may grant permission or *sua sponte* determine that a case shall proceed as an authorized class action at any time after a probable cause determination pursuant to 804 CMR 1.08(1)(f)1.~~ or 3.~~ and prior to certification to public hearing pursuant to 804 CMR 1.11 if the following prerequisites are met:

1. The class is so numerous that joinder of all members is impracticable;
2. There are questions of law or fact common to the class;
3. The claims or defenses of the representative parties are typical of the claims or defenses of the class;
4. The representative parties shall fairly and adequately protect the interests of the class;
5. The public interest is served by a class proceeding; and
6. The parties are allowed an opportunity to submit briefs on the issue prior to a *sua sponte* determination.

(b) A class action shall be maintained if the prerequisites of 804 CMR 1.15(5) ~~(4)(a)~~ are met, and the ~~Investigating Commissioner~~Chair finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to the other available methods for the fair and efficient adjudication of the controversy.

(c) The ~~Investigating Commissioner~~Chair may require such review and impose such terms as shall fairly and adequately protect the interests of the class on whose behalf the complaint is brought or defended. Whenever the representative party appears to the ~~Investigating Commissioner~~Chair inadequate to fairly protect the interests of absent individuals who may be bound by any Commission order, the ~~Investigating Commissioner~~Chair may, at any time prior to entry of the order certifying the class, amend the complaint to eliminate any reference to representation of absent persons. The ~~Investigating Commissioner~~Chair shall enter an order in such form as to affect only the parties to the action and those adequately represented.

(d) Respondent(s) or any person whose rights may be affected by the resolution of an authorized class action may challenge the class nature of the complaint before or within ten days' notice of certification to public hearing pursuant to 804 CMR 1.11 through a motion submitted to the ~~Investigating Commissioner~~Chair for a hearing concerning the validity of the class. The respondent or person challenging the authorized class action shall have the burden of showing by a preponderance of the evidence that the proposed class fails to satisfy the requirements of 804 CMR 1.15(4).

(e) An authorized class action shall not be withdrawn or modified without the approval of the ~~Investigating Commissioner~~Chair.

(f) In any case brought as a class action, the Commission may, when appropriate, order that all remedies shall apply to member(s) of the class.

(g) A party may appeal an order by the ~~Investigating Commissioner~~Chair certifying a class action to the Full Commission~~ pursuant to 804 CMR 1.13(10)(a).~~

~~(5)~~(6) Counsel Required following Probable Cause. Following a probable cause determination pursuant to 804 CMR 1.08(1)(f)1. ~~or 3.,~~the case in support of the complaint shall be presented before the Commission by an attorney. Such attorney may either be a Commission attorney, or, at the discretion of the Commission, an attorney retained by the complainant. The determination whether to assign one of the Commission's attorneys to a pending matter shall be made at the discretion of the ~~Investigating Commissioner~~Commission in consideration of the public interest.

~~(6)~~(7) Private Representation. A complainant may have a private ~~counsel~~ attorney notwithstanding the assignment of one of the Commission's attorneys to a case, although in such case counsel for the Commission has exclusive authority to present the case in support of the complaint and represent the public interest.

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~~(7)~~(8) Attorney Withdrawal.

(a) Prior to a conciliation conference held pursuant to 804 CMR 1.09, an attorney may, without leave of the Commission, withdraw from a matter by filing a written notice of withdrawal together with proof of service on their client and all other parties.

(b) Following the conciliation conference held pursuant to 804 CMR 1.09, an attorney may, without leave of the Commission, withdraw from a matter by filing a written notice of withdrawal which includes an appearance of successor counsel. Absent an appearance of successor counsel, an attorney shall obtain leave of the ~~Investigating Commissioner~~Chair to withdraw from a case. In deciding whether to allow the withdrawal of an attorney, the ~~Investigating Commissioner~~Chair's considerations may include, but are not limited to, the public interest necessary to assign one of the Commission's attorneys and the impact of a withdrawal on the timely, fair and efficient adjudication of the case.

(c) Unless there is appearance by successor counsel, every notice of withdrawal or request to withdraw filed under 804 CMR 1.15(7)(a) or (b) shall include current contact information for the party for whom representation is being withdrawn, including home and business address, email address and telephone number(s).

(d) Leave to withdraw without successor counsel shall be conditioned upon counsel's cooperation in the transfer of the matter to the Commission including, but not limited to, providing the Commission with all discovery conducted prior to withdrawal.

~~(8)~~(9) Enforcement by Private Counsel. The Commission may grant a request ~~*ex parte* motion~~ by complainant's counsel to be the designated agent of the Commission for purposes of enforcement of a settlement agreement, consent order, *subpoena* or final order of the Commission provided that the interest of the complainant and the interest of the Commission are not in conflict. Designation of private counsel as agent of the Commission for purposes of enforcement shall be made in writing.

~~(9)~~(10) Attorney Signature.

(a) Every pleading, motion or document filed by a party represented by counsel shall be signed by at least one attorney of record. The address of each attorney, telephone number, business email address, and Bar Registration Number shall be stated. ~~motion or document submitted~~ filed ~~by a party represented by counsel shall be signed by at least one attorney of record, in the individual attorney's name and shall include the attorney's address, electronic mail address and Board of Bar Overseers or Bar Registration number.~~

(b) The signature of an attorney constitutes certification that the signer has read the pleading, motion, or document; that based on the signer's knowledge, information and belief, it is grounded in fact and warranted by existing law or constitutes a good faith argument for the extension, modification, or revision of existing law; and is not interposed for any improper purpose, such as to harass or cause unnecessary delay or increase in the cost of the proceedings.

(c) Any pleading, motion or document ~~submitted~~ filed by counsel that is unsigned shall be stricken, unless it is signed promptly after the omission is brought to the attention of the attorney who ~~submitted~~ filed the document.

(d) If a pleading, motion, or other document submitted to the Commission fails to comply with the requirements within 804 CMR 1.15(9), the ~~Investigating Commissioner~~Chair or~~,~~ a Hearing Commissioner ~~assigned to the case~~ may impose sanctions in accordance with 804 CMR 1.22 upon the attorney, the represented party, or both, including an order to pay reasonable expenses and attorney's fees incurred by the opposing party or the Commission as a result of the noncompliant document.

~~(10)~~(11) Attorney Notice of Appearance and *Pro Hac Vice* Notice. Any attorney~~s~~ representing a client~~s~~ in a complaint filed with ~~at~~ the Commission shall be a member in good standing of the bar of the Commonwealth of Massachusetts and shall file a notice of appearance. The filing of a complaint on behalf of a client pursuant to 804 CMR 1.04(1) shall constitute a notice of appearance. If an attorney is not a member of the Massachusetts bar, in order to be admitted to represent a client *pro hac vice*, a motion for admission shall be filed in conformance with the following:

(a) The motion shall be signed and filed by a member in good standing of the Massachusetts bar on behalf of the attorney seeking admission *pro hac vice*.

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(b) The motion shall be accompanied by an affidavit from the attorney signing the motion stating that the out of state attorney is a member of the bar in good standing in every jurisdiction where admitted to practice; there are no disciplinary proceedings pending; and the attorney is familiar with the Commission's regulations and the Massachusetts anti-discrimination laws.

~~(11)~~(12) Limited Exception to Attorney *Pro Hac Vice* Admission. Pre-determination and during any appeal filed pursuant to 804 CMR 1.08(4)(b), an attorney who is a member in good standing of a state bar outside of Massachusetts may represent a party before the Commission representative without being admitted *pro hac vice*. After the issuance of a causal determination under 804 CMR 1.08(1)(f)2., an attorney who is not a member of the Massachusetts bar in good standing or admitted *pro hac vice* may not represent a party before the Commission.

~~(12)~~(13) Appearance by a DAR. A party shall have exclusive control over the appearance of a DAR and may authorize or revoke representation by a DAR at any time. A party who wishes to authorize or revoke representation of a DAR shall do so in writing either through the MCAD Case Portal or through alternative means if allowed under 804 CMR 1.15(13), except that authorization shall be via the MCAD Case Portal in all instances where a DAR assists with the filing of the complaint pursuant to 804 CMR 1.04(2)(a)1.

(14) Scope of DAR Representation. In accordance with the prohibition against the practice of law by non-attorneys, DAR representation is not allowed after a probable cause disposition.

(15) Use of the MCAD Case Portal by Representatives.

(a) Attorneys who are members of the bar in good standing in any U.S. jurisdiction representing parties before the Commission are required to register for and use the MCAD Case Portal for all filings with the Commission, including the filing of the complaint. The MCAD Case Portal shall be the sole means of case access for all attorneys representing parties before the Commission, and the primary avenue for communication with the Commission.

(b) DARs representing parties before the Commission who are authorized in accordance with 804 CMR 1.15(13) are required to register for and use the MCAD Case Portal for all filings with the Commission except for the filing of the complaint, as provided for in 804 CMR 1.04(2)(a)1. The MCAD Case Portal shall be the sole means of case access for all DARs representing parties before the Commission, and the primary avenue for communication with the Commission.

~~(13)~~(16) Use of the MCAD Case Portal by *Pro Se* Parties. *Pro se* parties are required to register for and use the MCAD Case Portal for all filings with the Commission absent good cause, although they may file a complaint by U.S. Mail or otherwise as provided for in 804 CMR 1.04(2)(a). Absent good cause, the MCAD Case Portal shall be the sole means of case access for *pro se* parties, and the primary avenue for communication with the Commission. Good cause to use alternative means for filing, case access and communication with the Commission may be demonstrated in a request for reasonable accommodation for disability or by demonstrating a compelling inability to access or use the MCAD Case Portal that is unrelated to disability. If the Commission finds good cause for allowing alternative means of case access for a *pro se* party, the Commission shall provide notice to all parties.

1.16: Service and Notice ~~by the Commission~~

(1) Service by the Commission.

~~(a)~~ Manner of Service. The Commission may serve any document, including the complaint,

~~(b)~~

(a) ~~In the absence of a specific rule of service in 804 CMR 1.00, the Commission may serve any paper~~ in a manner reasonably calculated to ensure receipt including, but not limited to, service through the MCAD Case Portal, by U.S. Mail, personal service, or service via e~~lectronic~~ mail.

(b) Service of the Complaint. Notice of the complaint shall be deemed sufficient and a party shall be deemed properly served with the complaint when:

1. A party who is a registered user of the MCAD Case Portal responds to the Commission through the MCAD Case Portal in response to the complaint after service by any means;
2. A party registers as a user in the MCAD Case Portal in response to the complaint after service by any means;
3. An attorney for a party enters an appearance through the MCAD Case Portal in response to the complaint after service by any means; or
4. Service is via personal service.

(2) Service by the Parties. Any service obligation in 804 CMR 1.00 is met by filing a document through the MCAD Case Portal as to every party and representative who is a registered user of the MCAD Case Portal and a certificate of service is not required, subject to the following exceptions:

(a) Where service of motions, oppositions, replies, and sur-replies on opposing parties is required prior to filing a motion package under 804 CMR 1.13, the parties shall serve those documents in accordance with 804 CMR 1.13.

(b) Service of discovery documents pursuant to 804 CMR 1.10 shall not be through the MCAD Case Portal, except for notices of non-party subpoenas filed under 804 CMR 1.14(1)(f), and every document served shall contain a certificate of service noting the date of service and the manner in which service was made on the party.

(c) When the Commission has authorized a party to use alternative means of filing and case access pursuant to 804 CMR 1.15(14), service on that party shall conform to the order of the Commission allowing the alternative means, and the final page of every document served shall contain a certificate of service noting the date of service and the manner in which service was made on the party.

~~(2)~~(3) Sufficient Notice after Service of the Complaint. After service of the complaint, all registered users of the MCAD Case Portal shall be notified of case documents and proceedings through system notifications sent to their registered email addresses, in accordance with the parties' obligation to keep contact information up to date and accurate pursuant to 804 CMR 1.15(1). System notifications shall constitute sufficient notice of the content communicated within the notifications or attached thereto, and accessing the MCAD Case Portal shall serve as proof of notice of that which is available to the party in the MCAD Case Portal as of the time of access. If a party does not register or participate as a user in the MCAD Case Portal after proper service, either because they are authorized to use alternative means of filing and case access pursuant to 804 CMR 1.15(15) or because of a failure to participate in the investigation or adjudication of a complaint after service, the party shall be deemed on notice of every document served by the Commission or the parties to the party's last known address.

1.17: Computing and Extending Time

(1) Computation.

(a) In computing any period of time prescribed or allowed by 804 CMR 1.00 or by order of the Commission, the day of the act or event, including default, after which the designated period of time begins to run shall not be included.

(b) The last day of the period being computed shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs to the end of the next day which is not a Saturday, a Sunday, or a legal holiday.

(c) When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

(d) A legal holiday for the purposes of 804 CMR 1.17(1)(b) includes those days specified by M.G.L. c. 4, § 7 and any other day appointed as a holiday by the President or the Congress of the United States, or designated by the Laws of Massachusetts.

(2) Extensions.

(a) Pre-determination. During any stage of the investigation, upon written request and for good cause shown, any party may request an extension of time. The request shall be addressed to the ~~Investigating Commissioner~~Commission and state the extension of time

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being requested and the reason(s) for the extension. ~~Pursuant to 804 CMR 1.13(9)(b)1., extension requests are exempt from motion practice and conference requirements.~~

(b) Post-determination. After an investigative disposition has issued, any request for an extension shall be made to the Clerk's Office and shall be subject to motion practice and other requirements within 804 CMR 1.13.

1.18: Proceedings on Commission Initiated Complaints

(1) General Provisions

(a) All complaints initiated by the Commission pursuant to M.G.L. c. 151B, § 5 and 804 CMR 1.04(1)(e) shall be processed under 804 CMR 1.18, unless otherwise ordered by the Commission.

(b) Such matters shall be investigated, heard and determined by the Commission as expeditiously as possible.

(c) Upon a Commission initiated complaint, the procedures of 804 CMR 1.00 shall be suspended, with the exception of proceedings pursuant to 804 CMR 1.23, 1.24 and 1.25.

~~(c)~~(d) The Chair may make the complaint and the terms of any settlement agreement publicly available at any time.

(2) Service and Investigation.

(a) The Commission shall serve a Commission initiated complaint on each of the parties via personal service. Such service shall include a notice requiring each respondent to file a position statement as described in 804 CMR 1.05(8) within 21 days of service.

(b) The Commission may serve *subpoenas* via personal service as it deems necessary to investigate the matter.

(c) The Commission shall, within 45~~30~~ calendar days of service of the Commission initiated complaint, convene an investigative conference, as described in 804 CMR 1.05(10), except that the Commission may provide less than 14 days notice of the conference. Notice of the date, time, and place of the conference shall be served upon the parties. The investigative conference shall result in one of the following outcomes:

1. The ~~Investigating Commissioner~~Commission may determine that a lack of probable cause exists for crediting the allegations of the complaint, and shall notify the parties of such determination. Such determination shall be the final order of the Commission~~Investigating Commissioner~~, and is not subject to preliminary ~~hearing~~ appeal pursuant to 804 CMR 1.08(4)(b) or Full Commission or judicial review pursuant to M.G.L. c. 151B, § 6 or M.G.L. c. 30A.

2. The Chair ~~Investigating Commissioner~~ may determine that probable cause exists for crediting the allegations of the complaint, in which case the Commission ~~Investigating Commissioner~~ shall immediately endeavor to eliminate the unlawful practice complained of by conference, conciliation and persuasion.

If the Chair ~~Investigating Commissioner~~ finds probable cause to credit the allegations of any housing complaint~~, including those dual filed with HUD~~, the Chair ~~Investigating Commissioner~~ shall immediately serve notice upon the respondent of the right to elect judicial determination of the complaint pursuant to M.G.L. c. 151B, § 5.

(3) Certification to Public Hearing.

(a) The Chair ~~Investigating Commissioner~~ may certify the ~~issues~~ claims for public hearing if the matter is not settled through conciliation. In any matter certified for public hearing the Commission may seek all remedies available pursuant to M.G.L. c. 151B.

(b) The Chair ~~Investigating Commissioner~~ shall serve a written notice requiring respondent to answer the charges of the complaint at a public hearing before the Commission, at a time and place to be specified in the notice. Requests to continue shall be granted only upon a showing of good cause.

(4) Public Hearing.

(a) The public hearing should, if at all practicable, occur within 60 days of the investigative conference described in 804 CMR 1.18(2)(c).

(b) The case in support of the complaint shall be presented before the Hearing Commissioner by the ~~Investigating Commissioner~~Commission.

(c) The respondent shall appear at the public hearing in person, with or without an attorney, and may submit evidence to rebut the charges in the complaint.

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~~(d) Public hearings shall be heard by a Hearing Commissioner, who shall not be the Commissioner who previously investigated the matter and issued the complaint.~~

(5) Hearing Decision. The Hearing Commissioner, should, if at all practicable, issue a final order within 60 days from the conclusion of a public hearing pursuant to 804 CMR 1.18(4).

1.19: Emergency Proceedings

(1) General Provisions.

(a) The Commission ~~Investigating Commissioner~~ may upon motion demonstrating necessity, *or sua sponte*, order that any matter under its ~~his or her~~ jurisdiction be processed as an emergency proceeding. The Commission may seek all remedies available pursuant to M.G.L. c. 151B.

(b) Such matters shall be investigated, heard and determined by the Commission as expeditiously as possible.

(c) Upon an order that a matter be set for emergency proceedings, the procedures of 804 CMR 1.00 shall be suspended, with the exception of 804 CMR 1.23, 1.24 and 1.25.

1.20: Language Assistance Services

(1) Basis for Services. Parties who require language assistance services to ensure meaningful access to, participation in and understanding of Commission proceedings, programs or services, shall be provided such services.

(2) Request Required. Language and interpreter assistance services may be provided if the individual in need or his or her representative makes a written or verbal request for such services in advance of the proceeding, or if the Commission determines there is a need for said services. The Commission retains discretion to determine when such services are needed.

(3) Type of Services. The services to be provided, whether telephonic interpretation, professional interpretation services, or interpretation by a competent bilingual staff member or other bilingual individual, or other language assistance service, shall be determined by the Commission.

(4) Adequate Notice Required. Parties requiring language assistance services shall make every effort to give adequate notice to the Commission of the need for such services. If the Commission determines that such services are required and inadequate notice has been provided to secure such services, a proceeding may be continued until such time as the services may be secured.

(5) Request for a Specific Interpreter. Whether to allow a party's request for interpretation services from a particular individual is entirely within the discretion of the Commission.

1.21: Access to Commission Materials and Restrictions to Personal Data

(1) Case Information Available to the Public. The following requirements apply to a request for case information by the public, all subject to 804 CMR 1.21(3):

(a) Predetermination. The investigative file in every charge under investigation, including the complaint, shall be confidential and exempt from public disclosure.

(b) Post-determination. The investigative file in every charge after an investigative disposition issues shall be confidential and exempt from public disclosure except for the complaint and the investigative disposition. The post-determination record of all docketed proceedings, filings, orders, and notices ~~administrative record, which~~ begins at the issuance of a probable cause determination and does not include the investigative file except for the complaint, shall be available upon case dismissal or the issuance of a hearing decision, whichever is first. In the event of an appeal pursuant to 804 CMR 1.23, the record of the appeal shall be available upon case dismissal or the issuance of a final decision by the Full Commission, whichever is first.

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(2) Additional Case Information Available to the Parties. Post-determination the investigative file shall be available to the parties ~~Upon request to the Records Access Officer post-determination, the parties to a complaint shall be allowed access to the investigative file,~~ except that all records described in 804 CMR 1.21(3) shall be unavailable.

(3) Unavailable Information. Privileged information, attorney work product, information exempt from disclosure pursuant to the public records law or other laws, information withheld or redacted pursuant to 804 CMR 1.21(4), and information placed under a pseudonym or protective order by the Commission pursuant to 804 CMR 1.04(7), 1.05(12) or 1.12(9) is not available to the public or to the parties.

(4) Restrictions on Personal Data Identifiers in Filings. To protect personal privacy, parties and ~~counsel~~ representatives shall refrain from including, or shall partially redact where inclusion is necessary, the following personal data identifiers from all filings and exhibits submitted to the Commission, whether filed electronically or in paper, unless otherwise ordered by the Commission:

(a) Social Security, Taxpayer Identification, Driver's License, State-issued Identification Card or Passport Numbers. If any such individual numbers shall be included in a filing, only the last four digits of that number should be used.

(b) Names of Minor Children. If the involvement of a minor child shall be included in a filing, they shall be referred to only as "minor child," although multiple minor children shall be distinguished from one another numerically, i.e., "minor child 2."

(c) Dates of Birth. If an individual's date of birth shall be included in a filing, only the year should be used.

(d) Financial Account, Credit or Debit Card Numbers. If any such financial account numbers shall be included in a filing, only the last four digits of these numbers should be used.

(e) Medical Record Numbers Patient Identification Numbers. If any such medical record numbers shall be included in a filing, only the last four digits of these numbers should be used.

(f) Mother's Maiden Name. If a person's mother's maiden name is identified as such, only the first initial of the maiden name shall be used.

(5) Responsibility for Redaction and Availability of Original. The responsibility for redacting personal data identifiers rests solely with parties and ~~counsel~~representatives. The Commission shall not review each filing for compliance with 804 CMR 1.21(4). ~~The~~ pParties and ~~counsel~~ representatives shall keep a complete copy of any document redacted containing the complete personal data identifier and shall furnish it to the Commission promptly upon request by the Commission to produce an un-redacted version of the document.

1.22: Sanctions

(1) Grounds for Sanctions. Parties, representatives and others accessing Commission services and offices may be subject to sanctions as provided throughout 804 CMR 1.00 and on the following grounds:

(a) Failure to comply with any provisions in 804 CMR 1.00 as applicable, or any directives or orders by Commissioners or Commission staff;

(b) Abusive, disruptive, or harassing behavior towards other parties, representatives, Commissioners, or Commission staff;

(c) The filing of three or more complaints subject to dismissal pursuant to 804 CMR 1.05(2)(b)(1) through (8) or administrative dismissal via sanctioning authority in 804 CMR 1.22 in a one-year period; or

(d) The intentional filing of documents containing false information, including false information generated by artificial intelligence.

~~(1)~~ Sanction Types. Sanctions, may include but are not limited to:

(2)

~~(a)~~

(a) ~~Failure by any participant in Commission investigations and proceedings to comply with Commission orders, requirements or procedures may result in the imposition of~~

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~~sanctions against a participant or counsel, which may include without limitation~~ Tthe award of attorney's~~'~~ fees and costs to other parties or the Commission,
(b) Administrative dismissal of the complaint;
(c) Limitations to or denial of access to Commission offices;
(d) Removal of DAR authorization;
(e) Denial of access to the MCAD Case Portal;
(f) Written reprimands;
(g) Limitations on communications with Commission staff, or
(h) ~~as well as i~~Investigative default against a respondent pursuant to 804 CMR 1.07.

(3) Sanction Orders and Written Reprimands. An order is required prior to imposing any sanction in 804 CMR 1.22 which shall address the grounds and the timeframe for the sanction imposed. At least one written reprimand is required prior to issuing any sanction order under 804 CMR 1.22(1)(b) unless the complainant had a complaint administratively dismissed within the previous year for the same or similar conduct or the conduct involves actual or threatened physical harm to any party, representative, Commission staff member or other person involved in the processing of the complaint.

~~(2)~~(4) Sanction Authority. Sanctions may be imposed by the Commission, the Chair, a Hearing Commissioner, and the Full Commission.

1.23: Full Commission Review

(1) Review of Decision of a Hearing Commissioner~~.~~.

(a) Time Period for Request. Any party aggrieved by a final decision of a Hearing Commissioner may, within ten days of receipt of the decision, file a notice of appeal with the Clerk's Office~~ in Boston~~.

(b) Petition for Review. Within 30 days of receipt of the decision, the appellant shall file with the Commission a petition for review with the Clerk's Office in Boston setting forth:

1. A statement of the ~~issues~~ claims presented for review;
2. A succinct statement of facts relevant to the issue(s) presented for review with appropriate citation references to the record upon which the appellant relies to support the appeal;
3. Any findings of fact which the appellant claims are not supported by substantial evidence and unwarranted by the facts in the record;
4. Any alleged error of law, including citations to the authorities, statutes and parts of the record relied on;
5. All other matters on which the appellant relies to support the appeal; and
6. The relief to which the appellant claims they are entitled, which relief may be requested in the alternative.

(c) Service. The party filing a notice of appeal or petition for review of a decision of the Hearing Commissioner shall serve a copy of the notice and petition upon all parties to the proceeding.

(2) Intervention in the Review.

(a) Any party to the proceeding before the Hearing Commissioner shall have the right to intervene in the review proceeding by filing a notice of intervention stating the party's interest and the position taken with respect to the decision under appeal.

(b) The Commission may in its discretion permit other interested persons to intervene in the review proceeding, if such persons are substantially and specifically affected by the proceedings.

(c) The notice of intervention shall be filed within ten days of receipt of the petition for review and shall be served on all parties by the intervener.

(d) An intervener may file a brief in reply to the petition for review addressing the appellant's arguments within 30 days of receipt of the petition for review, which shall be served on all parties by the intervener.

(3) Form of Petition for Review and Intervener's Brief. Except by permission of the Commission, a petition for review and any intervener's brief shall not exceed 30 pages. The text shall be double spaced, and typeface shall be 12-point or larger size and not exceed 10.5 characters per inch. The margins shall be at least one inch.

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(4) Citation of Supplemental Authorities. When pertinent and significant authorities come to the attention of a party after the petition for review or intervener's brief has been filed, a party shall ~~may~~ promptly advise the Commission, by letter, with a copy to all parties, setting forth the citations.

(5) Stay of Order. The filing of a petition for review of the decision of the Hearing Commissioner shall operate as a stay of execution of the Order of the Hearing Commissioner, unless ordered otherwise by the Commission.

(6) Full Commission Members. The ~~Investigating Commissioner~~ Chair shall not participate in the deliberations of the Commission except when necessary to create a quorum of the Full Commission or to resolve a split decision, or in cases in which the Chair was the Hearing Commissioner. The Hearing Commissioner but not any designee shall participate in the review of their decision unless such participation is impracticable.

(7) Oral Argument. The Commission may, in its discretion, order oral argument on a petition for review.

(8) Record of Review. The petition for review shall be confined to the record presented at the public hearing.

(9) Additional Evidence. If application is made to the Full Commission for leave to present additional evidence, and it is shown to the satisfaction of the Full Commission that the additional evidence is material to the ~~issues~~ claims in the case, and that there was good reason for failure to present it in the proceeding before the Hearing Commissioner, the Commission may order that the additional evidence be taken before the Hearing Commissioner upon such conditions as the Commission deems proper.

(10) Full Commission Decision. After review of the decision of the Hearing Commissioner, the Full Commission may affirm the decision, or remand the matter for further proceedings before the Hearing Commissioner; or set aside or modify the decision, if it determines that the substantial rights of any party may have been prejudiced because the decision is:

(a) In violation of constitutional provisions;
(b) In excess of the statutory authority or jurisdiction of the Commission;
(c) Based on an error of law;
(d) Made on unlawful procedure;
(e) Unsupported by substantial evidence; or
(f) Arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with law or the order of the ~~Investigating Commissioner~~Chair certifying the ~~issues~~ claims to public hearing.

(11) Commission Initiated Review of Hearing Decisions. The Full Commission may review the final decision of a Hearing Commissioner *sua sponte*. In addition, the ~~Investigating Commissioner~~Chair, may request the Full Commission to review a hearing decision. In such event, the Commission may order oral argument, or order the parties to submit memoranda of law or fact.

(12) Request for Award of Attorneys' Fees and Costs after Issuance of Full Commission Decision. Where the complainant prevails in an appeal to the Full Commission, the complainant may, within 15 days of receipt of the Full Commission decision issued pursuant to 804 CMR 1.23(10) or (11), petition for an award of reasonable attorney's~~!~~ fees and costs subject to the following provisions:

(a) The petition shall include detailed, contemporaneous time records and a supporting affidavit.~~;~~ The petition shall also include information about average hourly rates for attorneys with similar experience, which may be in the form of affidavits from attorneys with knowledge of such hourly rates or model fee charts, or other documentation;
(b) If complainant is the appellant, the petition may contain a request for fees and costs incurred prior to the appeal as well as those incurred as a result of litigating the appeal;
(c) If complainant is the appellee, the petition may contain only a request for supplemental fees and costs incurred as a result of litigating the appeal, as the costs

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incurred in prior proceedings before the Commission shall have been requested in accordance with 804 CMR 1.12(19);
(d) A respondent may file an opposition within 15 days of receipt of said petition; and
(e) The decision by the Full Commission on the petition for the award of attorney's fees and costs, together with the Full Commission decision issued pursuant to 804 CMR 1.23(10) or (11) shall constitute the final order of the Commission for the purpose of judicial review pursuant to M.G.L. c. 151B, § 6 and M.G.L. c. 30A.

1.24: Judicial Review

(1) Definition of Final Commission Order. For the purpose of judicial review pursuant to M.G.L. c. 151B, § 6 and M.G.L. c. 30A, only the decision of the Full Commission pursuant to 804 CMR 1.23(10) or (12) shall constitute the final order of the Commission.

(2) Who May Obtain Judicial Review of a Final Commission Order. Judicial review of a final Commission order may be obtained by the complainant, respondent or other person aggrieved by such order pursuant to M.G.L. c. 151B, § 6.

1.25: Judicial Enforcement

(1) Definition of Final Commission Order. Where no party files a timely appeal to the Full Commission, the ~~hearing~~ decision of the Hearing Commissioner shall constitute the final order of the Commission for the purposes of judicial enforcement. If an appeal to the Full Commission is timely filed, or the decision of the Hearing Commissioner is reviewed *sua sponte*, the Full Commission decision shall constitute the final order of the Commission for purposes of judicial enforcement. Consent orders entered into by the Commission may constitute final orders of the Commission for the purposes of judicial enforcement.

(2) Who May Obtain Judicial Enforcement of a Final Commission Order. A party to a consent order or a person affected by a final decision and order of the Commission may request that the Commission initiate an action for enforcement. The Commission may obtain enforcement by filing a petition in the appropriate state court pursuant to M.G.L. c. 151B, § 6. The Commission may appear in court at enforcement proceedings through one of its attorneys, or it may designate ~~counsel~~ an attorney for the party aggrieved by the alleged violation as agent of the Commission for the purpose of obtaining enforcement, in writing. An attorney so designated is not authorized to negotiate settlement terms addressing relief in the public interest ordered in a final Commission order, including civil penalties issued pursuant to M.G.L. c. 151B, § 5 or affirmative relief provided for in 804 CMR 1.09(5).

(3) Method of Enforcement. The Commission may seek to enforce the provisions of M.G.L. c. 151B, M..G.L. c. 151C, or M.G.L. c. 272, §§ 92A, 98, or 98A, or any other statutes under the jurisdiction of the Commission, or 804 CMR 1.00 by utilization of the procedures set forth in M.G.L. c. 151B, §§ 5, 8, M.G.L. c. 214, § 3(12) or (13) or any other lawful means as the interests of justice demand.

REGULATORY AUTHORITY

804 CMR 1.00; M.G.L. c. 151B, § 3; M.G.L. c. 151C, § 5.

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Sunila Thomas George
CHAIR

The Commonwealth of Massachusetts Commission Against Discrimination

MEMORANDUM

TO:	MCAD Commissioners Christina Brown, Steve Locke, Ed Mitnick, Jeremy Scheiner, and Sunila Thomas George (Chair)
FROM:	MCAD Office of the General Counsel
CC:	MCAD Executive Director, Chief of Investigations and Deputy Chief of Investigations
DATE:	March 26, 2026[1]
RE:	Commissioner review of draft Rules of Procedure, 804 CMR 1.00, and public comments

I. Introduction

Now in its 80th year, the Commission is poised to become more effective than ever before in pursuing its mission to eradicate discrimination in the Commonwealth, thanks to a multi-faceted modernization initiative conducted over the last several years. That initiative was born of necessity after the Commission was ordered to comply with the Open Meeting Law in 2023, and the Commission's first-ever Executive Director was hired, charged with overseeing operations, budget, and personnel matters.[2] From there, the core facets of the modernization initiative

[1] Memo updated on March 31, 2026 to include additional public comment and explanatory note in Appendix 1.
[2] In 1974, a committee was convened by Governor Francis Sargent to review the Commission's performance in response to growing critiques of the agency's effectiveness. The committee found that under the direction of individual part-time Commissioners, staff duties were carried out ad hoc and without a systematic approach, and the Commissioners could not meet their duty to formulate long-range policy reflecting the agency's goals while also overseeing operations. The committee recommended an executive director to address these ills. The executive director position was put into law but not required, and the three full-time Commissioners seated pursuant to the same legislation decided not to hire an executive director, the Chair of the Commission thereafter serving as the head administrator instead. See "Report of the Committee to Review the Massachusetts Commission Against Discrimination" at 12-13 (1974), available at: https://archive.org/details/reportofcommitte1974mass/mode/2up. This decision endured, despite continued calls to install an executive director through the years for the same reasons one was recommended in 1974, that is until Chair Sunila Thomas George appointed an Interim Executive Director on July 1, 2022, and the Commissioners hired the Executive Director on May 6, 2024.

involved reimaging the role of the Commissioners and permanently installing the Executive Director role through legislation passed in 2025,[3] the development of a five-million-dollar Comprehensive Case Management System ("CCMS") with online complaint filing through a public facing portal, and the dedication of countless staff hours thoroughly examining inefficient and ineffective case intake, investigation, and processing procedures. These efforts collectively inform the draft Rules of Procedure, 804 CMR 1.00, for the Commissioners' review and revision. To aid in that review, this memorandum explains the rationale for the draft rules in response to public comment, including important historical context and the intersection of the rules with CCMS functionality. This memorandum also documents the processes utilized to draft and promulgate the proposed rules and collects and assesses the public comments on the rules. Most importantly, this memorandum includes recommendations in support of the modernization initiative, not for the sake of it, but for the benefits it promises to bring to victims of discrimination, who have been and continue to be at the heart of everything the Commission does.

II. Historical context and rationale for new approach to investigations in the draft regulations in response to public comment

First and foremost, the draft regulations meaningfully address the decades of criticism the Commission has faced for the investigations backlog[4] and for arm's length, one size fits all investigations rarely including witness interviews, site visits, or other basic investigative activities beyond written requests for information ("RFI"s).[5] This approach has historically started with a uniform intake process that has consistently failed to return on the investment of staff time, either for complainants' private interests or the public interest. That intake process has involved a staff member (i.e., intake specialist) conducting an interview with every complainant,[6] typically lasting anywhere between one to three hours, resulting in the filing of a

[3] M.G.L. c. 6, § 56, as amended by St.2025, c. 9, § 5, eff. Jan. 1, 2026.

[4] A significant sample of this criticism is contained in Appendix 3, attached hereto. Through the years, the Commission has been called out by the courts for lengthy process and has been skewered by the press, parties, and the bar for the investigations backlog, despite the fact of limited resources over the years. Data from the Commission's annual reports show the extent to which the resources issue has persisted. For example, the ratio of complaints filed annually to every investigator (rounded to nearest whole number) in 1970 was 48:1, in 1998 it was 204:1, in 2007 it was 213:1, in 2011 it was 128: 1, and in 2017 it was 118:1. Appendix 1. The average ratio for the last six years is 111:1. (The Commission has not reported on the specific number of investigators since 2018, but Commission records show that the average number of investigators on staff for the last six years is 27, and the average number of complaints filed for the past six years has been 2990 (Appendix 1)). As explained in this memorandum, the Commission is reckoning with the enduring history of the backlog/resources issue, and with data clearly showing that over 100 complaints filed annually for every one investigator on staff will perpetuate an unending backlog unless there is meaningful change to the investigations approach. A nimbler approach to investigations, combined with modern technology, can promise greater effectiveness no matter what the fluctuations in Commission resources may be in the future.

[5] Requirements for the more active investigative model already implemented in 2025, include a more consistent use of investigative planning, emphasizing use of the elements of the prima facie case and persistent demands for records from respondents. Other requirements include immediate triage of the complaint, interviews with parties and witnesses early in the investigation, early issuance of requests for information, and better use of investigative tools including site visits.

[6] Attorneys representing complainants file written complaints without the need for in person intake, and complainants have also always been permitted to file by mail. However, the vast majority of complaints filed by

complaint typically containing fewer than two pages of allegations.[7] As part of the intake process, Commission attorneys have done complaint review duty during every intake, primarily to assist the intake specialist in getting claims correctly stated in the complaint. Neither the attorneys doing complaint review nor the intake specialists typically have further contact with the complaints filed on their intake days,[8] but the time commitment has been punishing to the mission, with each one of the Commission's 33 investigators commonly spending 15 hours of a 37.5 work week doing intake instead of investigating cases, and every one of the Commission's 13 attorneys[9] on complaint review duty spending at least five hours per week on intake, instead of assisting with investigations or prosecuting cases. Thus, every business day, the Commission has been consumed with intake, spending roughly 560 staff hours every week, for the primary purpose of getting claims and basic allegations articulated on its standard complaint form. With caseloads high and intake taking up nearly half of their work week, the one-sized approach has left investigators with little option other than to investigate on the papers,[10] resulting in a written investigative dispositions often issued years after the filing of the complaint.[11] As one attorney critical of these delays put it, "justice delayed is justice denied."[12] The Commission whole-heartedly agrees.

The development of CCMS, ideally supported by new procedural rules calling for intelligent case assessment and immediate investigation, will allow investigators to be investigators, not intake specialists out of contact with cases after intake, or arm's length reviewers of the parties' written submissions. Besides allowing for online complaint filing by unrepresented complainants, CCMS automates myriad administrative functions and standard communications to the parties, freeing up investigators for meaningful outreach to the complainants, witnesses, and locations involved in cases actually assigned to them. CCMS online complaint filing automatically populates the complaint form with counts of violations citing the appliable law, based on choices the complainant makes about who discriminated against them, and why. It also captures the complainant's allegations in short form, as well as in longer prose form, in the complainant's own words. Using CCMS, complainants do not have to know the law to file a proper complaint, and 560 hours of weekly staff time is not required just to get cases started. The Commission plans on making the most of the time saved on traditional intake by getting

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unrepresented complainants has been via intake interview. See, e.g., Massachusetts Commission Against Discrimination Annual Report Fiscal Year 2025, p. 8 (mail-in complaints accounted for 7% and intake accounted for 62% of all filings in FY2025), https://www.mass.gov/doc/mcad-fy25-annual-report/download.

[7] The average length of an intake interview and a typical complaint are a matter of common knowledge across the Commission, with intake and complaint filing happening every day the Commission is open to the public. The Commission does not keep data on these points.

[8] For many years, intake specialists have also been Commission interns, but even when an investigator has been the intake specialist, the case was usually assigned to a different investigator who then did not typically conduct their own interview with the complainant.

[9] Number of investigators and complaint review attorneys are current.

[10] Those papers are the position statement, the complainant's rebuttal, and the parties' answers to RFIs, if any.

[11] See generally Appendix 3.

[12] See Appendix 3 at p.14 (Saying attributed here to William E. Gladstone.) Note that not all delay through the years has been exclusively attributable to lengthy investigations, as long delays after the probable cause finding have occurred, including the time between a hearing decision and a Full Commission decision. The Commission has resolved the Full Commission backlog (defined as decisions pending longer than one year), due to consistent effort between 2018 and 2023. The Commission also tightened up oversight of its post-probable cause docket and over the last six years has consistently moved cases to certification to public hearing no later than 15 months after a failed conciliation.

investigators and Commission attorneys working on cases right away, through a new Preliminary Investigations Unit that will determine the scope of the investigation required for each complaint, utilizing the new procedural rules. The initial goal of the Preliminary Investigations Unit will be to assess and investigate each complaint within 30 days of filing, after which point the complaint is either dismissed or authorized for a more formal investigative process. Preliminary investigation will allow the Commission to use its considerable expertise to identify cases meriting further investigation and expenditure of scant Commission resources, with the goal of eliminating the investigative backlog and conducting quality investigations in a timely manner. This goal is deeply rooted in the mission to eradicate discrimination in the Commonwealth because when achieved, evidence will not grow stale over years-long investigations, complainants will know the outcome of their investigation long before the statute of limitations runs out for filing their case in court, and the Commission can strategically broaden the impact of its resources to fight discrimination.

As detailed in this memorandum, the Commission has received public comment objecting to these sea changes, primarily around the intake process and the dismissal of complaints after a preliminary investigation. These changes are innovative and disruptive to a long-standing status quo, and such comments are not unexpected. However, it is important to note at the outset that regarding the intake process, many of the comments rely on two incorrect assumptions. First, there is the incorrect assumption that Commission staff will no longer assist unrepresented complainants in person at Commission offices. The Commission will in fact continue to be open for all walk-in complaint filings during normal business hours, and Commission staff will be ready to assist any unrepresented complainant according to the level of assistance they might require, whether it is through language interpretation services or a traditional intake interview. Second, many of the comments treat the unrepresented complainant population as a monolith and assume that the typical unrepresented complainant is not capable of using the internet to sufficiently communicate in writing what happened to them, without the assistance of a Commission employee. The Commission has a depth and breadth of experience with unrepresented complaints,[13] and, based on that experience, knows that the average unrepresented complainant is literate, capable of telling their own story, and nowadays, a regular internet user. Moreover, by offering the convenience of online complaint filing, the Commission is responding to years of feedback from unrepresented complainants about the inconvenience and hardship of coming to a Commission office to file in person, particularly in Boston, where parking costs and traffic delays overly burden those who can least afford to take time off of work or pay for child care in order to file a complaint. Indeed, the development of CCMS has been inspired by a deep, abiding respect for unrepresented complainants because it has been responsive to these complaints and recognizes the population's widespread capabilities. In short, with these assumptions dispelled, the logic of upending the traditional intake paradigm is readily apparent—empowering complainants to file complaints on their own through a system-guided filing process, while still offering support to those who need it, allows the Commission to massively shift its time and resources to the investigation of complaints, not just their intake.

Next, the comments objecting to preliminary investigations and dismissals therefrom largely insist that the law requires a one-size fits all investigative approach and ignore the stark reality

[13] Based on the thousands of complaints filed annually, most of them by intake interview of the complainant. See Appendix 1.

evident from decades of annual reports, negative press, and criticism from the courts, that the Commission's one-size fits all, arm's length approach to investigations has all too often failed complainants and the public interest.[14] [15] As for what the law requires, the Commission "shall…make…prompt investigation" of complaints filed pursuant to M.G.L. c. 151B, § 5, but it does not dictate the manner or scope of that investigation or the framing of its disposition if probable cause is not found.[16] The law does, however, require "prompt" investigations, and empowers the Commission to enforce anti-discrimination law in the public interest, with all available tools at its disposal. The Commission now intends to meet these mandates, by candidly reckoning with the fact that the decades-old approach to investigations is not the best the Commission can do to enforce the law. Utilizing the decades-old approach, the Commission has taken multiple years to close thousands of investigations, only finding probable cause in typically less than a quarter of cases.[17] This means that through the decades, most complainants have had to wait long periods of time without much contact from the Commission only to receive a lack of probable cause determination, often after the deadline for filing their case in court has passed.

There is no question that the decades old approach to investigations does not best serve the mission to eradicate discrimination in the Commonwealth, much less the promise of administrative law. Moreover, years of data definitely prove that the various calls throughout the years for the Commission to do more with less without changing its approach to investigations are unrealistic. The best and laudable efforts of those who have served at the Commission through the years have remarkably, and without exception, failed to move the needle on the investigative backlog or the overall length and quality of investigations.[18] In the face of this overwhelming evidence, the Commission is ready to try something new based on its expertise, guided by its statutory mandate and careful consideration of its procedural rules. As for

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[14] See Appendix 3.

[15] The EEOC also learned through decades of painful trial and error that cases cannot all be investigated identically and must be strategically triaged and investigated according to available resources. The EEOC has implemented case triage, called "Priority Charge Handling Procedures" (PCHP), since 1995, which was established to manage a massive case backlog. See Paul Igasaki, EEOC, Priority Charge Handling Task Force Litigation Task Force Report (1998). The EEOC uses the PCHP to sort cases into A, B, and C categories. This categorization is set at a sub-regulatory level. Category C cases are those suitable for dismissal. "A charge may be placed in Category C and dismissed when an office has sufficient information from which to conclude that it is not likely that further investigation will result in a cause finding. An office will have sufficient information when it has conducted an investigation appropriate to the particular charge, factoring in resource considerations, and has assured that the CP has been provided a fair opportunity to present his or her case." Igasaki (quoting PCHP guidance that is not posted by the EEOC). The EEOC recommended that C cases "be disposed of as expeditiously as possible," including at intake. Igasaki. The EEOC has continued to implement the PCHP to keep its backlog down. In FY2024, it only had 52,080 cases pending—a far cry from the 110,000+ cases it had before PCHP was adopted. See Press Release, EEOC, EEOC Publishes Annual Performance and General Counsel Reports for Fiscal Year 2024 (Jan. 17, 2025).

[16] The law requires the Commission to investigate promptly, and it prescribes what happens when, after investigation, it finds probable cause to credit the allegations in the complaint. The statute therefore only dictates prompt investigation and post probable cause process and is silent as to anything else. Indeed, administrative dismissals based on a wide array of factors such as bankruptcy of a party, failure to cooperate with the investigation, the private settlement of a complaint, etc. as well as dismissals of facially flawed complaints, are well-established dismissals where the Commission is not finding probable cause after investigation. See 804 CMR 1.08 and 1.05(2), respectively. A 'lack of probable cause' disposition is one of many types of investigative dispositions within the statute's actual dichotomy because under the law, the Commission either finds probable cause after investigation, or it does not.

[17] See LOPC rate and backlog data, Appendix 1.

[18] Id.

expertise, the Commission has years of experience with the varying strength of the cases it has processed, and for the first time it is taking the bold step of leaning into that expertise to assess and preliminarily investigate cases quickly, so that stronger cases can get more attention, and get to a probable cause determination in a timely manner. Leaning into this expertise is also more important than ever before as the Commission faces a potential increase in annual complaint filings once online filing through CCMS becomes available. Conducting immediate outreach and assessment through preliminary investigations, prioritizing cases, and seeking the best outcome for every case in service to the mission overall will be essential in the face of increased complaint filings.

All of this said, the public comments are greatly appreciated by the Commission, regardless of whether they are supportive or critical of the proposed changes to its procedural rules. It is inspiring to see engagement with the agency and the work it does, and the comments will no doubt result in improvements throughout 804 CMR 1.00. Zooming out, the more critical comments, legal arguments aside, indicate a great deal of anxiety about the changes at the Commission, and sadly, mistrust, as to how the Commission intends to operate with regard to preliminary investigations and the implementation of CCMS. This is lamentable, as Commission staff share a deep and sincere commitment to civil rights across the board, and the draft changes to the regulations are informed by that commitment. They are also formed by the Commission's breadth of experience with the wide variation among complaints, and the understanding that treating every complaint in exactly the same way has meant that many have not gotten the timely attention they have deserved—this is the core problem that those on the inside at the Commission keenly understand and seek to rectify.

III. Processes and timelines for the development of the draft regulations

The draft regulations are a product of years of consideration by and collaboration between Commission staff members, as well as external input from a modernization working group convened by the Commission that included members of the MCAD Advisory Board. The draft regulations also went through the formal rulemaking process governed by the Massachusetts Administrative Procedures Act, M.G.L. c. 30A, and guidance published by the Secretary of the Commonwealth's Regulations Division.

In early May 2024, the Commission attorneys who review intakes on complaint review began consistently assessing and rating new complaints that were filed at the agency. The ratings essentially identified the strength of the complaints at the outset, and the project concluded on June 30, 2025. After reviewing the data and reasoning for the ratings, it was apparent that the attorneys were able to identify both potentially strong and very weak cases, providing proof of concept for initial triage by a preliminary investigations unit and informing the expansion of early dismissal factors. During that time, the Commission also held at least 17 meetings among all agency legal staff (Attorney Advisors, Commission Counsel, Hearings Unit, and ADR Unit) and Investigations Division leadership in order to ensure widespread internal input and buy in from Commission staff before presenting proposed changes to the Commissioners for their consideration, review, and revision.

The draft regulations were presented to the Commissioners for their review on October 3, 2025, and the Commissioners individually met with the General Counsel and the Deputy General in November of 2025 to discuss the draft regulations. From there, the Chapter 30A timeline proceeded as follows:[19]

December 2, 2025: The Commissioners approved the draft regulations for public hearing and comment. The Commission announced that there would be public hearings in addition to a 60-day public comment period consistent with prior rulemaking practices.
December 5, 2025: The Commission's Secretary of Communications notified stakeholders of the pending public comment period and proposed regulations by email. Chapter 30A also requires that copies of the proposed regulations be available to the public at the same time notice is given. M.G.L. c.30A, § 2. Copies of the proposed regulations were published to the Commission's website as early as December 5, 2025, and hard copies were available upon request by members of the public who came to the Commission's offices in person.
December 19, 2025: The Commission began the formal rulemaking process governed by M.G.L. c. 30A and the regulations promulgated by the Secretary of the Commonwealth, 950 CMR 20.00 et seq. The first step was notifying the Local Government Advisory Committee ("LGAC") about proposed rulemaking at least 14 days before giving notice of a public hearing or comment period.[20]
December 29, 2025: The Commission's Notice of Public Hearing and Public Comment Period (the "Notice") was submitted to the following local newspapers for publishing on January 2, 2026: *The Lowell Sun*, *The Boston Globe*, *The Worcester Telegram & Gazette*, *The Springfield Republican*, and *Massachusetts Lawyers Weekly.*[21]
January 2, 2026: In order to meet publishing timelines for the *Massachusetts Register,* the Notice and a small business impact statement were delivered to the Regulations Division in person. Electronic copies of the proposed regulations were emailed to the Regulations Division, per their request, on the same day.
January 23, 26, and 28, 2026: The Commission held three hybrid public hearings on January 23, 26,[22] and 28, 2026, which were hosted by the Executive Director, General Counsel, Deputy General Counsel, and Full Commission Law Clerk. Though the first public hearing had the most attendance and participation by members of the public, the Commission received several notable comments during each public hearing.
February 17, 2026: Based on testimony received during public hearing, written comments submitted directly to the Commission, and numerous requests of members of the public, a request to extend the public comment period was placed before the Commissioners in their open meeting. The Commissioners voted unanimously to extend the public comment period until March 31, 2026.
February 27, 2026: The Commission prepared a Notice of Extension of the Public Comment Period, which was submitted to the Regulations Division on February 27, 2026.

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[19] See Appendix 4 for all related notices.
[20] See Exec. Order No. 145, Consultation on Administrative Mandates with Cities & Towns (Oct. 21, 1978), 130 Mass. Reg. 159 (Nov. 2, 1978), available at: https://archives.lib.state.ma.us/handle/2452/857467.
[21] The same notice that is published must also be sent to anyone required to be specifically notified and individuals or groups who have expressly requested notification since December of the previous calendar year. M.G.L. c. 30A, § 2. At the time of rulemaking, there were no existing requests for notice.
[22] This public hearing was conducted on Zoom only due to building closures caused by inclement weather.

March 13, 2026: The Notice of Extension of the Public Comment Period was published in the *Massachusetts Register* on March 13, 2026.

After the hearings, close of public comment, and the final review and editing of the proposed regulations, an amended small business impact statement will be filed with the Secretary of the Commonwealth's Office prior to the adoption of a proposed regulation. See M.G.L. c. 30A, § 5. After the amended small business impact statement is filed, the Commission will file a completed Publication and Filing Form in both print and electronic formats, the "draft" hard-copy galley pages prepared by the Regulations Division marked in red to indicate changes that occurred as a result of public hearing or comment, and any items incorporated by reference, if any. Even if there are no changes to the regulations after public hearing or comment, the prepared draft copy must be returned to the Regulations Division. The Regulation Filing Form required by the Regulations Division serves as the agency's statement of compliance with M.G.L. c. 30A and must be signed by an authorized person, designated by the agency. Last, M.G.L. c. 30A, § 6 states that regulations shall become effective only when published in the Register or when a law or the agency requires a later effective date.

IV. Section by section public comment summary and recommendations

The Commission received 27 sets of written public comments from a mix of attorneys and laypersons, in addition to live commentary during the three public hearings held in January 2026. The recordings of the public hearings are separately available to the Commissioners, and the commentary from those hearings is briefly summarized in the public comment table of contents preceding all the written comments attached hereto at Appendix 2, for the Commissioners' review and consideration. Public comments for each section are also partially summarized below, along with a brief summary of the draft changes, supporting rationale, and any recommendations made by the Office of the General Counsel ("OGC").

Please note that there are proposed changes throughout 804 CMR 1.00 that address the decision-making authority of the Commissioners, necessitated by the statutory changes to M.G.L. c. 6, § 56 calling for four per diem Commissioners and effectively sunsetting the role of the Investigating Commissioner. Those changes are not addressed in the sections below because they operationalize the statutory change and are ubiquitous in nature. Moreover, the Commission did not receive any public comments about the draft changes to Commissioner decision making authority per se; there are a handful of comments that appear to object to the decision-making authority being granted to the Chair, but such comments do not consider the per diem nature of the other Commissioner roles.

A. 1.01: Scope and Purpose

- **Summary of draft changes and agency rationale:** The scope and purpose of the regulations are outlined in this section. This section remains unchanged except to acknowledge that Commission staff are empowered to do the work of the Commission. As addressed above, this change is necessitated by the statutory changes regarding the new structure of the Commission and Commissioner decision-making authority.

- **Summary of public comment:** No public comments received.

- **Recommendation:** The OGC recommends that the changes be adopted as proposed.

B. 1.02: Definitions

- **Summary of draft changes and agency rationale:** The changes and additions to this section are primarily to add clarity to existing terms and to include terms related to the creation and use of CCMS. For example, the definition of 'representative' is added as it used as an umbrella term for private attorneys or duly authorized representatives ("DAR"), and the definition of DAR is edited to be consistent with its everyday use within the Commission, which is to signify a non-attorney representative. 'Attorney' is not defined as it is well understood, and all three terms are used intentionally throughout the draft so that it is made clear that DARs cannot engage in the practice of law at the Commission (i.e. represent parties after the probable cause finding). CCMS is also designed so that the Clerk of the Commission vets notices of appearance before they are on file—if accepted, it means that good standing has been verified on the BBO website. It was also important to define 'filing' which is used throughout the procedural rules, to thoroughly convey that all filing by the parties is done through the MCAD Case Portal, barring special rule or permission not to use the MCAD Case Portal.

- **Summary of public comment:** Public comment on this section is scant with only a handful of suggested language changes, including allowing service at a person's place of work, deleting the word 'informal' from the definition of 'preliminary appeal' and enhancing the definition of 'pseudonym.'

- **Recommendation:** After reviewing the suggested language changes within public comment, the OGC has only one suggested language change which is to remove the phrase 'during which the Commission is investigating the complaint' from the definition of 'pre-determination.' The comment on this definition is well-taken—although it is often true that an investigation is ongoing between complaint filing and disposition, there are limited circumstances where that is untrue (e.g., if the investigation has been deferred to another forum, if the case is being mediated), and therefore the pre-determination phase is most accurately defined without that phrase.

C. 1.03: Commissioner Authority

- **Summary of draft changes and agency rationale:** As addressed above, this change is necessitated by the statutory changes regarding the new structure of the Commission and Commissioner decision-making authority. The changes to this section make a clear delineation between the Chair authority, Commissioner authority, and staff authority.

- **Summary of public comment:** No public comments received.

- **Recommendation:** The OGC recommends that the changes be adopted as proposed.

D. 1.04: Complaint Filing, Amendment and Withdrawal

- **Summary of draft changes and agency rationale:** Section 1.04 is significantly revised in the draft regulations as CCMS has the largest impact on complaint filing provisions. CCMS replaces the Commission's older database, CMS, which housed its complaint form for the past 25 years during which every single complaint filed with the Commission has had that system-generated complaint form in CMS, whether the complaint was mailed in, through intake, phone, or submitted by an attorney. The same is now true for CCMS, consistent with M.G.L. c. 151B, § 5, which requires every complaint filed with the Commission to contain "information as may be required by the Commission."

- **Summary of public comment:** As discussed in Section II of this memorandum, a significant number of public comments have apparently misread the revisions to this section and take it to mean that the Commission is no longer available to assist complainants with the filing of their complaints. However, section 1.04(2)(a)(2.) clearly states that complainants "may file through the MCAD Case Portal with the assistance of the Commission by visiting any of the Commission's offices during regular business hours." Section 1.04(2) intentionally emphasizes that all filings are through the MCAD Case Portal because CCMS has been exhaustively and carefully designed to ask questions of filers that answer by drop-down choices in order to file claims, and anyone who needs assistance making these choices, or needs some guidance in writing out their allegations, will have it. Using CCMS, a traditional intake interview is not required for the Commission to provide quality assistance and get a complaint on file with sufficient particulars. Commenters objected to the draft language regarding mail-in complaints at 1.04(2)(a)(3.) and they are well-taken in terms of the phrase 'strongly discouraged.' There are also several comments concerning the proper stating of the discovery rule.

- **Recommendation:** The OGC recommends changing 804 CMR 1.04(2) to read "…knew or should have known of the claim of discrimination" as the comments on this provision are well-taken. The OGC will present some revised language for pseudonym complaint process under section 1.04(7) as the process can likely be more clearly stated due to an updated understanding of CCMS capabilities. Section 1.04(8)(5.) should be amended to include the requirement that complainants verify amended content, as comments to that effect are well-taken and CCMS has been designed to require this, in accordance with long-standing practice. Section 1.04(6)(b) should be amended to say "…committed by specific persons, if known to the complainant…" consistent with well-taken comments to that effect, as the requirement does not fairly address those situations where the names of perpetrators of discrimination are unknown to the complainant. The Commissioners should also consider whether to clarify when a mailed-in complaint is considered filed with the Commission in response to comments on that topic.

E. 1.05: Investigation and Answer of Complaint

- **Summary of draft changes and agency rationale:** The draft changes to this section are at the core of the Commission's proposed new approach to investigations, discussed at length in the introduction section of this memorandum. Of central importance are the proposed changes to section 1.05(2), that would convert the long-standing, discretionary review and authorization process (typically staffed by one or two Commission attorneys) into a significantly more robust, mandatory preliminary investigations process in a Preliminary Investigations Unit. This new unit will be headed by a member of management, and staffed with investigators, attorneys, and administrative professionals. The goal of the unit will be the timely assessment and triage of complaints, and the authorization of a formal investigation within 30 days of complaint filing. That authorization might often include a referral to the Commission's ADR Unit for mediation for cases where urgent action is needed, or where other circumstances make the case a good candidate for mediation.

  The factors for dismissing cases after review and authorization are expanded to include three additional factors identifying categories of cases that present readily apparent deficiencies that are highly unlikely to receive a probable cause determination. The Commission believes that these cases can be quickly assessed, investigated, and sometimes resolved with simple outreach, freeing up valuable investigator time for stronger cases having greater impact on the mission. The draft changes are careful to include that the Commission may put the respondent on notice of the complaint to ensure the preservation of evidence, and to ensure the correct parties to the complaint are named before formal service of the complaint might occur. Currently, service of complaints often takes 30 or more days after intake, and the Commission expects that in general, between the automation and efficiency of CCMS and the quick turnaround time for preliminary investigation with potential notice of the complaint, the need to preserve evidence will not be negatively impacted by the new rules.

  Other changes in this section involve eliminating process distinctions for housing cases, owing largely to the efficiencies gained by CCMS and the benefit of uniformity in case processing within CCMS's complicated architecture. Pre-determination discovery is also eliminated because it is emblematic of the investigations model the Commission is deliberately moving away from, i.e., one in which the investigator passively takes in the submissions from the parties in a process that is overly litigious in practice and procedure, rather than taking active ownership of the investigation to produce a quality and timely result using their own skills and the support of the investigative team. Relatedly, the draft rules have protective orders issued by request from a party, not motion practice, in recognition of the fact that most complainants are unrepresented during the investigation and benefit from a more streamlined, less formal, and less litigious approach to investigations. Removing these practices, more appropriately associated with litigation, will provide a less intimidating process for unrepresented parties, and will allow the focus to be on furthering the investigation.

- **Summary of public comment:** This section far and away received the most attention in the public comments to the draft regulations. Some comments are positive and supportive of the proposed changes. However, multiple commenters object to the expansion of the dismissal factors in section 1.05(2) and to the specific language used in those factors, such as "de minimus harm."

- **Recommendation:** As discussed at length in this memorandum, the draft revisions to section 1.05(2) are central to the Commission's new approach to investigations. They are the result of the Commission's considerable time and effort, envisioning a new way forward to make the most of its valuable resources and provide as much relief as it can to victims of discrimination, as timely as possible. The expanded factors are the result of careful consideration by Commission staff (explained in section III of this memorandum) of those cases unlikely to get a probable cause determination yet consuming valuable time using the old, one-size fits all approach to investigations.

  The particular language of the factors could be improved, however:

  - The phrase "de minimus" in section 1.05(2)(b)(7.) can be replaced with "negligible", for example, in response to the comments that object to the use of legal terminology.
  - The comments regarding the absence of harm to an individual sometimes being beside the point of the Commission's mission and obligation to enforce the law are well taken, and the following revision to 1.05(2)(b)(7.) is proposed: "allegations of monetary and non-monetary harm appear negligible, moot, or mitigated during preliminary investigation and further investigation of the alleged violation is not in the public interest".
  - Section 1.05(2)(b)(9.) deserves close attention to better capture the spirit and intent behind this factor, which is to identify straightforward cases with weaknesses evident from minimal investigation right from the start. Reference to the unlikelihood of reaching a probable cause determination in section 1.05(2)(b)(9.) is recommended. (Section 1.05(2)(b)(8.) is a specific type of such case, and the same reference could be made there as well.)
  - Mandating an interview of the complainant, or documented attempts to do so, prior to dismissal on the expanded factors (1.05(2)(b)(6.) through (9.)) is recommended—Commission leadership in the Investigations Division is already planning on instituting this practice, but enshrining it in regulation will speak to the integrity of preliminary investigations and dismissals that are not based on a facial review of the complaint, such as may be the case with the other dismissal factors found in section 1.05(2)(b)(1.) through (5.). As for those factors, there are no draft changes and all of them have been in the regulations since at least 2020.

  The OGC will raise the comments related to clerical errors at the review meetings, and recommends that after the Commissioners carefully review section 1.05, they approve expanded factors upon which the Commission may dismiss cases in preliminary investigation.

F. 1.06: Mediation

- **Summary of draft changes and agency rationale:** The regulations surrounding the mediations offered with the ADR Unit are in this section. Minimal changes were made in order to align the regulations with new Commissioner authority and party representation requirements (addressed below in 1.15).

  Additionally, specialized rules around offering early mediation in HUD housing complaints were removed. These specialized rules were removed to give the agency more discretion in the cases it chooses to mediate. Rather than uniformly offer mediation in all cases, the agency has designed CCMS so that the parties can request mediation at any time through the portal (after submitting their position statement), and so that agency has the discretion to offer mediation at any time. The agency believes that this will allow for more efficient use of the limited, but popular, ADR services it provides.

- **Summary of public comment:** None of the public comments about mediation touch upon the changes proposed in the draft regulations. Instead, the public comments suggest changes to the existing mediation process that are unnecessary. They propose elimination of long-standing mediation rules (e.g., the MCAD has the ability to dismiss a case if the complainant does not accept a reasonable settlement), codification of existing practices (e.g., requiring mediating parties to have settlement authority when attending), or misunderstanding current processes (e.g., wanting MCAD to offer early mediation in all cases, not just HUD cases, which the MCAD has done but will do no longer). The MCAD's current mediation program is very effective (86% settlement rate for mediations) and these adjustments would hinder the mediators' ability to continue their work successfully.

- **Recommendation:** The OGC recommends that the changes be adopted as proposed.

G. 1.07: Investigative Default Procedure

- **Summary of draft changes and agency rationale:** The proposed changes are minimal and do not change any procedures. They added necessary clarification to a party's obligations and the Commission's authority during investigative default proceedings. They also remove the language allowing the Commission to issue monetary sanctions because all sanctioning is governed by the proposed language in section 1.22 which states that the Commission can issue monetary sanctions if there is a failure to comply with any of the provisions in 803 CMR 1.00, which would include section 1.07.

- **Summary of public comment:** One comment from a complainant expresses a general wish for mandatory response deadlines and default judgment provisions but does not provide any specific recommendations. Two of the public comments express concern that the Commission is eliminating its monetary sanctioning authority. None of the other public comments address any of the other proposed changes.

- **Recommendation:** Given the confusion around the Commission's monetary sanctioning authority, the OGC recommends including a reference to section 1.22 by adding the following bolded language to section 1.07(3)(a): "If respondent fails to respond to the notice of consequences as required by 804 CMR 1.07(2), the Commission may issue an order and entry of investigative default, imposing one or more of the sanctions available under 804 CMR 1.07(1) **and 804 CMR 1.22**."

H. 1.08: Investigative Dispositions, Complaint Dismissals and Appeal

- **Summary of draft changes and agency rationale:** The draft changes to section 1.08 focus on a tighter process for preliminary appeals that compliments how CCMS has been designed, as well as a move away from split dispositions, which have proved to be extraordinarily burdensome for the Commission to process for a multitude of reasons, not the least of which has been the challenge of cases straddling the appeals process as well as the conciliation process. The solution to removing split decisions while still allowing complainants to object to the dismissal of parties or claims from the complaint during investigation is to allow motions for reconsideration of the probable cause to be filed by complainants, instead of just respondents.

- **Summary of public comment:** Several public comments object to the requirement for written preliminary appeals in section 1.08(4)(b), and some commenters believe that the law requires a live hearing. However, a legal requirement to hold a hearing may be met by offering a live hearing or conducting a hearing on papers,[23] and in fact, the Commission's regulation on this point has long made it a matter of the Commission's discretion to hold the hearing in person or in writing under 804 CMR 1.08(4)(b)(1.). Several commenters object to the modification of the probable cause provision in 1.08(1)(f)(1.), urging that the summary judgment standard is necessary to prevent the dismissal of claims that a hearing officer should decide.

- **Recommendation:** The Commission can schedule preliminary appeal proceedings, i.e., live hearings, through CCMS, and the Commission retains the discretion that is currently in the regulations. Requiring some form of written appeal in every instance (except where reasonable accommodations require otherwise) should remain, but the OGC recommends adding language to clarify that the Commission may also sua sponte schedule a live hearing if it believes such hearing will be helpful to solicit additional information and decide the appeal. The OGC recommends keeping the revisions to the probable cause provision. Probable cause is not defined in M.G.L. c. 151B, and it is defined, without the additional language, in section 1.01. This change is in keeping with the Commission's approach to clearly distinguish between

[23] Notably, the SJC has recognized as much in the context of a court poised to order equitable remedies, "Due process does not require any particular type of hearing, and 'many matters can lawfully—and satisfactorily—be heard on the papers.'" Demoulas v. Demoulas, 428 Mass. 555, 589 (1998), quoting EEOC v. Steamship Clerks Union, Local 1066, 48 F.3d 594, 608 (1st Cir., 1995), cert. denied, 516 U.S. 814 (1995). In EEOC v. Steamship Clerks Union, the First Circuit concluded that litigants generally do not have an "absolute right to present their arguments in whatever way they prefer…" or protest the opportunities they are given to make such arguments; thus, it is within a judge's authority to set reasonable limits on said opportunities. 48 F.3d at 609.

investigations and litigation. Section 1.08(1)(f) should be retitled to read "Formal Investigative Determinations" as the expanded factors for preliminary dismissal under section 1.05(2)(b) are causal.

I. 1.09: Conciliation

- **Summary of draft changes and agency rationale:** The proposed changes in this section codify a long-standing practice of the ADR Unit that continuances will only be granted upon a motion demonstrating good cause. All non-emergency motions for continuances should be filed jointly or as an assented-to motion. The other changes in this section clarify the scope of public interest relief available, the sanctions available by tying in section 1.22, and eliminate legally extraneous language around conciliation agreement requirements.

- **Summary of public comment:** None of the public comments about conciliation touch upon the changes proposed in the draft regulations. One public comment requested that the non-exhaustive list of relief sought during conciliation in section 1.09(6)(a) be expanded to include interest and out-of-pocket expenses. There was one public comment that requested that the Commission eliminate its long-standing regulation that allows the Chair to dismiss a case if the complainant does not accept a reasonable settlement. On the other hand, another public comment wanted to enlarge this same regulation, under section 1.09(11), by specifying that the Chair should take future litigation costs and the complainant's self-represented status into consideration when deciding on a dismissal.

- **Recommendation:** The OGC recommends that the proposed changes be adopted. Additionally, the OGC recommends that interest and out-of-pocket expenses be added to section 1.09(6)(a) and that future litigation costs and the complainant's self-represented status be added to section 1.09(11).

J. 1.10: Discovery

- **Summary of draft changes and agency rationale:** The proposed changes to the regulation on discovery were to require specific objections to interrogatories and requests for documents, papers, and other tangible things ("RPDs"), which reflect best practices in discovery that will also help the Chair (or their designee) weigh any discovery disputes. The proposed changes also added procedures to request admissions and for producing documents, both of which largely mirror the requirements in the Massachusetts Rules of Civil Procedure. Another proposed change was to have a discovery completion date (instead of a discovery service deadline) in the initial discovery order to the parties. This reflects the direction that the agency has been moving in the past years, which allows for tighter control of the discovery timeline by the Commission. Other minimal changes were made to add clarity to existing rules or fix clerical errors.

- **Summary of public comment:** The public comments did not touch upon the majority of the proposed changes. One public comment approved of the additions of admissions to the regulations because it would help the parties quickly narrow issues, and another public comment did not like it because there are existing discovery tools to confirm factual issues. Another public comment requested that rules around RPDs be clarified that both the responses and responsive documents are also due in 30 days. Another public comment argued that the proposed changes unnecessarily expanded discovery at the agency level and requested, *inter alia*, that long-standing rules around RPDs and depositions be amended to restrict discovery. One public comment requested that clarity be added that subpoenas in 1.10 were subject to the regulations in 1.14.

- **Recommendation:** The OGC recommends that the proposed changes be adopted. Additionally, the OGC recommends that section 1.10(5)(a) be altered to read: "shall serve a written response and **copies of responsive documents** within 30 days after service…" The OGC also recommends that section 1.10(2) be altered to read "Permitted discovery may include… subpoenas **issued subject to 804 CMR 1.14**…"

K. 1.11: Certification of Claims to Public Hearing

- **Summary of draft changes and agency rationale:** The minimal changes in this section codify the practice of certifying claims (rather than issues) for public hearing, clarify the sanctions available by tying in section 1.22, and eliminate extraneous language around the certification process.

- **Summary of public comment:** No public comments received.

- **Recommendation:** The OGC recommends that the proposed changes be adopted.

L. 1.12: Public Hearings

- **Summary of draft changes and agency rationale:** The changes in this section codify the current practices of the agency (in the pro-se-friendly, plain language used by the Hearings Unit's orders) for default hearings, public hearing transcripts, post-hearing briefs, administrative records, and requiring "average hourly rates" for attorneys when petitioning for attorney's fees and costs. Though the changes in these sections look extensive due to the wholesale adoption of plain language, the underlying processes remain largely unchanged.

- **Summary of public comment:** The public comments did not touch upon the majority of the proposed changes. One public comment suggested altering a long-standing rule to allow a complaint to be prosecuted even if the complainant fails to appear at public hearing. Multiple public comments from attorneys objected to the using "average hourly rates" when considering attorney's fees. They suggested using "reasonable rates" or "fair market rates" instead, as this is the accurate language, used

in the lodestar method for calculating attorney's fees adopted by the Supreme Judicial Court.

- **Recommendation:** The OGC recommends that "average hourly rate" be changed to "fair market rate." The Commissioners are also urged to consider modifying the default language in 1.12(10) to clarify that if a complainant does not appear at public hearing the Hearing Commissioner shall dismiss the complaint unless counsel for the Commission is prosecuting the matter and decides to proceed in the public interest.

M. 1.13: Motions and Requests

- **Summary of draft changes and agency rationale:** This section is heavily revised to reflect a clear division of motion rules pre-determination and post-probable cause, in keeping with the approach of taking litigation framework out of investigations. CCMS design allows parties to make simple 'requests' in the MCAD Case Portal, particularly during the investigation, so that investigators and Commission attorneys are free to focus on investigations rather than motions. For the same reason, recognized motions are limited. The revisions also essentially centralize a motion docket with the Clerk of the Commission, and CCMS has been designed to allow the Clerk to assign and track motions for the purpose of ensuring that motions are acted upon in a timely manner. There is no motion packaging requirement for any pre-determination motion, and service of pre-determination motions will be through CCMS. These changes will significantly increase the efficiency of processing pre-determination motions. Revisions to post-probable cause motion rules are minimal but notably dispense with any special rules for pro se parties.

- **Summary of public comment:** Public comment on this section largely addresses the language "…interfere with the timely investigation of complaints" and objects that it is not regulatory in nature. Other comments object to limitations on the motions that may be filed pre-determination.

- **Recommendation:** The OGC recommends that section 1.13 is revised to be clear that "post-determination" only means post-probable cause, as the rules as titled should not apply to the preliminary appeals phase. Section 1.13(4)(d) should clarify that service of the motion package is not through the MCAD Case Portal, only the filing of the package is through the MCAD Case Portal, as comments to that effect are well taken. Comments objecting to the "interfere" language are also well taken and that language should be removed.

N. 1.14: Subpoenas

- **Summary of draft changes and agency rationale:** The minor changes in this section reflect the current agency practices and trend to not allow pre-determination discovery by parties, also reflected above in section 1.04. Other minimal changes were made to add clarity to existing rules, ensure consistency with other sections, and fix clerical errors.

- **Summary of public comment:** No public comments received.

- **Recommendation:** The OGC recommends that the proposed changes be adopted.

O. 1.15: Parties and Representatives

- **Summary of draft changes and agency rationale:** The majority of the changes in this section outline the obligations for parties and their representatives with the MCAD Case Portal, including the requirement that they keep their contact information updated. Attorneys and duly-appointed representatives ("DARs") are required to use the MCAD Case Portal, and unrepresented parties are required to use the MCAD Case Portal absent good cause. Additionally, the proposed changes add necessary clarification to the requirements for attorney pro hac vice admissions and limit the scope of DAR representation.

  Attorneys are already acclimated to electronic filing with the courts and generally prefer it. Almost all federal courts mandate that attorneys register and use PACER (or CM/ECF), the federal court case management system. Pro se parties have asked for online filing, and the vast majority of pro se parties already use electronic means (e.g., email, Adobe eSign, Zoom) to interact with the Commission. The Commission is ready to provide support (e.g., by providing internet access or technology at its offices, guidance documents, staff support, etc.) or else grant accommodations to those who are unable to use the MCAD Case Portal.

  The Commission has heavily invested time and resources to create the MCAD Case Portal to make it user-friendly, and it will continually be open to improvements that will make it so. Maximizing usage of the MCAD Case Portal will help ensure quicker case processing times with less mistakes by utilizing automated processes and system checks to staff.

- **Summary of public comment:** There were no public comments objecting to requiring attorney use of the MCAD Case Portal. Only two public comments objected to the "good cause" exception for the pro se parties, both from attorneys, who suggested lowering the barrier. There were no other public comments on the other proposed changes to this section. Other public comments suggested overturning or amending long-standing rules around DARs, class actions, service requirements.

- **Recommendation:** Given the lack of objections about MCAD Case Portal use requirements and leaning on the Commission's depth and breadth of experience with unrepresented complainants, most of whom interact with the Commission through electronic means, the OGC recommends that the proposed changes be adopted as drafted.

P. 1.16: Service and Notice

- **Summary of draft changes and agency rationale:** The proposed changes in this section were necessary to add rules on how service and notice would work for both

the Commission and the parties with the implementation of MCAD Case Portal. The changes also fix a long-standing problem of default respondents by detailing what constitutes proper service of the complaint.

- **Summary of public comment:** No public comments received.

- **Recommendation:** The OGC recommends that the proposed changes be adopted.

Q. 1.17: Computing and Extending Time

- **Summary of draft changes and agency rationale:** Minimal changes were made to this section to ensure consistency with other sections.

- **Summary of public comment:** No public comments received.

- **Recommendation:** The OGC recommends that the proposed changes be adopted.

R. 1.18: Proceedings on Commission Initiated Complaints

- **Summary of draft changes and agency rationale:** Minimal changes were made to this section to ensure consistency with other sections and current Commission practices.

- **Summary of public comment:** No public comments received.

- **Recommendation:** The OGC recommends that the proposed changes be adopted.

S. 1.19: Emergency Proceedings

- **Summary of draft changes and agency rationale:** Minimal changes were made to this section to use gender-neutral language.

- **Summary of public comment:** No public comments received.

- **Recommendation:** The OGC recommends that the proposed changes be adopted.

T. 1.20: Language Assistance Services

- **Summary of draft changes and agency rationale:** No changes proposed.

- **Summary of public comment:** A public comment was received suggesting that section 1.20 be revised to provide additional services to individuals in need of language assistance services by, inter alia, requiring the Commission staff to make language assistance inquiries to all complainants, providing consistent language

assistance through the lifetime of a case, and allowing all individuals to freely choose any type of language assistance, request specific services and specific interpreters.

- **Recommendation:** The Commission's language access services are robust and CCMS will allow for seamless language assistance throughout the life of a case. The OGC does not recommend any changes to this section.

U. 1.21: Access to Commission Materials and Restrictions to Personal Data

- **Summary of draft changes and agency rationale:** Minimal changes were made to add clarity to existing rules and ensure consistency with other sections.

- **Summary of public comment:** No public comments received.

- **Recommendation:** The OGC recommends that the proposed changes be adopted.

V. 1.22: Sanctions

- **Summary of draft changes and agency rationale:** The changes to this section clarify and add necessary processes to the Commission's sanctioning powers, including explicitly providing when the Commission can impose sanctions.

- **Summary of public comment:** One public comment supports the inclusion of additional sanctions and suggests adding sanctions against a party or their attorney for allegations that are not supported by a good faith basis, commonly known as "Rule 11" sanctions in the Massachusetts Rules of Civil Procedure.

- **Recommendation:** The "Rule 11" sanctions were proposed in section 1.15(10). As such, the OGC recommends that the proposed changes be adopted.

W. 1.23: Full Commission Review

- **Summary of draft changes and agency rationale:** Minimal changes were made to add clarity existing rules and ensure consistency with other sections, including adding the requirement for "average hourly rates" for attorneys when petitioning for attorney's fees and costs to be consistent with section 1.12 above.

- **Summary of public comment:** The public comments did not address the majority of the proposed changes. As with section 1.12, one public comment objected to using "average hourly rates" when considering attorney's fees and suggested using "reasonable rates" or "fair market rates."

- **Recommendation:** The OGC recommends that "average hourly rate" be changed to "fair market rate."

X. 1.24: Judicial Review

- **Summary of draft changes and agency rationale:** No changes proposed.
- **Summary of public comment:** No public comments received.
- **Recommendation:** The OGC does not recommend any changes to this section.

Y. 1.25: Judicial Enforcement

- **Summary of draft changes and agency rationale:** Minimal changes were made to add clarity to existing rules and ensure consistency with other sections, including clarification that a private attorney designated to enforce a final Commission order cannot negotiate and settle relief ordered in the public interest or affirmative relief as the Commission is charged with safeguarding the public interest.
- **Summary of public comment:** No public comments received.
- **Recommendation:** The OGC recommends that the proposed changes be adopted.

APPENDIX

APPENDIX 1: Chart of MCAD Annual Report Data 1970-2025
APPENDIX 2: Public Comments to 804 CMR 1.00 Received Through March 26, 2026
APPENDIX 3: Court Commentary & Press Concerning Length of MCAD Case Processing
APPENDIX 4: M.G.L. c. 30A Notices for Promulgation of 804 CMR 1.00

APPENDIX 1

Chart of MCAD Annual Report Data 1970 – 2025[1]

Year	No. of Cases Filed	No. Of Investigator Staff	Annual State Appropriation	No. of Cases in Backlog[2]	LOPC Rate[3]
1970	1,005	21	$661,248	Backlog is acknowledged but specific number is not reported	
1971	1,017	21	$736,854	2,035* cases in case inventory	
1972	1,360	21	$789,081	Backlog is acknowledged but specific number is not reported	
1973	1,538	25	$831,567	Backlog is acknowledged but specific number is not reported	
1974	1,872*	No Annual Report available	No Annual Report available	2,800* cases over one year old	
1975	2,182*	No Annual Report available	$978,777*	4,310* cases in case inventory	
1976	1,741*	No Annual Report available	$731,175*	No Annual Report available	

[1] The Annual Reports vary widely in their approaches and data presented. This chart is compiled for ease of reference for the Commissioners' review of 804 CMR 1.00, notwithstanding that the articulated data points are not available for every year. While every effort has been made to present the data accurately, the Annual Reports themselves should be consulted as the official source of information. The Annual Reports and related reports to the governor with these data can be found in the state library archives (https://archives.lib.state.ma.us/home) and other data can be found in the 1974 Committee Report (https://archive.org/details/reportofcommitte1974mass).

[2] In the modern era, the Commission has defined the backlog as investigations open longer than 18 months. Many of the numbers in this column are total case inventory which undoubtedly included newer cases.

[3] The calculation of the LOPC rate also varied widely or was not reported over the years. The LOPC rate is included here only at the point of which it becomes consistently reported.

1977	1,709*	No Annual Report available	$785,464*	3,511* cases in case inventory	
1978	1,433*	No Annual Report available	$795,464*	Over 4,000* cases in case inventory	
1979	1,918*	Not reported	$975,000	2,237 cases in case inventory	
1980	1,954	Not reported	$1,000,000	2,251	
1981	2,009	Not reported	$1,054,704	2,563	
1982	1,641	Not reported	$932,969	2,163	
1983	1,802	Not reported	1,005,000	2,114	
1984	1,937	Not reported	$1,138,000	1,893	
1985	2,078	Not reported	Not reported	Not reported	
1986	2,470	Not reported	Not reported	Not reported	

1987	2,797	Not reported	Not reported	Not reported	
1988	3,149	Not reported	Not reported	Not reported	
1989	3,177	Not reported	Not reported	Not reported	
1990	3,097	Not reported	Not reported	Not reported	
1991	3,456	Not reported	$1,156,000	6,500	
1992	3,211	Not reported	$1,052,824	<6,500	
1993	3,551	Not reported	$1,164,713	1,216	
1994	>4,000	Not reported	$1,154,233	<500	
1995	>5,000	Not reported	$1,125,181	Unclear, but <1,000	
1996	4,950	Not reported	$1,169,225	Unclear, but <1,000	

1997	5,015	Not reported	$1,322,753	Unclear, but <1,000	
1998	~4,500	22	Not reported	Unclear, but <1,000	
1999	4,180	22	$1,589,522	Unclear, but <1,000	
2000	4,400	Not reported	$2,447,941	Not reported	
2001	4,006	Not reported	$2,974,961	Not reported	
2002	4,150	Not reported	$2,064,248	Not reported	
2003	3,328	Not reported	$1,494,521	Not reported	
2004	3,496	Not reported	$1,434,740	Not reported	
2005	3,406	Not reported	$1,665,012	Not reported	
2006	3,198	Not reported	$2,313,830	Not reported	

2007	3,413	16	$2,313,830	Not reported	
2008	3,657	23	$2,376,992	Not reported	
2009	3,323	19	$2,563,857	Not reported	
2010	3,308	21	$2,563,587	Not reported	77.70%
2011	3,195	25	$2,543,312	>700	75%
2012	3,186	24	2,543,312	1,215	74%
2013	3,224	25	$2,543,312	1,561	76%
2014	3,127	26	$2,568,237	1,804	83%
2015	3,042	25	$2,767,791	1,778	84%
2016	3,082	31	$2,898,657	960	87%

2017	2,951	25	$3,048,657	357	86%
2018	2,906	22	$3,207,196	386	86%
2019	3,364	Not reported	$3,800,000	285	86%
2020	2,778	Not reported	$4,047,794	802	83%
2021	2,463	Not reported	$4,169,189	1,214	83%
2022	2,822	Not reported	$4,400,144	1,416	83%
2023	3,086	Not reported	$7,641,395 (value of federal contracts covered for first time by Legistlature)	1,800	80.40%
2024	3,553	Not reported	$8,437,089	1,851	84%
2025	3,243	Not reported	$8,462,516	2,342	85%

* Data was found in an Annual Report or report to the Governor in a different year.

APPENDIX 2

Name	Organization (if applicable)	Date Received	Comment Section(s)	Page
Jessica Salcedo	N/A	12/7/2025	General Case-specific comments Internal policy suggestions 1.05 1.09 1.13 1.22	1
Thomas L. Saltonstall	MCAD Advisory Board	12/9/2025	General 1.04 1.05	4
Jessica Segill	N/A	12/17/2025	1.04	7
Susanne Cleveland	N/A	12/17/2025	General Case-specific comments Internal policy suggestions	8
Raphael B. Hirsch, Esq.	RBH Law Group PLLC	12/26/2025	1.02 1.04 1.05 1.08 1.15	10
Emily "Em" Byram Suzanne Chung	Worcester Housing Authority	1/15/2026	1.05 1.06 1.08	16
Matt Christoph	Global Partners LP	1/20/2026	1.05 1.06 1.15	21
Robert S. Mantell, Esq.	(On behalf of) MELA & GBLS	1/21/2026	Definitions 1.04 1.05 1.06 1.07 1.08 1.09 1.10 1.12 1.13 1.15 1.23	24
Michaela May	MELA	1/23/2026 (Public Hearing)	President of MELA presenting concerns about manner and substance of procedural regulations, noting lack of stakeholder participation prior to proposing draft regulations. MELA submitted written comment to supplement. Expressed belief changes to regulations will harm pro se complainants.	N/A
Cromwell Johnson	MELA	1/23/2026 (Public Hearing)	Co-chair of MELA MCAD subcommittee. Concern with eliminating in-person intake process.	N/A
Robert S. Mantell	MELA	1/23/2026 (Public Hearing)	Public Hearing testimony follows written comment submission. Concerns regarding intake, preliminary investigation, early dismissal, discovery, attorney's fees, etc.	N/A
Ellen Messing	LCR	1/23/2026 (Public Hearing)	Submitted written comments. Concerns over mail-in complaints, staff assistance, preliminary investigation, preserving PC standard, in-person appeals, attorney's fees, etc.	N/A
Anne Josephson	N/A	1/23/2026 (Public Hearing)	Concurs with previous comments. Submitted written comments.	N/A
Raphael Hirsch	MELA	1/23/2026 (Public Hearing)	Written only appeals undermines MCAD process and are due process violation.	N/A

Name	Organization (if applicable)	Date Received	Comment Section(s)	Page
Evan Bjorklund	City of Cambridge	1/23/2026 (Public Hearing)	Offered respondent-side commentary appreciative of preliminary investigation process. Didn't read this as eliminating investigation altogether. Commenting on timing of position statement and urges allowing additional time for respondents. Appreciative of motion for more definite statement, early mediation, expansion of discovery scope and inclusion of admissions, requests through portal, and predetermination motions to dismiss.	N/A
Anne Glennon	N/A	1/23/2026 (Public Hearing)	Concerns with removal of in-person intake and requiring use of portal.	N/A
Susanne Cleveland	N/A	1/26/2026 (Public Hearing)	Also submitted written comment. Comments relate to internal policy and case processing as a current complainant.	N/A
Donna Ashton	N/A	1/26/2026 (Public Hearing)	Commented on 1.05 and wanted more transparency on timing and status of cases. Requested training and clarification on access to portal.	N/A
Margaret Ishihara	N/A	1/26/2026 (Public Hearing)	Asked question, more than comment regarding standard for probable cause. Submitted written comment.	N/A
Margaret Ishihara, Esq.	Law Office of Margaret A. Ishihara	1/26/2026	1.08	33
Vanessa Williams	N/A	1/27/2026	1.07 Case-specific comments Internal policy suggestions	34
Monserrate Rodríguez Colón	N/A	1/28/2026 (Public Hearing)	Former Commissioner appreciated added language in 1.10 for discovery.	N/A
Kristina da Fonseca	SouthCoast Fair Housing	1/28/2026 (Public Hearing)	Also submitted written comment. Concerns that draft regulations express that certain claims are "too small" for Commission to investigate, grounds for dismissal before formal investigation are unfair, written appeals are a disadvantage compared to live hearings, concern regarding probable cause standard, requiring portal use, asks if geography will be considered in relation to "greater impact", pro se drafted complaints, and request for extension of public comment period.	N/A
Jeffrey A. Dretler	MCAD Advisory Board	1/30/2026	1.04 1.05 1.08 1.12 1.15 1.16 1.18	36
Mirian Albert, Esq.	Lawyers for Civil Rights, Brazilian Worker Center, Justice at Work, the Massachusetts Coalition for Occupational Safety and Health, the NAACP–Boston Branch, and the Urban League of	1/30/2026	1.04 1.05	42

Name	Organization (if applicable)	Date Received	Comment Section(s)	Page
	Eastern Massachusetts			
Timothy G. Kenneally, Esq.	Foley & Foley, PC	1/30/2026	1.04 1.05 1.08 1.10 1.12	53
Kristina da Fonseca, Esq. Jamie Langowski, Esq.Maureen R. St. Cyr, Esq.	SouthCoast Fair HousingCenter for Housing Justice & PolicyMassachusetts Fair Housing Center	1/30/2026	1.04 1.05	55
Iris Eileen Coloma-Gaines, Esq.	Massachusetts Law Reform Institute 40 Court Street, Ste. 700 Boston, MA 02108	1/30/2026	1.13 1.15 1.20	62
Iván Espinoza-Madrigal, Esq. Ellen Messing, Esq. Oren Sellstrom, Esq. Mirian Albert, Esq. Sophia Hall, Esq.	Lawyers for Civil Rights	1/30/2026	1.04 1.05	66
Reid Wakefield, Esq.	Mirick, O'Connell, DeMallie & Lougee, LLP	1/30/2026	1.04 1.05	80
Erin Chow	Seyfarth Shaw LLP	1/30/2026	1.04 1.05 1.06 1.08 1.09 1.10 1.13 1.15 1.22	83
Anne Josephson	GLAD Law Jewish Alliance for Law & Social Action ACLU of Massachusetts Disability Law Center	1/30/2026	1.04 1.05 1.08	91
Paul Merry	N/A	1/30/2026	1.04 1.05 1.06 1.08 1.10 1.12 1.13	102
Alycia Kennedy, Esq.	Community Legal Aid	2/2/2026	1.04 1.05	110

Name	Organization (if applicable)	Date Received	Comment Section(s)	Page
			1.07 1.12	
Natalie Groot	Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C	2/9/2026	1.04 1.05	117
Elyse Best	N/A	3/6/2026	1.04 1.05 1.08 1.09 1.10	119
Mike Avitzur Suma V. Nair	BBA's Civil Rights & Civil Liberties Section	3/11/2026	1.04 1.05 1.08	130
Anne Kearney	N/A	3/13/2026	Definitions 1.04 (7)	134
Nina Tepper	Barnstable County Human Rights Advisory Commission	3/19/2026	1.04	135
Richard Stagnone	N/A	3/30/2026	1.04 1.21 Case-specific comments	136

From:	Jess Salcedo
To:	MCADProRegs (CAD)
Cc:	Fierza Jess
Subject:	Public Comment on Draft MCAD Procedural Regulations – Comment from Jessica Salcedo, active complainant
Date:	Sunday, December 7, 2025 2:19:48 PM

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Dear Commissioners,

My name is Jessica Salcedo, and I am submitting this comment as an active MCAD complainant, a whistleblower who endured extensive retaliation, and a person whose case highlights the exact procedural gaps the updated regulations are attempting to correct.

---

1. Retaliation After Protected Activity Must Be Treated as a Major Violation

In my case, retaliation escalated immediately after reporting discrimination and hostile environment concerns. Employers should not be able to continue harming a complainant during an active MCAD investigation without fear of enforcement. Updated regulations should clearly define retaliation during an open case as an aggravating factor that triggers automatic escalation.

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2. Spoliation and Evidence Manipulation Require Stronger Rules

I experienced deleted video evidence, altered documentation, and the disappearance of recordings that directly supported my claims. Stronger procedural rules should require employers and state agencies to preserve all relevant records from the moment they become aware of a complaint or protected activity. Failure to do so should carry explicit penalties.

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3. Systemic Harassment ("Mobbing") Must Be Recognized and Addressed

What happened to me was not one individual acting alone. It was group retaliation tolerated—and in some cases encouraged—by leadership. Mobbing behavior should be identified as a structural failure within an organization, not a series of isolated incidents. Regulations should reflect that organized harassment intensifies liability.

---

4. Employer Behavior During an Open MCAD Case Must Be Enforceable

After filing, my employer continued to retaliate, escalate hostility, and use PR campaigns to undermine me publicly. There must be a clear mechanism for MCAD to intervene when an

employer behaves aggressively or strategically during an ongoing complaint. Regulations should empower MCAD to act before the situation becomes uncontainable.

---

5. Collateral Financial Damage Must Be Formally Acknowledged

Retaliation did not just harm my employment. It endangered my home, destroyed my credit, jeopardized my loans, forced me to access my 401(k), and left me without unemployment benefits after an illegal denial by Mass Unemployment. Updated regulations should explicitly recognize that financial devastation is a foreseeable consequence of retaliation and should be considered in damage assessments.

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6. Ignored Communications to MCAD Left Me Unprotected

Before my case was transferred to Worcester, I contacted MCAD multiple times through official .gov channels while under duress. These emails reported escalating retaliation and requested assistance. They went unanswered or pushed back. A City of Worcester official—the Commissioner of Health—was included in these threads and instructed me to contact MCAD, yet no one responded accordingly. This silence created a window in which my employer felt emboldened to escalate retaliation.

Regulations should require timely acknowledgment of complainant communications, especially those containing indicators of distress or imminent retaliation.

---

7. I Was Fired Within Hours of Informing MCAD I Would Go to the Press

On the same day—within hours—of notifying MCAD that I planned to go to the press and request resignations due to unresolved retaliation, I was terminated. This timing is not coincidental. It demonstrates why early MCAD engagement is essential. When employers perceive agency silence, they take liberties they would not otherwise take.

Regulations should prohibit administrative inaction when imminent media escalation or retaliation is reported, as this is precisely when employers retaliate most aggressively.

Recommendations

I respectfully recommend the following additions to the updated procedural regulations:

Required acknowledgment of complainant communications within defined timeframes.

Mandatory triage for emails indicating distress, retaliation, or safety concerns.

Escalation procedures when municipal or state officials are copied on complaint-related

threads.

Clear prohibitions and consequences for retaliation occurring during an active case.

Explicit recognition of financial, emotional, and reputational harm as compensable damages.

Stronger evidence preservation standards with penalties for spoliation.

Conclusion

My case demonstrates how procedural gaps can leave a whistleblower vulnerable at the exact moment they most need protection. Your proposed revisions move in the right direction, and I urge you to incorporate stronger enforcement and communication requirements to prevent future harm to complainants like me.

Thank you for your work and for allowing public comment.

Sincerely,
Jessica Salcedo
Massachusetts Resident
Whistleblower & MCAD Complainant

STATEMENT OF THOMAS L. SALTONSTALL, MEMBER, THE MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION (MCAD) ADVISORY BOARD AT ITS MEETING ON DECEMBER 9, 2025.

Good Afternoon.

For those of you who don't know me, I am Tom Saltonstall. By way of background, I formerly served in various positions at the United States Equal Employment Opportunity Commission in the 1980's, first in Washington, D.C. as Director of its State and Local Programs Division and subsequently as Acting Director of the Office of Field Services, responsible for management of its 49 District and Area Offices across the United States. I concluded my work at the EEOC by serving as Director of its Boston Area Office for three years, with responsibility, among other things, for its investigative enforcement activities under the Equal Pay Act, the Age Discrimination in Employment Act and Title VII of the Civil Rights Act throughout the New England States.

I began my association with the MCAD even before my work at the EEOC, working as a consultant with Glendora Putnam when she chaired the Commission, and I became a Member of this Advisory Board, along with my colleague Jeff Hirsch, when we were appointed nearly 25 years ago by Acting Governor Paul Celucci. We are the longest, continuously serving members of this Advisory Board in the Commission's history.

I come to this meeting, the last in my service to the Commission, to voice my opposition to the proposed amendments to the MCAD's Procedural Regulations as well as the recently enacted amendments to its enabling legislation in the strongest terms I am able to muster. I do so for two reasons: the substance of these dramatic changes and the processes by which they have been and continue to be developed.

Currently constrained by several significant disabilities, I must be brief.

As to substance, the proposed regulations and enacted amendments unfairly tilt what has largely been a level playing field since the Commission's creation to one favoring respondent employers and

realtors to the detriment of charging parties, especially the poor, the indigent, and all plaintiffs who need assistance in understanding and pursuing their civil rights.

Are we really going to institutionalize by regulation the position that an entry-level employee's discriminatory discharge is less important than the unlawful firing of an executive? Or let a racist landlord who refused to lease an apartment to an applicant who was black off the hook because that applicant was able to find other, comparable housing promptly thereafter, thereby minimizing the racist's liability? Will we actually require charging parties to name those responsible for discriminating against them in failure to hire cases? In most cases, such a task is impossible for a complainant to carry out.

Further as to substance, the proposed regulations and enacted amendments dangerously centralize the Commission's power and authority in the Office of its Chair, marginalizing and trivializing the role of other Commissioners.

Will we really permit one individual to dismiss a meritorious case on the basis that other cases have more impact, and to do so with no avenue of administrative appeal available, nor any check and balance on the part of other Commissioners? Will we really turn our backs and the clock on the civil rights community's decades-long, successful battles to make MCAD Commissioners full-time and to require that one of three reside in Western Massachusetts and another on the South Coast, areas in the Commonwealth which had lacked representation on the Commission for far too long?

And will we actually celebrate these damaging, substantive changes benefitting respondents to the detriment of those the Commission was established to protect under a spurious pretext of "reform" and "modernization" of the Commission's operations?

As to process, I find it an absolute outrage that civil rights organizations were not part of the working groups that devised these changes. Further as to process, I find it similarly objectionable that that the Members of this Advisory Board were given but a week's notice to review the proposed regulations and come today prepared to discuss their content.

Further, rightly or wrongly, I believe that the exclusion of civil rights groups from the tables where and when these one-sided, deleterious changes were devised was deliberate.

What the current, national administration is doing to upend the Civil Rights Acts, and the Voting Rights Act is far from bad enough. But now, in the Commonwealth of Massachusetts of all places, are we really going to seriously undermine the protections incorporated in Chapter 151B?

Now in the end stage of a terminal disease and currently hobbled by pain caused by another disability, these will likely constitute my last words concerning the MCAD and its operations. I have communicated to Governor Healey's Office my intention to resign from the Advisory Board, effective at the end of this month.

In closing, I admit to being absolutely mystified and frankly appalled that Her Excellency, with a previously proud, powerful and praiseworthy civil rights record, would be a party to this misguided proposal.

Outlook

Keep 300 day filing deadline

From Jessica S. <jss4856@gmail.com>
Date Wed 12/17/2025 11:07 AM
To MCADProRegs (CAD) <MCADProRegs@mass.gov>

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Hello,

Please keep the 300 day filing window, do not change it to 120 days.
People are confused enough with this process. The window for filing
should remain the same 300 days.

Thank you for your time, Jessica Segill

Outlook

MCAD Procedural Regulations: Public Comment

From Susanne Cleveland <susannecleveland75@gmail.com>
Date Wed 12/17/2025 2:52 PM
To MCADProRegs (CAD) <MCADProRegs@mass.gov>
Cc Sarah Burger <sburger@burgerlawgroup.com>

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Subject: Public Comment on MCAD Investigative Policies and Case Processing

Date: December 17, 2025

To the Massachusetts Commission Against Discrimination,

My name is Susanne Cleveland. I am a Massachusetts resident and a current complainant with a pending MCAD matter. I submit this comment in response to MCAD's request for public input regarding its policies, procedures, and the conduct of its investigative operations.

My purpose in submitting this comment is not to seek adjudication of my individual complaint, but to provide feedback on systemic practices that affect complainants' ability to meaningfully access the MCAD process.

My complaint, filed in 2022, has remained pending for an extended period and has been subject to multiple investigator reassignments and prolonged intervals with little or no substantive communication. While I have complied timely with all requests made of me, the absence of predictable timelines, consistent points of contact, and regular status updates has made it difficult to understand the progression of my case.

Based on this experience, I respectfully raise the following policy and operational concerns for MCAD's consideration:

- Frequent investigator reassignment without clear continuity or formal handoff procedures

- Lack of standardized timeframes or required communication intervals for complainants
- Limited transparency regarding investigative stages and expected case progression
- Absence of a clear escalation or review mechanism for cases pending beyond standard time thresholds

I respectfully recommend that MCAD consider policy improvements such as routine case-status notifications, structured transition protocols during investigator changes, publication of general investigative timelines, and the establishment of escalation pathways for aged cases. These measures would improve transparency, accountability, and confidence in the process for all parties.

I appreciate the Commission's willingness to solicit and consider public input. This comment is submitted in good faith with the goal of supporting improvements that enhance fairness, efficiency, and trust in MCAD's work.

Sincerely,

Susanne Cleveland

Massachusetts Resident

Raphael B. Hirsch, Esq.
Admitted in: MA &
U.S. Dist. Court for MA
rhirsch@rbhlawgroup.com

RBH LAW GROUP PLLC

1660 Soldiers Field Road
Suite 7 #1073
Boston, MA 02135
857.500.7400

December 26, 2025

By Electronic Mail Only

Justine LaVoye
Massachusetts Commission Against Discrimination
1 Ashburton Street
Suite: 601
Boston, MA 02108

Dear Justine LaVoye,

Thank you for reaching out to me via email to review the draft regulations for comments regarding the change in MCAD rules of procedure. I am most pleased to be included. I was present at the Youtube open meeting wherein it was announced that the cyber-portal would "be a thing." Little did I know I would be reviewing them and giving my feedback.

I have attached a formal letter to this document with my comments. I have never commented on proposed regulations before, so I hope the format I used is acceptable. I asked "Counselor GPT," what the format is supposed to look like, if it is not correct or passable, please let me know and I will revise accordingly. I thank you in advance for this awesome and unique opportunity.

If possible, when the MCAD holds its open meeting about the public comments, I would like to attend if may. I do not know how to get invited, but it is something that interests me. Thank you again for reaching out to me. My comments are on the attached letter.

Best,

/s/ Raphael B. Hirsch
Raphael B. Hirsch, Esq.
RBH Law Group PLLC
1660 Soldiers Field Road
Suite 7 #1073
Boston, MA 02135
rhirsch@rbhlawgroup.com
Tel. 857.500.7400

cc: MCADProRegs@mass.gov

Raphael B. Hirsch, Esq.
Admitted in: MA &
U.S. Dist. Court for MA
rhirsch@rbhlawgroup.com

RBH LAW GROUP PLLC

1660 Soldiers Field Road
Suite 7 #1073
Boston, MA 02135
857.500.7400

December 26, 2025

By Electronic Mail Only

Massachusetts Commission Against Discrimination
C/O: MCADProRegs@mass.gov
1 Ashburton Street
Suite 601
Boston, MA 02108

Re: Public Comment on Massachusetts Commission Against Discrimination Proposed Rules of Procedure

Brief Introduction

Pursuant to the Massachusetts Commission Against Discrimination's invitation to comment on the Proposed Rules of Procedure, I hereby submit this comment on behalf of myself, a litigator who owns RBH Law Group PLLC, which regularly represents Complainants in Massachusetts Commission Against Discrimination ("MCAD") proceedings. My legal practice and many clients will be directly subject to the proposed amendments to the 804 CMR 1.00 Rules of Procedure. Through my reading of the proposed rules conducted in December of 2025, it appears that a significant revamp of the MCAD itself is underway.

The below comments in this document are my own considerations, thoughts, and opinions regarding the proposed rules based upon practicing discrimination law exclusively from the Complainant side since 2018. My relevant MCAD experience is primarily in employment law,

although I have worked in the housing side before. I have volunteered with both prominent low-income employment law nonprofits in Boston (specifically geared towards fair employment law practices), and with the Massachusetts Bar Association's Dial-a-Lawyer program wherein I advised callers on MCAD practice. I currently serve on the MCAD Committee in the Massachusetts Employment Lawyers Association.

Comments on the Proposed MCAD Rules of Procedure

The proceeding paragraphs are my comments on the Proposed MCAD Rules of Procedure. My comments are in the order in which the rules themselves are read, beginning with 1.01 and continuing thorough 1.25. This decision was made for ease of reading. Thus, my comments begin below by addressing 1.02, as 1.02 was the first proposed regulation that I decided to comment upon.

The proposed definition of "Administrative Dismissal" in *Definitions* 1.02 is concerning, in that it "means a case dismissal that may occur..." As drafted, this provision seems stringent. To address this issue, and remain in balance with MCAD's statutory objectives, and balance public policy, I recommend modifying "may occur" to "can occur."

I support removing the verification component of a Complaint when signed by an attorney, in accordance with 1.04 (5) *Form*. This pragmatic change helps streamline the process of filing Complaints, especially given that most Complaints will be conducted via the cyber-portal as soon as it goes live.

My reading *Manner of Filing* 2(a)-1-5 makes clear that the cyber-portal will now be the rule of the land. My concern is that anyone (and perhaps even AI) could create and log into the portal and file whatever they want, whenever they want. As a practitioner, it is not unusual to inherit *pro se* Complainants' filed Complaints, (or at least review them before ultimately determining

representation). In these matters, practitioners often amend the Complaints and conduct an assessment on the validity of removal to court or likelihood of a Probable Cause finding at MCAD. However, when the Complaint on file is dreadfully written, a *pro se* Complainant is less apt to find representation.

When participating in a limited scope of representation, such as for an MCAD mediation, the basis of the scope of representation in the case to be mediated is based upon review of the pleadings, with the Complaint as the backbone. At-risk and already marginalized individuals may find themselves prejudiced because of mandatory cyber filings. Further, it is not inconceivable that AI would help draft a Complainant's pleading and simultaneously be both so wrong and so uplifting that the Complainant is persuaded that their AI results is how the MCAD works, thus giving them unmerited confidence leading to disaster. I do not have a suggestion on how to handle these issues except that perhaps once the new rules are implemented, the MCAD will determine if such concerns come to fruition.

On the *Time of Filing* (3) it is nice that the proposal alleviates confusion and mentions "any statute" while incorporates the "discovery rule" language, which seems to have been stricken from *Equitable Tolling*. Hopefully the Statute of Limitations eventually increases to either a full year, or to three years, bringing it in the same timeframe as many other civil causes of action. Even 300 days is strict, and many people do not know their rights.

Regarding *Dismissal* at 1.05 2(b)8 where there is "tenuous nexus between protected class discriminatory conduct" this is problematic as the clause makes disparate impact claims and unconscious bias claims (difficult to begin with), substantially more difficult to win, and risk dismissal. Insofar as *id.* at 8, there is no rule determining what *de minimis* monetary and non-monetary harm is, and as a subjective standard, it is fundamentally and significantly advantageous

to the Respondent side. Regarding *id.* at 9, as a practitioner, this has long been understood as an *unwritten* rule. It is great to see it codified.

In 1.15 *Parties*, specifically 11-16 suggests that predetermination MCAD practice is not the practice of law, and that anyone can represent a client from Complaint to investigative conference. This is questionable policy. Many severe issues may arise. Further, after reading the rules, it is unclear that if Complainant elects mediation with Respondent, whether the DAR or non *pro hac vice* attorney would be representing them in a mediation with binding results. Sadly it is unlikely that a DAR would adequately possess the relative sophistication to advise whether a settlement is a good or bad idea and the legal implications contained on the term sheet and settlement, how to valuate a case, the application of existing case law to the facts at hand, and assessing the likelihood of success of further pursuing the case on the merits at MCAD or in Superior or Federal Court. This would also imply that a DAR or non *pro hac vice* attorney can engage in motion practice such as motions to Amended the Complaint, and Motions for a More Definitive Statement.

The *Reconsideration* 1.08 regulations are quite useful to clarify the rules. However, the appellate modifications *id.* being changed to strictly written appeals except to accommodate disability is in contravention of public policy. *Pro se* litigants may lack the ability to draft a persuasive appeal, and if the only way to get an in-person appeal is to have a disability, that creates problems of inequity wherein disabled Complainants are treated better than similarly suited Complainants who are not disabled. There is seemingly nothing about serving the written appeal upon Respondent. Serving the appeal on opposing counsel seems like something that should be done in the interest of justice since it is a written pleading. The only rule is that it must comply with is 1.08(b), and 1.08(b) describes the methodology to withdraw a case to court.

Conclusion

As the MCAD transitions to a more cybercentric platform, undoubtably issues will present themselves. The proposed Rules of Procedure are a strong roadmap to for practicing discrimination law during the transition and beyond. All *pro se* litigants and employment lawyers, both for Complainant and Respondent side should familiarize themselves with such rules.

Best,

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January 15, 2026

PUBLIC COMMENT SUBMISSION
Regarding Draft Revised Procedural Regulations – 804 CMR 1.00
Massachusetts Commission Against Discrimination**

Submitted by:
Worcester Housing Authority (WHA)

I. Introduction

As the second-largest public housing authority in Massachusetts, WHA serves approximately 3,000 households in public housing and administers over 4,000 Housing Choice Vouchers, the Worcester Housing Authority appreciates the opportunity to comment on the Commission's proposed revisions to 804 CMR 1.00,The WHA frequently works with MCAD and fully supports the Commission's mandate to eradicate discrimination.

However, WHA also experiences a high volume of unfounded or retaliatory complaints that sap the resources of MCAD and impose unnecessary strain on public resources, diverting valuable funds as well as staff time and expertise to address matters where no adverse action occurred or allegations are objectively implausible, unverified, or unsupported.

Even when dismissed, these matters impose significant costs to both MCAD and the public.

While the draft regulations represent an important modernization effort, the WHA respectfully submits the following recommendations to ensure the new framework reduces frivolous filings, increases efficiency, and preserves equitable due process for respondents while maintaining MCAD's core mission.

II. Recommendations and Requested Modifications

1. Strengthen Early Screening and Mandatory Preliminary Dismissal Standards

Relevant Sections: 1.05(2)(a)-(b)

The draft allows MCAD to dismiss complaints during preliminary review when allegations are vague, implausible, or lack jurisdiction. WHA strongly supports this and urges MCAD to require dismissal where minimum factual and legal standards are not met.

Requested Revisions

MCAD should:

- Require dismissal where a complaint fails to allege:
    - a protected class,
    - a specific adverse action, or
    - a plausible causal connection.
- Require complainants to cure deficiencies before investigation proceeds.
- Allow dismissal where factual allegations are objectively unverifiable or demonstrably false.

Rationale

Where a filing has no discrimination nexus whatsoever, dismissal serves the public interest by removing baseless matters before significant public resources are used to address them.

2. Create Guardrails for Serial, Vexatious, or Bad-Faith Filers

Relevant Sections: 1.04; 1.05; 1.08

Many public agencies, including the WHA, encounter repeat filers who use MCAD not as a sheild against discrimination, but as a sword against the agency to strategically retaliate against management decisions.

Requested Revisions

Add a provision allowing:

- Administrative dismissal of repetitive complaints arising from the same or substantially similar facts.
- A mechanism to identify a complainant as a vexatious filer after multiple frivolous filings.
- Heightened pleading requirements for repeat or abusive filers.

Rationale

These modifications would protect the integrity of the compliant process, and prevents MCAD from being used as a weapon by those who may be aggrieved by an agency's decisions, but without a discriminatory animus.

3. Require Verification for Any New Allegations Added Through Amendments or Rebuttals

Relevant Sections: 1.04(5), 1.04(8), 1.05(9)

Only the initial complaint must be verified. Amendments, supplemental allegations, and rebuttals may introduce new factual assertions without verification.

Requested Revisions

- Require verification under penalty of perjury for any filing that introduces new factual allegations, including amendments and rebuttals.
- Require complainants to certify the truth of new assertions before MCAD relies on them in its determination.

Rationale

Truth is a core tenant of MCAD's work. Verification of facts alleged as true serves this greater mission, while permitting allegations without verification detracts from this goal and adds layers of discovery needed to substantiate subsequent claims.

4. Limit Amendments That Expand Claims Outside the Original Factual Basis

Relevant Sections: 1.04(8)-(10)

Amendments "relate back" by default and may be made "at any time," including after certification.

Requested Revisions

- Limit amendments to allegations that arise from the **same nucleus of operative facts** as the original complaint.
- Prevent amendments that add entirely new factual scenarios outside the statutory filing period.
- Require MCAD to balance **prejudice to the respondent** when considering amendments.

Rationale

It is an unfair burden upon public agencies to defend against new or unrelated allegations that were never part of the original complaint or investigative record.

7. Require Full Disclosure to Respondents of All Rebuttal Information Considered by MCAD

Relevant Sections: 1.05(9)

Verbal rebuttals or materials submitted privately may inform MCAD's decision without respondents ever seeing them.

Requested Revisions

- Require MCAD to share all rebuttal information—written or verbal—that it considers in making a determination.
- Require documentation of any verbal rebuttal.

Rationale

The right to face and respond to one's accuser is a critical component of both substantive justice and a complete investigation. Failure by MCAD to afford respondents the opportunity to know or respond to a rebuttal is a failure to meet this call.

8. Clarify the Use of "Public Interest" Standards

Relevant Sections: 1.05(2)(b)(9); 1.08(1)(d)

The "public interest" standard is broad and allows retention of very low-level disputes.

Requested Revisions

- Define "public interest" with objective criteria.
- Clarify that isolated interpersonal disputes, minor administrative actions, and issues untethered to discrimination do not warrant full MCAD investigation.

9. Narrow the Burden of the Record Preservation Requirement

Relevant Sections: 1.05(1)

The requirement to preserve "all manner and forms of information and documents" is extremely broad and burdensome to large public agencies.

Requested Revisions

- Limit preservation duties to documents reasonably related to the allegations or foreseeably relevant to investigation.
- Provide guidance on scope, duration, and proportionality.

10. Expand Early Resolution and Mediation Pathways

Relevant Sections: 1.06

WHA strongly supports early resolution opportunities, but is hampered by these being afforded only to HUD housing complainants.

Requested Revisions

- Offer mediation early in all cases—not only HUD housing complaints.
- Create an Early Resolution Track for:
    - unverified claims,
    - minor disputes,
    - workplace or tenancy conflicts without a clear discrimination component.

Rationale

Early intervention reduces MCAD backlog, reduces overall administrative burden, and provides more prompt relief to both complainants and respondents.

III. Conclusion

MCAD's efforts to modernize its procedural framework is a welcome development, and the WHA urges the Commission to adopt the alterations above to: Reduce frivolous and retaliatory filings,

- Improve investigative efficiency,
- Protect limited public resources, and
- Strengthen the integrity of the complaint process

These revisions would create a more balanced, fair, and streamlined system while fully preserving MCAD's mission to eliminate discrimination across the Commonwealth.

WHA welcomes continued dialogue with the Commission as it finalizes these important regulations.

Thank you.

Sincerely,

Suzanne Chung

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WHA General Counsel

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January 21, 2026

Via Email: MCADProRegs@mass.gov
Sunila Thomas George, Chairwoman
Massachusetts Commission Against Discrimination
1 Ashburton Place, Suite 601
Boston, MA 02108

Re: Public Comment - Massachusetts Commission Against Discrimination Draft MCAD Procedural Regulations

Dear Chairwoman George,

On behalf of Global Partners LP ("Global"), a leading owner, supplier and operator of liquid energy terminals, fueling locations, and retail experiences located in—*and proudly serving*—the Commonwealth of Massachusetts for nearly 100 years, we submit these comments regarding the proposed updates to the Massachusetts Commission Against Discrimination's ("MCAD") Procedural Regulations, published on December 4, 2025.

As explained below, the proposed updates would benefit from *additional* revisions to ensure claims are resolved quickly, litigants are better served, and matter handling is streamlined. We appreciate the opportunity to contribute our views during the public comment period.

About Global Partners

Global's headquarters are located at 800 South Street, Waltham, Massachusetts. Global owns, leases and/or supplies, approximately 1,700 convenience stores and gasoline stations in a number of states, including 162 throughout Massachusetts.

General Position

We support many of the proposed updates to Massachusetts Commission Against Discrimination's Procedural Regulations. In particular, we celebrate the technological advancement and use of the electronic case management system, the "MCAD Case Portal," similar to the Equal Employment Opportunity Commission's ("EEOC") 2016 implementation of the Respondent Portal, the first digital charge system, now fully operational across 53 EEOC offices nationally. These systems reduce manual intake processing, free up MCAD staff to assist *pro se* filers, and allow for real-time updates to parties, among other significant benefits.

However, there are certain areas of the proposed updates which may stifle the charge filing process, diminish the ability for matters to settle and resolve timely, and add unnecessary cost to claimants and respondents, and delay complaint processing. As explained more fully below, the Commission should consider additional revisions to help parties before the Commission going forward.

Suggested Modifications to Proposed Regulations

(a) Investigation & Answer to Complaint (Section 1.05)

MCAD should be required to complete an investigation within a set time period and build consequences into the proposed regulations for failure to comply. Section 1.05(5)(b) reads, "Complaints Other Than Housing Complaints. The investigation of a complaint alleging discrimination in all areas within the jurisdiction of the Commission other than housing complaints shall be completed no more than 18 months following receipt of the complaint, unless it is impracticable to do so."

The EEOC is subject to EEOC Management Directive 110. The Directive establishes clear deadlines for EEO complaint processing, requiring the agency to complete an investigation within 180 days of filing. To be fair to both claimants and respondents, respectively, speedy investigations help all parties resolve matters earlier and more favorably. While many state fair employment practices agencies do not publish time standards, Massachusetts should either mirror the federal counterpart or consider doing better for parties before the Commission. Respectively, the Commonwealth has an opportunity to set itself apart. Similar to pay equity and other landmark legislative actions and judicial decisions (for instance, *Goodridge v. Department of Public Health*), Massachusetts should lead in this area. The 2024 Fiscal Year annual report for MCAD noted an investigative backlog of 1,851 cases which remained pending for over 18 months (which was a 3% increase from 2023). We would recommend MCAD specifically mandate complaints be resolved no more than 180 days following filing of the complaint.

(b) Mediation (Section 1.06)

Mediation is well-suited for many agency matters. Alternative dispute resolution through a less formal, confidential, quick and inexpensive forum versus a public hearing is ideal, allowing parties to have greater control over the outcome. In 2024, 425 cases were resolved through mediation and conciliation at MCAD which was an increase from 400 in 2023. This is a testament to the desire of parties to get these charges resolved cheaply and quickly.

If a matter is scheduled for mediation, the respondent's duty to file a position statement should be ***tolled***. MCAD currently requires parties to file position statements despite scheduling of a mediation which diminishes settlement potential on cases. Drafting and filing a position statement costs between $5,000-$10,000 on average which, depending on the industry and claimant, may far exceed the total damages which the claimant would receive through formal litigation. This cost could, potentially, be used towards settlement which benefits the claimant. Requiring a position statement to be filed despite a scheduled mediation is both impractical and not the best use of financial and human resources.

Respectfully, we would recommend the following regulatory language be added to Section 1.06(g):

If both parties agree to mediate a complaint prior to the answer to the complaint / position statement filing deadline, the Commission shall toll respondent's requirements under Section 1.05(8) until mediation is concluded.

(c) Parties & Representatives (Section 1.15)

Complaints are often sent to the wrong businesses and matters are delayed from improper service on parties. Over the years, MCAD staff have been left to the guidance of aggrieved current and former employees regarding their employer, their employer's identity, their employer's address, and the appropriate entity for service of process. This word-of-mouth approach lends itself to untimely service of process and delayed charge processing. We can do better.

To ensure the appropriate entity is named in the charge of discrimination and served appropriately, charging parties should be required to bring a paystub or W-2 from their former employer when filing a charge. This will resolve the issue of the wrong entity being served and help MCAD, through the Secretary of State's office or a federally required document like a W-2, to send the complaint to the appropriate agent for service.

Request for Agency Consideration

We respectfully request the Commission incorporate these suggested revisions for the sake of charging parties, respondents and the public welfare. By streamlining matters and encouraging low-cost mediation, more claims will be disposed early on to the benefit of lower wage workers and employers. Furthermore, by holding MCAD to timelines for investigation and conclusion of matters, we will serve the public and ensure charges are handled, litigated and resolved timely.

Conclusion

We thank the agency for its efforts and remain committed to working constructively to finalize a workable rule that furthers the intended policy objectives while minimizing unintended burdens on businesses.

Sincerely,
matthew christoph
Matthew E. Christoph
Vice President, Legal
Global Partners LP
matthew.christoph@globalp.com

MELA Massachusetts Employment Lawyers Association, Inc.

January 21, 2026

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Re: Comments to the MCAD's Proposed Procedural Regulations

To the Massachusetts Commission Against Discrimination:

The Massachusetts Employment Lawyers Association (MELA) and Greater Boston Legal Services (GBLS) hereby submit their comments to the MCAD's proposed procedural regulations. We appreciate the opportunity to comment and remain available if the Commission seeks further explanation or input from our organizations.

The comments go through the proposed regulations serially and their order should not be seen as a reflection on their importance or priority.

PUBLIC COMMENTS

Personal Service definition: The regulation should be amended to permit service at a person's "last and usual place of above **or place of work** of such person." Most of the actors will be known to the Complainant only through her work. Therefore, it makes sense to permit service at the place of work of individuals.

Pre-determination definition: Pre-determination means the period of time between the filing of a complaint and the issuance of an investigation disposition **during which the Commission is investigating the complaint**.

We suggest the deletion the bold portion, which wrongly suggests that the pre-determination designation only applies during a subset of the period between the filing of the complaint and the issuance of the investigative disposition, during which there must be an active investigation ongoing. The bolded portion leads to a misleading and overly narrow understanding of the pre-determination period and does not add anything to the definition.

Preliminary Appeal definition: We suggestion the deletion of the word "informal", which does not add anything of substance to the definition. The right to appeal is found in G.L. c. 151B, § 5, is obtained "as a matter of right," and one wonders what aspect of its existence is deemed "informal." It

wrongly implies that there is a different procedure for those seeking a "formal" appeal, which would somehow be taken more seriously.

1.04(2)(a)(3): Filing by Mail. This provision states that filing by mail is "strongly discouraged and may cause delay in the processing of the complaint." In general, pro se complainants file by mail because they have to. The message from this proposed regulation is that mailed complaints will be de-prioritized; the reference to delay feels like a threat. We urge a more neutral way to communicate that the primary way the Commission expects to receive complaints is through the Portal. The negativity indicated here poses the danger of dissuading certain people from filing at all. This danger will be further highlighted in the discussion of section 1.15(16), below.

1.04(2)(b) – deleted. Intake Process: The proposed regulations eliminate the in-person intake process, which permits employees to come to the Commission's office and consult with a knowledgeable representative for the purpose of perfecting and filing a claim. It is a process extremely popular with pro se complainants and is helpful for people who are unsure of their rights and the relevant procedures. The intake process is successful in bringing an enormous amount of information to the commission.

The elimination of this process for approaching the commission is an absolute tragedy. Over one third of all complaints are filed through the intake process, because it assists individuals who need the help. It is an invaluable resource for the underserved, those with limited English proficiency and limited technology skills or accessibility. And the Commission is obligated to be accessible. The consequences of failing to provide the resource is dire, as an inadequate charge of discrimination may waive crucial c. 151B rights forever.

The idea that all pro se, unsophisticated or less articulate complainants could identify all potential statutory claims, the names and contact information of all appropriate respondents, describe supporting evidence for each claim, along with witnesses, and enter all this in a web portal, is fanciful. A website portal could never replace the competence of the trained investigators and supervisory oversight currently available during the intake process. The elimination of the process will drastically curtail both the number of discrimination charges filed and the sufficiency of the information contained therein.

The proposed regulation is all more concerning given that the MCAD is now declaring for itself the right to dismiss, on preliminary investigation, charges that it considers to be vague, implausible, incapable of verification, or insufficiently supported with respect to "nexus" between protected trait and the adverse action. See 1.05(2)(b). This represents a double-whammy, where the Commission is inviting less competent, incomplete complaints and then proactively dismissing such complaints without full investigation as lacking sufficient detail. We strongly request the Commission re-think the elimination of the intake process. At the very least, the web portal should give an in-person option to those who need it.

1.04(3): Discovery Rule. Change the proposed second sentence to: "The period in which to file a complaint under any statute within the Commission's jurisdiction commenced on the date that the Complainant knew or should have known of **the cause of action**."

The Commission proposes that the standard be whether the Complainant "knew or should have known of the unlawful conduct." This language is restrictive, and appears to imply that where a complainant knows of an adverse action, that knowledge alone starts the clock, even if she does not have information indicating that the adverse action was discriminatory. Such an interpretation would be wrong.

The language proposed by MELA starts the clock whether the complainant knows or should have known of the "cause of action." MELA's language is consistent with, Riley v. Presnell, 409 Mass. 239, 244 (1991), which commences the limitation period where "the plaintiff actually knows of the cause of action or when the plaintiff should have known of the cause of action." Likewise, the SJC has elsewhere stated that the discovery rule applies, specifically to c. 151B, "when a plaintiff knew or should have known of the existence of a cause of action." Silvestris v. Tantasqua Reg'l Sch. Dist., 446 Mass. 756, 767 (2006). For example, a limitations period does not begin the run in an age discrimination claim until the plaintiff knows or reasonably should know of his or her replacement by a younger employee. Wheatley v. American Tel & Tel. Co., 418 Mass. 394, 398 (1994). While the MCAD's proposed language is susceptible to an interpretation consistent with these precedents, it is also susceptible to a much narrower interpretation, which would start the clock merely upon knowledge of an adverse action, before there was any hint of a discriminatory motive. It cannot be wrong to quote the SJC, and the MCAD should do so in this regulation.

In the alternative, the discovery rule is also mentioned in 804 CMR 1.04(4)(a), which talks about when a complainant "knew or should have known that the matters raised in the grievance would support a claim of discrimination." That version of the discovery rule is clear and correct, and MELA would support using similar language in 1.04(3).

1.04(3): Wheatley Rule. MELA proposes adding a third sentence to 1.04(3). **The filing deadline does not begin to run on an adverse action, unless and until the complainant receives final, unequivocal notice that the adverse action will occur**." Such a sentence merely effectuates the holding of Wheatley, 418 Mass. at 398.

1.04(4)(a): Collective Bargaining Agreement. MELA proposes the addition of the following language. "**To the extent that an employment contract requires that an employee exhaust an alternative dispute process such as an internal grievance procedure prior to fling an MCAD charge, the 300-day deadline is triggered by the termination of such process. However, no employment agreement of any kind should be suggested or asserted that would prevent an employee from filing a complaint with the MCAD or receiving any and all remedies from the MCAD which it is authorized by law to award**."

1.04(4)(d): Equitable Tolling. Add "**where the complainant was younger than 18 at the time of the adverse action,** . . ." See [Redacted] v. Boston, 2001 Mass. Super. Lexis 154, 13.

1.04(13): Additional Requirement for Withdrawal of Complaint. G.L. c. 151B, § 9 imposes on the complainant the duty to provide notice to the commission when he or she has filed a civil action. The requirement contained in this regulation to provide a copy of the complaint filed in court to the

General Counsel exceeds the notice requirement contained in section 9. The regulation should say: "shall promptly provide the **Commission notice of the claim filed in court.**"

1.05(2)(a): Manner of Investigation. A new sentence should be added stating, "**Unless expressly permitted by the Commission and for good cause only, a party providing information to the Commission in response to its investigation must provide the same information to the other parties**." Ex parte provision of data to the Investigating Commission will greatly increase the risk of "gaming" the system to provide the Commission with misleading information.

1.05(2)(b): The Commission attempts to reserve for itself unbounded discretion to dismiss cases prior to full investigations – prior even to the charge being served on the Respondent. This impulse is highly concerning and unnecessary, given that investigators themselves may reject cases for valid reasons after full investigation. These changes appear to attempt to impose new pleading standards, which permit dismissals without a true investigation, in violation of the statutory probable cause standard.

Section 5 of c. 151B requires that the Commission appoint an investigator with respect to each complaint. The statute does not require just the appointment of this individual; the investigator has to investigate. The investigator must "make . . . prompt investigation." Dismissals may only occur "after such investigation that no probable cause exists." The standards for investigation should be no less exacting than what is expected of employers investigating internal reports of discrimination and harassment. MCAD Guidelines on Harassment in the Workplace (July 2, 2024), at 40-41. For example, the complainant should be interviewed. Id. at 41.

However, this proposal appears to permit the dismissal of complaints merely upon review of the pleadings, for reasons independent of the probable cause standard (which is the only statutory justification for dismissal). Review of pleadings is not an "investigation." Moreover, it is bad public policy to dismiss claims based only on the review of (mostly) pro se claimants' initial complaints.

For this type of regulation to be valid, it should contain an additional statement, such as: "**There will be no dismissals based on preliminary investigation unless and until the investigator provides the Complainant a chance to further develop or amend her allegations such that they are adequate."** Only in this way can dismissal based on review of pleadings be seen in any way as consistent with the idea of the mandatory investigation.

Beyond that issue, it remains a problem that this section permits dismissals that are independent of the lack of probable cause. The idea, for example, that public interest requires the Commission to ignore otherwise valid claims based on other complaints with "greater impact" (1.05(2)(b)(9)) appears to reflect a blatant disregard of the standard of probable cause contained in G.L. c. 151B, § 5. The proposed criteria are often subjective and unstructured. The MCAD proposes to immediately dismiss complaints that are "vague", "incapable of verification" (?), that have a "tenuous nexus between protected class and allegedly discriminatory conduct," or are not a priority with respect to the "public interest." Very concerning is that there is no provision to require the Commission to inquire further if it deems a complaint to be vague and insufficiently detailed with respect to causation. This turns the complaint process into a game of "gotcha," whereby pro se complainants

who are insufficiently eloquent have their charges summarily dismissed. If certain complaints are vague, that simply begs the need for further investigation. It is only where the Complainant is determined to lack sufficient evidence that the charge should be dismissed.

The MCAD seeks to impose standards for pleading that exceed those of civil procedure. The rules of civil procedure abrogated the need to match facts to legal elements. A civil complaint need only say, "I was turned down for a job because of my race." Thomas v. JBS Green Bay, Inc., 120 F.4th 1335, 1336 (7th Cir. 2024). However, under the proposed regulations, the Commission would have the same complaint summarily dismissed, without contacting the complainant, based on multiple justifications. The danger is that the complainant is not being given sufficient opportunity to support a claim against the various diffuse, non-obvious standards the Commission seeks to impose. These vague standards should be eliminated from 1.05(2)(b).

Especially concerning is that these new, atextual reasons for dismissing complaints at a preliminary stage are paired with the Commission's proposed elimination of the in-person intake process. The Commission is acting in a way that will greatly compromise the competency of many pro se charges of discrimination and then expand its capacity to immediately dismiss these imperfect charges. This is a trap; it is not conducive to the support of civil rights.

1.05(2)(b)(7): Here, the Commission reserves for itself the option to dismiss claims where the harm "appears" *de minimus*. Many of the rights contained in c. 151B refer to prohibitions for which there is no direct harm – such as when employers ask applicants illegal questions. That places Complainants in an impossible bind. In its Amicus Brief in the case of Martino v. Forward Air, Inc., 609 F.3d 1 (1st Cir. 2010), the Commission took the position that an employee may not sue in court for an illegal inquiry, without establishing that "an injury in fact or adverse action was caused by the unlawful inquiry." P. 16. Assuring the First Circuit that there remained an avenue for enforcing the law against illegal inquiries, the Commission stated that, "The Commission can and does act in the public interest pursuant to G.L. c. 151B, § 5 to seek a panoply of remedial measures for a 'technical' violation." P. 16 n. 9. But now, the Commission is opening the door to summarily dismissing such cases without investigation. There should be no situation in which the Commission should permit illegal conduct to be ongoing or unremedied. This section should be eliminated, or in the alternative, the Commission's authority should be much more highly truncated than is currently proposed.

Indeed, in its amicus brief filed in the case of Robinson v. Town of Marshfield SJC-13825, the MCAD has recently taken the position that some form of liability attaches upon a finding of unlawful motive, even if the employer would have taken the same action anyway. In other words, it is the Commission's position that liability will attach even upon a finding of no harm. MCAD Amicus Brief, at 24-25, 28-30. This dovetails with the SJC's determination that liability attaches, and that even punitive damages may be appropriate, upon the award of mere nominal damages. Bain v. City of Springfield, 424 Mass. 758, 767 & n.6 (1997). "Given the purpose of punitive damages, there is no reason in principle to exclude them, where a defendant's conduct warrants condemnation and deterrence, even though the plaintiff may . . . have suffered **no actual damages** or mitigated them to nothing. Id. at 767. The idea that the MCAD can dismiss cases based on low harm is contrary to controlling precedent and is inimical to the rule of law.

1.05(2)(b)(8): Protected Class. The proposed regulation uses the phrase "protected class." Most recent scholarship considers the phrase "protected trait" more accurate, especially given the fact that discrimination statutes are directed toward the protection of individuals and not groups. Deborah Widiss, *Proving Discrimination by the Text*, 106 Minnesota Law Review 353, 380 (2021).

1.05(2)(d): Appeal of Dismissal. "notice of appeal **pursuant** to 804 CMR 1.08(4)(b)." Add the word "pursuant" to make the sentence read correctly.

1.05(4)(a): Change "person" to "**persons**".

1.05(8): "Form and Timing" Heading appears misplaced and undesignated by a number or letter

1.05(13): The Commission has removed the *option* of permitting predetermination discovery by the parties. It seems unnecessary for the Commission to remove this power from itself. To the extent, that the Commission continues with this effort to remove its authority, it can replace it with: "**Parties are free to suggest to the Investigator inquiries and document requests that the Commission may proffer to the opposing party as part of the Investigation**." The Commission may suggest a specific process for making suggestions to the Investigator.

1.06(1)(d) & 1.09(11): The Commission should not reserve for itself the power to dismiss certified claims, simply because the complainant fails to accept a reasonable settlement. The case should be tried and the complainant should recover what the Hearing Officer awards.

1.06(e): Consequences should be established where an employer attends mediation without authority to settle.

1.07(3)(b) – deleted: Monetary Sanctions. The proposed regulations delete the Commission's stated capacity to order the payment of reasonable costs and attorneys' fees based on the respondent's failure to comply with the Commission's Orders. It is hard to understand why a Respondent should be permitted to impose extra burdens, work and inconvenience on Complainants, without being held responsible for the direct and foreseeable consequences of their misconduct.

1.08(1)(f): The proposed regulation is framed such that the probable cause standard does not apply to the Chair, and that the Chair appears to have unbounded discretion to reject a finding of probable cause. The implication that the Commission may simply dismiss a complaint that otherwise represents probable cause is contrary to the statute. Vesting ultimate decision with the Chair, in her complete discretion and without guiding principles is also problematic, as c. 151B, § 5 indicates an intent to vest the determination of probable cause with an investigating commissioner, and establishes no other factor other than the existence or non-existence of probable cause.

Furthermore, in the same section, the proposed regulation eliminates the statement that: "Disputes involving genuine issues of material fact shall be reserved for a fact finder at public hearing." Deleting this sentence invites investigators to make credibility determinations and choose sides, even when a reasonable fact finder could come to an opposite conclusion. This sentence should be

reinstated, to remind investigators that their role is to determine what the evidence could support, as opposed to permitting them to make findings of facts themselves on the ultimate questions of liability.

1.08(1)(f)(3): The deletion of the option for multiple determinations makes it seem like PC and LOPC are an all-or-nothing determination. That seems unnecessary and there is nothing wrong with acknowledging the possibility of mixed rulings.

1.08(4)(b)(1): The proposal appears to do away with live preliminary hearings, and requires that an appeal of an LOPC take place based only on papers, except in cases where a live hearing is required as a reasonable accommodation. Such a change violates G.L. c. 151B, § 5, which entitles one appealing an LOPC to a "preliminary hearing." The difficulty with the proposal illustrated by the fact that the it literally deletes the statutory words "preliminary hearing" from the regulation. The statutory violation is made obvious within the edit itself. Thus, the complainant must always be afforded the option of having a live "preliminary hearing."

1.09(6)(a): Relief Sought During Conciliation: The list here should include "**interest and out-of-pocket expenses**."

1.10(5)(a): Requests for Production of Documents. The regulation should make it clear that copies of the requested documents should be provided within 30 days of the request as opposed to stating that a response simply asserting that inspection of documents will be permitted needs to be provided in that timeframe. That lack of a specific deadline for the production of documents is often used as a tool for manipulation and delay. Any delay in the provision of responsive documents has a cascading effect on the ability to submit timely interrogatories and requests for admissions, and further requires that depositions must be put off. The regulation should be altered to read: "shall serve a written response **and copies of responsive documents** within 30 days after service . . . "

It should be uncontroversial that the commission would accept some kind of default deadline for providing responsive documents as well as the non-substantive response to document requests.

1.12(19): Request for Award of Attorneys' Fees. The proposed addition requires affidavits about and consideration of "average hourly rates." This requirement is a due process violation, as the "average hourly rate" does not exist as an ascertainable number. Indeed, the same lawyer might charge different clients different rates, based on highly variable factors, and under various rubrics, such as hourly, contingency and hybrid arrangements.

The lodestar approach, as adopted by the SJC, focuses on "reasonable rates" or "market rates" and not "average hourly rates. Fontaine v. Ebtec Corp., 415 Mass. 209, 326 (1993) (in c. 151B cases, the basic measure of reasonable attorney's fees is the "fair market rate for the time reasonably spent"). Requiring an "average" implies a large survey of attorneys with similar experience, as if such data can always be pulled together. Thus, "market rates" should replace "average hourly rates." Market rates would also reflect various factors, such as geography, which "average" does not embrace. Also, the "average" appears to preclude an award on a higher or lower end, based on other considerations. Market surveys are just as supportive of the consideration of market rates as they are for determining

the "average." In addition, the complainant must, in the alternative, be given the opportunity to show that her requested rate is otherwise "reasonable."

1.13(3)(b): This regulation appears to provide an avenue for only four different types of pre-determination motions. It appears to indicate that any other type of motion is inappropriate. Given the infinite amount of issues that can arise during the investigative phase, shouldn't there be other options or a catch-all option to file through the portal? This set of restrictions appears to be short-sighted and fails to foresee all of the issues that may develop. See 804 CMR 1.13(6) on emergency motions; 804 CMR 1.15(4) (motion to consolidate).

1.13(3)(b): The statement "Predetermination motions slow the investigative process and interfere with the timely investigation of complaints," appears to prejudge the motions and express hostility. This sentence should be deleted.

1.13(4)(d)(4): Make clear that the package is not filed through the web portal, and specify that hard copies of the documents should be filed at a particular address, with attention to a particular person (the clerk?).

1.15(8)(c): reference to 1.15(7)(a) or (b) should be changed to "1.15(**8**)(a) or (b)."

1.15(16): Use of Portal by Pro Se parties. The proposed regulations permit pro se parties to avoid use of the Portal upon "good cause." Good cause is established upon demonstration of a "compelling" inability to access or use the Portal. This provision, like others in the proposal, acts as a barrier of access to the Commission, which is supposed to be the protector of vulnerable populations. We proposed that "good cause" be defined as "**difficulty or inability to use or to regularly access the Portal**." That standard should be sufficient, without requiring an additional burden that the barrier to access be "compelling," which appears to be a standard meant to stifle requests for alternative filing processes. MELA's proposal also focuses on regular access, which is required to properly participate in MCAD proceedings.

1.23(12)(a): Attorney Fee Petition Before Full Commission. This proposal repeats the same erroneous reference to "average hourly rates" as opposed to "market rate". See above comment to 1.12(19); Fontaine v. Ebtec Corp., 415 Mass. 209, 326 (1993) (in c. 151B cases, the basic measure of reasonable attorney's fees is the "fair market rate for the time reasonably spent").

MELA and GBLS hope their comments are useful and help serve the mission of eliminating discrimination in the Commonwealth.

Very truly yours,

/s/ Robert S. Mantell

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From:	Margaret Ishihara
To:	MCADProRegs (CAD)
Cc:	Margaret Ishihara; Governor Healey, Maura (GOV)
Subject:	MCAD draft procedural regulations comment
Date:	Monday, January 26, 2026 4:34:53 PM

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

To: MCAD

My comment pertains to MCAD Draft Procedural Regulations.

In my opinion, Section 1.08 (f) Causal Determinations should not be modified to deleted the sentence which reads: "Disputes involving genuine issues of material fact shall be reserved for a fact finder at public hearing". Without this clause there is no standard for determining whether probable cause to support a finding of discrimination exists. This is particularly concerning because issues of credibility would be decided by the Investigator without the presentation of witnesses.

Because use of the portal is mandated for Attorneys, please ensure that either an accept or reject for a document is done immediately, since often filings are time sensitive.

Thank you.

--
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From:	Vanessa Williams
To:	MCADProRegs (CAD)
Subject:	Public Comment on Draft Updated MCAD Procedural Regulations
Date:	Tuesday, January 27, 2026 8:34:06 AM

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Hello,

I submit these comments as someone currently navigating my second MCAD complaint, filed in 2023 and still unresolved, with firsthand experience of how procedural gaps enable discrimination and exhaust legitimate complainants.

Investigator Support Crisis Investigators are overwhelmed, under-supported middlemen trying to help while drowning in caseloads. This creates communication voids that protect employers, not employees. Cases averaging 18+ months to conclusion demonstrates a system where delay IS the employer strategy. The emotional toll on complainants is ignored while employers exploit procedural delays to exhaust us into abandonment.

The Attorney Abandonment Pipeline After 10+ employment attorneys declined my case—despite documented HR admissions of retaliation—I discovered the truth: MCAD's damage caps and prolonged timelines make cases economically unviable. Lawyers aren't seeking "slam dunks"; they're avoiding a system designed to fail. Current procedures assume legal representation that the system itself makes impossible to obtain.

Continuing Violations Doctrine Needs Enforcement While the doctrine exists on paper, employers exploit the 300-day filing window through strategic retaliation timing. My employer admitted retaliation in writing, yet earlier discriminatory acts risk exclusion despite clear patterns. Regulations must explicitly state that ANY ongoing retaliation makes the entire pattern admissible, with concrete examples.

Specific Procedural Failures: • No expedited track for cases with written admissions • Excessive backlogs enabling employer attrition strategies • No meaningful pro se guidance beyond generic templates • Position statements lack deadlines, allowing endless employer delays

Recommendations:

1. Create fast-track review for documented admissions (30-120 day determination)
2. Mandatory employer response deadlines with default judgment provisions
3. Pro se advocate program—actual navigation support, not just forms
4. Increase damage caps to make legal representation economically viable
5. Public database of employer violation patterns to inform future complainants

Current procedures protect employers who document nothing while punishing employees who document everything. These regulations must shift from exhausting complainants to delivering

justice.

Respectfully submitted

--
Vanessa JP Williams

MEMORANDUM

To: The Massachusetts Commission Against Discrimination
sunila.thomas-george@mass.gov

The Honorable Maura Healey
Governor of The Commonwealth of Massachusetts
Attention: Jesse Boodoo, Chief Legal Counsel
jesse.m.boodoo@mass.gov

From: MCAD Advisory Board

Dated: January 30, 2026

Re: Comments on Proposed Changes to the MCAD's Procedural Regulations

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INTRODUCTION

The MCAD has recently issued draft updated procedural regulations, 801 CMR 1.00, and established a public comment period through January 30, 2026, prior to the Commissioner's approval and publication. In a departure from prior practice, the MCAD did not work with the MCAD Advisory Board or, indeed, any other practitioners or organizations with an interest in the proper functioning of the agency, before issuing its proposed revisions. The MCAD Advisory Board, established pursuant to G.L. c. 6, § 56, has formed a Subcommittee to review the draft updated regulations and hereby provides its comments to the MCAD and Governor concerning same. Some members of the Subcommittee have also submitted other or additional comments in their individual capacities and/or as part of other groups or associations. While some of the comments below are consistent with those made by others, they represent a consensus view of the MCAD Advisory Board.

THE DRAFT PROPOSED REGULATIONS

As set forth below, several of the changes that the MCAD has proposed run counter not only to its important statutory mandate but also to the specific requirements of G.L. c. 151B:

1. Mandatory Use of Case Portal Limits Access to the MCAD.

G.L. c. 151B, § 5 provides, ***as a matter of right***, that "any person claiming to be aggrieved by an alleged unlawful practice . . . may, by himself or his attorney, make, sign, and file with the commission a verified complaint. . . ."

A significant feature of the proposed regulations is its new requirement that, with certain narrow exceptions, complainants and their counsel must use an electronic MCAD Case Portal to file complaints (as well as many other complaint-related documents). The

Advisory Board supports the launching of the new Case Portal as it holds the promise of more streamlined processing of cases. However, the Advisory Board is concerned about the potential adverse effect of such a requirement on *pro se* parties, particularly complainants without access to computers and/or the internet. According to the MCAD's 2025 Annual Report, more than one third of the complaints filed with the agency are filed by walk-in complainants.

Even apart from the impact on *pro se* complainants, the Advisory Board is concerned about the impact of this mandate on *all* parties, at this juncture, given that the MCAD Case Portal has not yet been fully implemented or tested. Until the MCAD has had the opportunity to work with this new system and iron out any problems that emerge, the Advisory Board recommends that no parties be required to use this portal as the exclusive means of access to the MCAD. Under these circumstances, the requirement that all parties use an electronic portal that has not yet been tested may stand as a barrier to complainants who have the statutory right to file a complaint of discrimination with the Commission.

Recommendation: We recommend that use of the Case Portal not be mandatory for any party for a reasonable period of time while its efficacy and ease of use is assessed (possibly 6 mos.), and that the Case Portal remain optional thereafter for *pro se* parties

2. Proposed Expansion of the MCAD's Ability to Dismiss a Complaint with Only Preliminary Investigation.

Currently, 804 CMR § 1.05(2)(a) allows the MCAD to dismiss a complaint due to "lack of standing, lack of jurisdiction, untimeliness, failure to state a claim of discrimination, frivolous claims, or where allegations are facially implausible or incapable of verification." In other words, under current practice, the MCAD may only dismiss a complaint which, on its face, is simply not within the purview of G.L. c. 151B.

The proposed changes would allow the MCAD to dismiss a complaint prior to full investigation for several additional reasons, even where the allegations *are* within the purview of the statute – namely, if, on preliminary review, the complaint is somehow "vague," if the "allegations of monetary and non-monetary harm appear *de minimus,* moot, or mitigated," if the "allegations contain tenuous nexus between protected class and allegedly discriminatory conduct; or if "[t]he public interest requires focusing Commission resources on complaint with greater impact on the mission to eradicate discrimination."

These proposed changes are so broad as to grant the MCAD the discretion to dismiss *any* complaint without a full investigation. Yet the statute does not afford the MCAD that discretion – or, indeed, *any* discretion to dismiss complaints that fall within the purview of G.L. c. 151B. On the contrary, the proposed language runs afoul of G.L. c. 151B, § 5, which *requires* the MCAD to investigate complaints alleging discrimination: "After the filing of any complaint, the chairman of the commission ***shall*** **designate one of the commissioners to make, with the assistance of the commission's staff, prompt investigation in connection therewith.**" G.L. c.

151B, § 5 (emphasis added). This investigation must conclude with a finding of probable cause or lack of probable cause. *Id.*

Regulations that allow the MCAD to screen out cases without full investigation on ground that the damage to the complainant appears, on initial review, to be "*de minimus*," or where the allegations as initially stated in the complaint seem to have a "tenuous" nexus between the class and discriminatory conduct, or, where the Commission decides it wants to focus its resources elsewhere, are inconsistent with the statute that the Commission was created to enforce. The Advisory Board appreciates that the Commission may be proposing these changes in order to increase the efficiency and effectiveness of the Agency in handling its significant caseload, but we do not believe it is statutorily authorized to exercise such discretion (unlike, for example, a state or federal agency with prosecutorial discretion).

Recommendation: We recommend that the MCAD strike proposed regulations 1.05(2)(b)(7), (8) and (9).

3. Predetermination Discovery.

Section 1.05 (13), as currently written, allows parties represented by counsel to seek the opportunity to conduct limited pre-determination discovery and allows Commissioners to independently authorize such discovery on their own initiative. That section has been stricken in its entirety. While the Advisory Board understands that pre-determination discovery may not be appropriate in some cases, the Board does believe it should remain as an option where appropriate.

Recommendation: Keep the existing Section 1.05(13).

4. Disputes of Material Fact Should Be Reserved for Public Hearing

Currently the standard for probable cause is whether it is "more probable than not" that discrimination has occurred. And in determining whether the probable cause standard is satisfied, the current regulations provide that "disputes involving genuine issues of material fact shall be reserved for a factfinder at a public hearing." 1.08 (1)(f)(1)). This is, of course, the summary judgment standard – a standard that is particularly important (and consistently recognized as such) in discrimination cases, (a) where a respondent's motive is invariably a key issue, and (b) where questions of credibility are best determined by the factfinder, who has had the opportunity to hear and assess the live testimony of witnesses.

The proposed standard strikes out the language making clear that disputed issues of material fact are not for the investigator to determine, but are reserved for the Hearing Officer at a public hearing. Without that regulatory language, an investigator is theoretically free to decide not to believe the complainant or the complainant's evidence and to decide, accordingly, that there is no reason to believe that discrimination has occurred. The investigator should not be authorized to make credibility determinations and to choose among conflicting evidence.

Recommendation: Keep the existing language.

5. Removal of the Appeal Hearing Following Issuance of an LOPC Determination

Under the existing regulations, if an LOPC determination issues, the complainant may appeal, seeking hearing before a Commissioner where he or she may present "oral or written reasons," as well as evidence, demonstrating why the LOPC was wrong. Typically, under existing regulations, represented parties submit a written argument in advance of the hearing and argue it at the hearing, while *pro se* parties simply show up at the hearing and explain their reasons. This is consistent with G.L. c. 151B, which makes clear that, **upon a written request for a preliminary hearing to appeal a decision of no probable cause, "the commission shall allow such request *as a matter of right*.**" G.L. c. 151B, § 5 (emphasis supplied). Notwithstanding the plain language cited above, the proposed regulations would eliminate all hearings except as a reasonable accommodation and would reduce a complainant's statutory right to a "preliminary hearing" to a written appeal alone.

Recommendation: Keep the opportunity for an appeal hearing.

6. Using Average Attorney's Fees is Not the Correct Measure of Determining Reasonable Attorney's Fees Awarded to Prevailing Complainants.

If represented complainants manage to achieve probable cause, get to a public hearing, and prevail, they will be entitled to an award of reasonable attorneys' fees. The right to such a attorneys' fee award is designed to encourage competent counsel to represent complainants with civil rights claims, *Haddad v. Wal-Mart Stores, Inc*., 455 Mass. 1024, 1025 (2010), even where such claims "are not likely to pay for themselves but are nevertheless desirable because they vindicate important public rights." *Stratos v. Department of Public Welfare*, 387 Mass. 312, 323 (1982). As the First Circuit has recognized, "If our civil rights laws are not to become mere hollow pronouncements which average citizens cannot enforce, we must maintain the traditionally effective remedy of fee-shifting in these cases." *Furtado v. Bishop*, 635 F. 2d 915, 918 n.6 (1st Cir. 1980). In other words, attorneys' fee awards serve a key role in the effective enforcement of civil rights laws, including G.L. c. 151B.

The standard governing the award of attorneys' fees to prevailing 151B complainants is well-settled. Such awards are determined by the "lodestar" method, which multiplies the number of hours reasonably spent by the reasonable hourly rate. *See, Fontaine v. Ebtec*, 415 Mass. 309, 326 (1993). This produces a presumptively reasonable fee, which then may be adjusted within certain accepted guidelines. The goal is to arrive at an award that reflects the "fair market rate for time reasonably spent preparing and litigating" the case. *Id.*

Despite the clarity of controlling case law on this subject, the proposed regulations state that attorneys' fees petitions must include "information about *average* hourly rates for attorneys

with similar experience." Of course, "average" hourly rates is not the lodestar standard – it's "fair market rates" or "reasonable rates." "Average" suggests that the petitioning lawyer must do some kind of survey of attorneys with similar experience (as if such data could be gathered), or only seek an arithmetic mean in rates, which is inconsistent with controlling precedent. An "average" rate appears to preclude consideration of a variety of factors such as geography, and appears to preclude an award on a higher or lower end based upon other recognized considerations. If not changed, this proposed regulation's reliance on an "average" rate could discourage competent counsel from taking on these cases.

Recommendation: Strike the word "average" from draft regulation 1.12(19) and include language consistent with controlling precedent.

7. Time of Filing/Discovery Rule

At 804 CMR 1.04(3), the proposed regulations define the "discovery rule," for statute of limitations purposes, as the date that the Complainant "knew or should have known of the unlawful conduct." While this language is susceptible to interpretation as an accurate statement of the law, it may also suggest, incorrectly, that the statute of limitations starts to run when a complainant knew or should have known that an adverse action has occurred, even if the complainant did not know or have reason to know that the adverse action was discriminatory.

A more accurate description of the discovery rule could be: "The period in which to file a complaint under any statute within the Commission's jurisdiction commenced on the date that the Complainant knew or should have known of **the cause of action**." This language is consistent with the Supreme Judicial Court's language in *Riley v. Presnell*, 409 Mass. 239, 244 (1991), which commences the limitation period where "the plaintiff actually knows of the cause of action or when the plaintiff should have known of the cause of action." Likewise, in *Silvestris v. Tantasqua Reg'l Sch. Dist.*, 446 Mass. 756, 767 (2006). the Supreme Judicial Court stated that the discovery rule applies, specifically to c. 151B, "when a plaintiff knew or should have known of the existence of a cause of action." For example, a limitations period does not begin to run in an age discrimination claim until the plaintiff knows or reasonably should know that he or she was replaced by a younger employee, even where the adverse action (namely, the termination) occurred earlier. *Wheatley v. American Tel & Tel. Co.,* 418 Mass. 394, 398 (1994). It cannot be wrong to quote the Supreme Judicial Court, and the MCAD should do so in this regulation.

In the alternative, the discovery rule is also mentioned in 804 CMR 1.04(4)(a), which talks about when a complainant "knew or should have known that the matters raised in the grievance would support a claim of discrimination." That rendition of the discovery rule is clear and correct and would eliminate the doubt caused by the language used in the proposed regulations.

Recommendation: Rephrase the language so that it is consistent with case law.

8. Additional Comments

The following are some minor comments for the MCAD's consideration:

- Sec. 1.04(1)(b): It seems that this reference should be to the defined term DAR. There may also be other references to "representative" that don't use the term, e.g., Sec. 1.12(12).

- Sec. 1.04(5): We suggest removal of the reference in the last sentence to 1.04(1)(b), because the complainant should be required to verify a complaint filed by a DAR.

- Sec. 1.05(2): We believe the first sentence should reference Sec. 1.05 rather than 1.04.

- Sec. 1.08(5): We suggest that "written or oral" be deleted.

- Sec. 1.08(4)(b)(7): Is the reference to 1.05(2) incorrect?

- Sec. 1.15(11): We feel that this section should apply to respondent attorneys as well.

- Sec. 1.16 Service: Some respondents have experienced problems with a complaint being served on unauthorized individuals who do not forward it to someone who can address it. When the Case Portal is implemented, we would like to see a formal process for an employer to register the proper party to receive service of all complaints.

- Sec. 1.18(1)(d): We would strike or at least modify this provision allowing the Chair to make any complaint and settlement terms public with no limitations.

CONCLUSION

Thank you for the opportunity to provide the above input. The MCAD Advisory Board is available for any follow up questions or discussions.

LCR | LAWYERS FOR CIVIL RIGHTS BOSTON

January 30, 2026

Sunila Thomas George, Chair
Massachusetts Commission Against Discrimination (MCAD)
One Ashburton Place, Suite 601
Boston, MA 02108
MCADProRegs@mass.gov

Re: Public Comment on MCAD's Proposed Procedural Regulations

Dear Chair George and MCAD Commissioners:

On behalf of Lawyers for Civil Rights and our concerned community partners—the Brazilian Worker Center, Justice at Work, the Massachusetts Coalition for Occupational Safety and Health, the NAACP–Boston Branch, and the Urban League of Eastern Massachusetts—we respectfully submit these comments regarding the recently-proposed changes to MCAD's procedural regulations.

We certainly acknowledge and appreciate the workload pressures MCAD staff are navigating, and we support efforts to better fund the agency so that it can meet community needs. However, we are concerned that the proposed regulations are unlawful and would ultimately increase administrative burdens at a time when staff caseloads are already under great strain.

As detailed below, the proposed regulations impermissibly curtail the rights of victims of discrimination who seek redress from MCAD. If adopted, the regulations would further weaken MCAD's protections and would particularly impact those who most need MCAD's assistance: people of color, low-wage workers, immigrants, non-English speakers, and other marginalized populations. Further, unlike previous MCAD regulations, they were proposed with no meaningful input from the signatories to this letter or from other organizations representing impacted communities.

Accordingly, we respectfully urge MCAD to withdraw the proposed regulations in their entirety because they are incompatible with the agency's legislative mandate. At a minimum, MCAD should make significant changes to address the existential concerns outlined below, and the revised regulations should be re-issued for an additional round of public comment.[1]

[1] In light of the gravity of the changes proposed, we requested on December 15, 2025 that MCAD extend the time for public comment. To date, that request has not been formally acted upon, although we understand that comments submitted after January 30, 2026 might still be considered. To the extent that MCAD does not withdraw the proposed regulations entirely, we respectfully renew our request that the public be given more meaningful time to weigh in on these significant changes.

I. Interest of Commenters

The **Brazilian Worker Center (BWC)** is a nonprofit, membership organization that supports and educates immigrant workers about workplace rights, immigration issues, and health equity. The organization empowers immigrants with the knowledge and skills needed to advance economic, social, political, and racial justice for all.

Justice at Work is a multilingual legal nonprofit that supports organizations of workers in low-paying industries. Its staff offer direct legal services to members of worker organizations, train workers and organizers on their workplace rights and ways to assert them, and provide ongoing legal counsel to groups of workers organizing for better conditions. In this context, Justice at Work regularly directs workers to the MCAD's processes for *pro se* complainants and also handles matters before the MCAD.

Lawyers for Civil Rights (LCR) is a non-profit organization that provides free legal services to individuals and families in Massachusetts. For over 50 years, LCR has fought against discrimination and sought equal opportunity for people of color and immigrants through creative and courageous legal action, education, and economic empowerment in collaboration with law firms and community partners. LCR represents clients in numerous impact areas, including employment and housing discrimination, and, in this capacity, regularly works with clients who are directly impacted by MCAD's policies and practices.

The **Massachusetts Coalition for Occupational Safety and Health (MassCOSH)** is a nonprofit membership organization dedicated to advancing safe, healthy, and equitable workplaces across Massachusetts, particularly for immigrants, low-wage workers, and workers of color. MassCOSH provides support services to its members, including information and support with MCAD complaints.

The **NAACP, Boston Branch,** is a nonprofit civil rights organization dedicated to eliminating racial discrimination and advancing social, economic, and political equity, including by addressing employment discrimination through advocacy, community engagement, and coalition-building in the Boston area.

The **Urban League of Massachusetts (ULEM)** is a non-profit, membership- and community-based organization committed to eradicating racial, social, and economic barriers to employment and promoting economic development, including by connecting affected members to legal support for filing employment discrimination complaints with the Commission.

II. The Proposed Regulations Run Counter to MCAD's Statutory Mandate

Massachusetts has a long and proud tradition of civil rights enforcement. In 1946, we became the first state to adopt an omnibus civil rights statute, codified as Chapter 151B of Massachusetts General Laws.[2] The law is intended to be sweeping. Its drafters wrote that

[2] G.L. c. 151B, inserted by St. 1946, c. 368, § 4.

discriminatory conduct serves as a "harmful influence to our democratic institutions" and proclaimed that "no well-informed, right thinking person can be oblivious or indifferent to this evil." *Report of the Special Commission Relative to the Matter of Discrimination Against Persons in Employment Because of Their Race, Color, Religion, of Nationality*, H.R. Rep. No. 337, 154th Leg., 1st Sess. at 2 (Mass. 1945). Further, the elimination of discrimination, the Legislature declared, is a "corner-stone" upon which "world peace must be based." *Report of the Governor's Committee to Recommend Fair Employment Practice Legislation*, H.R. REP. No. 400, 154th Leg., 2nd Sess., at 7 (Mass. 1946).

In keeping with its mandate to eliminate the scourge of discrimination, the statute makes clear that "this chapter shall be construed liberally for the accomplishment of its purposes, and any law inconsistent with any provision of this chapter shall not apply." G.L. c. 151B, § 9. Under section 3 of the statute, the MCAD is charged with effectuating the purposes of the statute, including promulgating rules and regulations to implement its statutory commands.

Unfortunately, MCAD has failed to meet these statutory directives for many years. In 2024, LCR and ULEM summarized many of these failings in a detailed letter, focusing in particular on MCAD's failure to afford *pro se* individuals a meaningful opportunity to file complaints by intake and its failure to conduct timely investigations or render timely adjudications. Since that time, these problems have only escalated. MCAD's backlog (*i.e.*, non-housing investigations pending for over 18 months), which was already at record levels in 2024, skyrocketed over 26% in the last Fiscal Year and now exceeds 2300 cases.[3]

Rather than addressing these deficiencies, the proposed regulations move further in the wrong direction. In a variety of ways, they narrow access to the MCAD and make it even more likely that the law's intended beneficiaries—victims of discrimination—will be left without redress.

III. Specific Problems With Proposed Regulations[4]

A. The Proposed Regulations Impose Severe Restrictions on the Manner of Filing Complaints

1. Mail-In Filings

Currently, complainants may file an initial complaint (1) by "delivery" in person or through the mail, (2) through in-person or virtual intakes with MCAD staff, or (3) for complainants represented by lawyers or Duly Authorized Representatives ("DARs"), through the online portal. 1.04(a)(b) (current form of regulation); MCAD website, https://www.mass.gov/decision-tree/file-a-complaint-of-discrimination-at-the-mcad. The mail and walk-in intake options remain an important avenue for many victims of discrimination. In the last fiscal year, 7% of complaints

[3] *See* MCAD Annual Report FY 2025 ("2025 Annual Report") at 9, available at https://www.mass.gov/lists/mcad-annual-reports.

[4] The existing/proposed regulations are found at 804 CMR 1.00 *et seq*. and are referenced below as "1.xx."

were filed by mail, while 26% were filed after a virtual intake, and 36% were filed after a walk-in intake. 2025 Annual Report at 8.

The proposed regulations, however, would require virtually all complainants to use the on-line portal, with only very limited exceptions—such as the submission of a request for reasonable accommodation. *See* Proposed Regulations 1.15(16) (filings other than through the portal will not be permitted "absent good cause," *i.e.* a "compelling inability" to access or use the portal). Even then, the proposed regulations state that "such filings are strongly discouraged," and filing in this manner "may cause delay in the processing of the complaint . . . "1.04(2)(a)(3).

Even if a complainant is permitted to file an initial complaint by mail, under the proposed regulations they are still required to handle all future filings via the portal, unless they prove (through the same undetermined process) that they can demonstrate a *compelling* inability to access or use the portal. The electronic filing requirement and the unclear nature of the exception to the general rule are barriers to access that are extremely problematic for *pro se* complainants who may lack technical skills or access to computers.

The pandemic brought to the forefront the inequity of access to technology and the severity of the digital divide plaguing the Commonwealth. Even before the pandemic, in Massachusetts, 42,260 households with school aged children were without internet subscriptions, and 14,047 households with school-aged children were without any computing device.[5] Even for Massachusetts households with internet at home, about 9% of those households depend solely on unstable connections to the internet such as mobile phone data plans.[6] Certain areas of Massachusetts are more affected than others by the digital divide. In Franklin County, towns such as Monroe and Wendell contain 51% of households and 40% of households without internet service subscriptions respectively.[7] Low-income urban communities are also affected with areas like Springfield (31 percent), Lawrence (31 percent), Holyoke (29 percent), and Lowell (27 percent) demonstrating severe lack of internet access.[8] The lived reality of victims of discrimination who are affected by the digital divide underscores the importance of ensuring that mailed complaints are never treated differently for timing and investigation purposes than any other complaints.

2. *Pro Se* Portal Filings

Currently, *pro se* complainants lack the option of filing through an electronic portal. While expanding portal access could increase filing convenience for unrepresented complainants, it

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[5] U.S. Census Bureau, *Age By Presence Of A Computer And Types Of Internet Subscription In Household*, (ACS Survey 2019), https://data.census.gov/cedsci/table?q=internet&g=0400000US25&tid=ACSDT1Y2019.B28005&hidePreview=true.

[6] *Id.*

[7] *Gateway Cities at the Center of the Digital Divide in Massachusetts*, MassINC (May 5, 2020), https://massinc.org/2020/05/05/gateway-cities-at-the-center-of-the-digital-divide-in-massachusetts/.

[8] *Id.*

would also eliminate the meaningful assistance that MCAD staff currently provide in helping complainants marshal their facts or formulate their claims into an adequate complaint. That differs from the current situation, in which anyone seeking to file a complaint can obtain assistance from MCAD staff. This serves as a critical safeguard for *pro se* litigants who lack legal training and may struggle to articulate their claims clearly or in legally cognizable manner. This new reality is likely to undermine and defeat many complaints, including legitimate ones, for failure to meet an impermissibly harsher standard for filing and surviving dismissal.

B. The Proposed Regulations Impermissibly Allow MCAD To Reject Claims Without Investigation

The authorizing statute states that MCAD "shall . . . make . . . prompt investigation in connection" with "the filing of any complaint." G.L. c. 151B, § 5. This statutory command for MCAD to promptly investigate *all* filed complaints is both unequivocal and mandatory. *Oberlies v. Attorney General,* 479 Mass. 823, 838 n.13 (2018) ("It is well established that use of the word 'shall' [in a law] indicates a mandatory duty"); *Patel v. 7-Eleven, Inc.*, 494 Mass. 562, 567 n.14 ("the word 'any' has an expansive meaning, that is, one or some indiscriminately of any kind . . . .") (internal quotation omitted).

Under the current version of 1.05(2)(b), MCAD is authorized to dismiss complaints without an investigation only for very narrow threshold reasons, such as jurisdictional or frivolousness issues. Otherwise, as required by section 5 of the authorizing statute, MCAD must investigate and make a finding as to probable cause (or lack thereof) for each filed complaint.

The proposed regulations would impermissibly expand MCAD's authority to dismiss a complaint without any factual investigation, under any of the following circumstances:

- the complaint is "vague";
- the monetary/non-monetary harm alleged is "de minimus" (sic), moot, or mitigated;
- there is a "tenuous nexus" between the protected class and the complained of discriminatory conduct; or
- the "public interest" requires the MCAD to focus on complaints with "greater impact" on its mission.

1.05(2)(b)(6)-(9).

Allowing dismissals on these grounds would be flatly contrary to the authorizing statute and, therefore, if adopted, would be invalid. *See Electronics Corp. of America v. Commr. of Revenue*, 402 Mass. 672, 676-77 (1988) (a regulation that is more restrictive than its authorizing statute is invalid; an administrative board has no authority to promulgate a regulation in conflict with the statute creating that board).

Section 5 requires a prompt investigation of *all* filed complaints. The proposed regulation attempts to circumvent this clear inconsistency with the statute by calling the new screening mechanism a "preliminary investigation." 1.05(2). But MCAD cannot evade its statutory mandate in this manner. Chapter 151B's use of the term "investigation" means a factual inquiry, not an on-

the-papers assessment before the facts have been developed. *See United States v. Allergan, Inc.*, 46 F.4th 991, 998 & n.7 (9th Cir. 2022) ("investigation" means a fact-finding process to obtain information) (citation omitted); *see also* Cornell Law School, Legal Information Institute ("an investigation is an inquiry, whether formal or informal, intended to develop a factual record"), *available at* https://www.law.cornell.edu/wex/investigation (last visited Jan. 21, 2026).

Further, each of the stated grounds for dismissal is problematic. Many *pro se* complaints can be characterized as "**vague**" simply because non-lawyers often submit allegations that are conclusory, lack clear timelines, or describe events imprecisely, not because the underlying claims lack merit. The very task of MCAD's investigation is to flesh them out. Indeed, many pathbreaking employment cases have begun with "vague" complaints that may appear to have a "tenuous nexus" to discrimination or another of the proposed grounds for dismissal. *Sanchez v. Standard Brands, Inc.*, is a classic example of a case where agency staff revised an arguably "vague" and "tenuous" complaint into an EEOC charge that became a major lawsuit. 431 F.2d 455 (5th Cir. 1970). There, the complainant's *pro se* charge to the EEOC read in its entirety:

> . . . my boss lady hit me at my rear end and about a month before that I hurt my thumb and was out of work for seven days and the Company didn't pay me. I hurt my thumb at work.

Id. at 458. After consultation with the EEOC staff, the facts were contextualized as an allegation that Sanchez's supervisor singled out Mexican-American women for physical and verbal aggression and denied them promotional opportunities. Ultimately, the case was filed as a class action in federal court. *See id*. at 459-60. As this case amply demonstrates, limitations arising from imperfect exposition of a claim do not warrant or authorize premature dismissal of a complaint.

Similarly, "**de minimis**" is a standard that has been applied in various areas of law, including areas of labor law other than discrimination. For example, the Occupational Safety and Health Administration ("OSHA") applies it to decline to penalize technical non-compliance with health and safety standards where the same safety goal is achieved by alternate methods or the non-compliance is inconsequential. OSHA Standard 1903.14(a). However, this rationale does not translate to discrimination cases where the harm is substantive, not technical. Indeed, the "de minimis" doctrine is specifically disfavored in employment law. For example, a recent Ninth Circuit decision, *Cadena v. Customer Connexx LLC*, held that there was no "de minimis" exception for non-payment of wages for the time it took workers to boot up and shut down their computers daily. 107 F. 4th 902, 915 (9th Cir. 2024).

Attempting to import a "de minimis" exception into discrimination law is particularly inappropriate. Chapter 151B does not allow an employer to discriminate against, or racially harass, a worker, "just a little." Nor is it the law that an employer may pay one worker less than another for discriminatory reasons by "just a few dollars" if the reason for that is discriminatory. *See, e.g., Muldrow v. City of St. Louis*, 601 U.S. 346, 355-56 (2024) (under Title VII, any difference in a term or condition of employment because of an employee's protected class is illegal; the harm need not be significant, serious, or substantial). There is no "de minimis" exception in Chapter 151B—and MCAD cannot unilaterally create one by regulation. *See Electronics Corp. of America*, 402 Mass. at 676-77.

The proposed regulations are also unclear about what it means for harm to be "**moot**" or "**mitigated**," and provide no definition for these terms. Mootness generally refers to circumstances or actions by the parties that end a controversy without court intervention. *E.g.*, *PIC Vokey v. Massachusetts Insurers Insolvency Fund,* 381 Mass. 386, 388 (1980) (settlement of claim rendered arbitration proceedings moot); *EEOC v. Goodyear Aerospace Corp.*, 813 F. 2d 1539, 1543 (9th Cir. 1987) (individual's settlement of claim rendered case moot). However, it is unclear what "moot" means in the proposed regulations. Cases are not automatically moot, for example, if an employer voluntarily ends discriminatory conduct without agreeing not to resume it, or if the conduct's harm persists. *See, e.g.*, *A.Y. Allee v. Medrano*, 416 U.S. 802, 811 (1974) ("an action . . . does not become moot merely because the conduct complained of has terminated, if there is a possibility of recurrence, since otherwise the defendants would be free to return to [their] old ways"); *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 189 (2000) (defendant's "voluntary cessation" of allegedly wrongful conduct does not render claim moot unless "absolutely clear" that challenged conduct "could not reasonably be expected to recur").[9] Cases should not be dismissed as moot unless it is evident that the issue is fully resolved, and that all concomitant and attendant harms have been redressed, with no continuing effects. But the proposed regulations do not require that. The meaning of "mitigated" in the proposed regulations is equally unclear and concerning because it risks leaving victims of discrimination without meaningful redress.[10]

Similarly, if the filed complaint sets forth only a "**tenuous nexus**" between a protected class and the complained-of discriminatory conduct, this nexus should be fleshed out by MCAD's investigation. There is an established body of caselaw recognizing that proving discrimination is difficult and that the complainant may rely on indirect evidence, including proof of pretext, evidence of comparator treatment, and evidence of the employer's disingenuousness. *See, e.g.*, *Bulwer v. Mt. Auburn Hospital,* 473 Mass. 672, 689 (2016) (employer's motive is "elusive and rarely is established by other than circumstantial evidence") (citing authorities) (cleaned up). If those methods fail, then these cases should receive a lack of probable cause determination. But it is contrary to law to make that determination at a preliminary stage, without the benefit of further development—particularly for *pro se* litigants.

By diluting its own standards—in contravention of the governing statute—MCAD sends a dangerous message: discrimination is permissible so long as the harm can be obscured as "vague," "de minimis," or papered over through superficial "mitigation." This framework does not deter discrimination; it invites it. It predictably encourages strategic wrongdoing by rewarding defendants who calibrate discriminatory conduct to evade scrutiny rather than comply with the law—and by incentivizing ever more sophisticated forms of discrimination. The result is entrenched discrimination and victims left without meaningful protection or redress.

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[9] *See also Sheely v. MRI Radiology P.A.*, 505 F. 3d 1173, 1184-89 (11th Cir. 2007) (case not moot where employer ended challenged practice but refused to acknowledge wrongdoing).

[10] If the intent is to refer to cases that have been resolved by the parties between themselves, these cases should go through the MCAD settlement-approval process to help preclude future retaliation, ensure that the resolution is adequate, and preserve a record of the complaint should the issues recur.

Moreover, the "**public interest**" criterion for dismissal is particularly problematic, since it is completely subjective and essentially standardless. Inclusion of this criterion would allow MCAD unlimited discretion not to investigate complaints for reasons that the public will never learn. That is the antithesis of the transparent approach that a public agency should take. Moreover, it is directly contrary to MCAD's authorizing statute. As explained above, under Chapter 151B, MCAD is *required* to investigate all cases to determine whether there is probable cause.

Even apart from the criteria to be used in this pre-screening, the process itself is problematic and contrary to law. While this newly-expanded pre-screening process is underway, untrammeled by any time limits, the complainant's clock for a court complaint continues to tick. The respondent may or may not be notified that a case is pending, and otherwise, MCAD does not obligate itself to engage or communicate with the parties in any way. This will inevitably lead to even longer delays than are currently experienced. The lack of any required input whatsoever from the complainant into this process almost ensures that there will be confusion and misunderstandings of the nature of the claims, and an over-eagerness to dismiss complaints. This process also forces the MCAD into the highly inappropriate role of a pseudo-respondent, looking for holes or cracks in complaints to eliminate them, rather than an independent investigator. This threatens the integrity of the complaint adjudication process and fundamentally undermines MCAD's credibility, legitimacy, and trust with the communities it is charged to serve.

C. The Proposed Regulations Impermissibly Alter the Probable Cause Standard

Under the authorizing statute and the current regulations, in order for a claim to progress out of the investigative stage toward a hearing, MCAD must find "probable cause," *i.e.* whether it is "more probable than not" that discrimination has occurred. 1.08(1)(f)(1). In determining whether that standard is satisfied, the current rules provide that "disputes involving genuine issues of material fact shall be reserved for a factfinder at a public hearing" —and are not to be made by the investigator. *Id.* This is, of course, the standard for denying summary judgment in court and permitting civil cases to go to trial. This is an appropriate standard as it provides a methodology for investigators to use: accept undisputed facts, refrain from weighing competing evidence where facts are contested, and ask only whether, if the complainant's version of the disputed facts were credited, the facts would support a finding of discrimination. If so, the case should proceed.

At least in theory, that standard prevents investigators from trying to decide the facts themselves, which is not their role, and which could lead to unwarranted lack of probable cause determinations. Without this explicit legal standard in place, an investigator could simply reject the complainant's account and recommend a lack-of-probable-cause finding, even where evidence supports the claim. That outcome usurps the role of the public hearing required by c. 151B, § 5 and as such, is illegal, yet the proposed change appears to allow it.

D. The Proposed Regulations Impermissibly Eliminate In-Person Appeals

Under the existing rules, if a lack of probable cause determination issues, the complainant may appeal and receive a hearing before an MCAD Commissioner. At the hearing, the complainant may present "oral or written reasons," as well as evidence, why the lack of probable

cause decision was wrong. In practice, represented parties typically submit a written argument in advance of or at the hearing, along with an oral argument at the hearing, while *pro se* parties typically present their arguments orally at the hearing. Although these appeals are seldom successful, their success typically depends on the ability of the complainant to respond to the issues raised by the presiding MCAD Commissioner at the live hearing.

The proposed rules eliminate all live hearings, except as a reasonable accommodation, and require complainants to make appeal arguments only in writing. This sets up a major disadvantage for most *pro se* parties, as many lack access to the technology necessary to prepare written submissions or the legal training required to draft effective written arguments. The practical effect would be to foreclose meaningful appellate review for most unrepresented parties. Moreover, it also violates c. 151B, § 5, which requires a "preliminary *hearing*" upon a complainant's written request "as a matter of right" after an adverse causal ruling.

E. The Proposed Regulations Exacerbate the Information Imbalance Between Complainants and Respondents

It is a truism that employers typically hold most of the information needed to develop a case, but the proposed regulations prevent the disclosure of that information in at least two ways: the parties are no longer permitted even the opportunity to request permission to conduct pre-determination discovery; and the parties are not authorized to obtain the other party's responses to information requests.

Elimination of pre-determination discovery. Section 1.05 (13) as currently written allows parties represented by counsel to seek the opportunity to conduct limited pre-determination discovery and allows Commissioners to independently authorize such discovery on their own initiative. The proposed regulations strike that section in its entirety. The MCAD should not eliminate even the opportunity to ask for an important fact-gathering tool.

No requirement to share information provided to the MCAD. The proposed elimination of section 1.05(13) makes section 105(4)(d) even more problematic. When employers answer MCAD Requests for Information, they are not required to provide their responses to complainants, and investigators are barred from requiring them to do so, even with confidential information redacted. This effectively keeps complainants in the dark and limits their ability to build their cases. It also deprives a complainant of the ability to dispute, explain, or contextualize facts that the employer has provided to the Investigator.

The proposed regulations should require this information to be shared to help level the informational playing field, develop narratives for proper legal assessment of probable cause, and enhance transparency at MCAD.

The opaque "preliminary" investigation tool, taken with the information imbalance noted above, communicates that the MCAD believes that complainants have nothing to contribute to the factual or analytical development of their cases. Complainants are very likely to understand what information is important to pursue, and how it fits into a larger understanding of the case, in ways that an Investigator unfamiliar with the particular workplace may not.

F. The Proposed Regulations Introduce DARs Without Appropriate Guardrails

The proposed regulations allow parties to designate a DAR to make filings on their behalf with the MCAD through the new portal pre-causal determination. While the undersigned generally do not oppose innovative ways to assist *pro se* individuals, appropriate guardrails must be in place to ensure against problematic practices.

In theory, DARs could assist complainants, particularly *pro se* individuals, in navigating the new portal or improving the clarity of their complaints, especially where the DAR is a trusted friend or family member. In practice, however, the proposed regulations risk creating an unregulated intermediary role that could be exploited. Without clear limitations or safeguards, there is a substantial risk that a cottage industry may arise similar to the infamous "notario" system in the immigration context, in which unqualified individuals charge vulnerable individuals, similar to victims of discrimination, for assistance that is ineffective, misleading, or harmful.

G. The Proposed Regulations Apply an Incorrect Standard to Deciding Attorneys' Fee Awards

Successful complainants are entitled to an award of attorneys' fees. The proposed regulations state that attorneys' fees petitions must include "information about average hourly rates for attorneys with similar experience." But "average" hourly rates are not the correct standard. Under well-established caselaw, attorneys' fee awards must be based on "fair market rates" or "reasonable rates." *See, e.g.*, *Fontaine v. Ebtec Corp.*, 415 Mass. 309, 325-26 (1993) (adopting lodestar method for use in c. 151B cases; a "fair market rate for time reasonably spent . . . is the basic measure of a reasonable attorney's fee under State law"). Adopting the standard set forth in the proposed regulations would be inconsistent with state civil rights case law and would discourage competent counsel from taking on employment discrimination matters, resulting in even more cases proceeding *pro se* and further straining an already overburdened MCAD docket.

IV. CONCLUSION

If adopted, the proposed regulations would significantly undermine the remedial and adjudicatory purpose of G.L. c. 151B, restricting access to justice for the very communities the MCAD is charged with protecting, and prioritizing administrative shortcuts over meaningful civil rights enforcement. MCAD has long served as a critical bulwark against discrimination in the Commonwealth. Preserving that role requires regulations that expand access, promote transparency, and ensure that complaints are fully and fairly investigated—not prematurely or impermissibly screened out.

For these reasons, we respectfully request that the regulations be withdrawn in their entirety. Any new regulations should be adopted only after full engagement with the communities affected, especially marginalized communities. They should then be subject to a subsequent round of public comment. At a minimum, to avoid inconsistency with the authorizing statute that would subject the proposed regulations to legal challenge, these regulations must be significantly modified to eliminate the significant deficiencies cited above.

Respectfully submitted,

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Outlook

Written comments/questions on the Draft Update Procedural Regulations

From Tim Kenneally <Tim@foleylawpractice.com>
Date Fri 1/30/2026 2:07 PM
To MCADProRegs (CAD) <MCADProRegs@mass.gov>
Cc Greg Paal <gpaal@foleylawpractice.com>

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Good afternoon,

Here are our comments/questions:

- For the purposes of calculating filing deadlines under section 1.04(2), if a complainant files by mail rather than by going through the portal, is the filing considered to be made on the date the complaint was mailed or the date the complaint was received by the MCAD?
- Section 1.04(4)(c) has been revised to allow for 120 days to file a complaint after the parties agree to mediate, rather than 21 days after mediation fails. This revision should be reversed, as it creates an expansive filing period for a complainant where mediation can be scheduled quickly, but also puts an arbitrary deadline on the parties' attempts to mediate, which could make it more difficult to actually resolve the matter.
- If the revision to section 1.05(13) is intended to prohibit pre-determination discovery, the Commission's revised regulation should state that expressly. The revision could be amended to keep just the first section of the regulation ("the parties do not have a right to conduct discovery during the investigation of the complaint").
- Can the Commission provide an express cap on the amount of time that can be granted to for an extension on a written appeal under section 1.08(4)(b)(2)? For example, respondents are expressly capped at 21 days for extension for filing a position statement. A 14-day cap on extensions for filing written appeals would be appropriate in our opinion.
- Can the Commission provide guidance on any rules that may apply to subpoenas issued under section 1.10? If subpoenas for the purposes of Section 1.10 are subject to the regulations in Section 1.14, can Section 1.10 be revised to expressly confirm that?
- Are the revisions to Section 1.12(16) intended to prohibit parties from submitting proposed findings of fact and conclusions of law as part of a post-hearing brief?

Thank you.

Sincerely,

Tim

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January 30, 2026

Via electronic mail to: MCADProRegs@mass.gov

Massachusetts Commission Against Discrimination
1 Ashburton Place, Room 601
Boston, MA 02108

Re: Public Comment on DRAFT of Updated Procedural Regulations

Dear Commissioners:

We at the Massachusetts Fair Housing Center (MFHC), SouthCoast Fair Housing (SCFH), Suffolk University's Center for Housing Justice & Policy (CHJP), and the additional undersigned offer these comments on the Massachusetts Commission Against Discrimination's (the Commission or MCAD) draft Updated Procedural Regulations. We appreciate the opportunity to provide our insight as experienced fair housing practitioners, who have had the privilege to litigate numerous matters over the years before the Commission, and as other individuals or organizations with an interest in the Commission's processes and administration.

We submit these comments with particular concern for the impact these proposed changes will have on the investigation and enforcement of housing discrimination claims under G.L. c. 151B. This is a moment when access to federal fair housing enforcement mechanisms and funding is increasingly uncertain and when homelessness, housing instability and exclusionary practices continue to harm residents based on protected classes across the Commonwealth. In this context, MCAD's role as the Commonwealth's primary civil rights enforcement agency, particularly in the housing sphere, is more critical than ever. The Commission's statutory mandate is not merely to manage caseloads efficiently, but to eradicate discrimination and provide a meaningful forum for all persons denied equal access to housing. That mandate must take precedence over all other goals, including efficient caseload management.

Our comments below address our most pressing concerns with the proposed regulations and are not exhaustive in nature.

I. Early dismissals conflict with MCAD's statutory mandate and will adversely affect access to justice.

Several provisions of the proposed regulations appear to expand the Commission's authority to dismiss housing complaints at an early stage, prior to full investigation. While we recognize that MCAD faces real resource constraints, the remedial purposes of G.L. c. 151B and the requirements of due process do not permit early dismissals for reasons grounded in resource allocation, such as subjective decisions that a complaint does not have sufficient impact on the public interest or that the damages have been mitigated. Moreover, these increased regulatory hurdles for litigants narrow access to the Commission and access to justice in direct contradiction to the statute's requirement that it be construed liberally to achieve its broad, remedial purpose.

The Commission is statutorily required to promptly investigate ***all*** jurisdictional complaints to determine whether probable cause exists, thus ensuring access to justice for victims of discrimination.[1] In contrast, the proposed regulations purport to allow the dismissal of jurisdictional complaints without engaging in formal investigation and making a probable cause determination. This directly violates the statutory mandate.

Specifically, the Commission seeks to dismiss complaints at this preliminary stage if the Commission determines that allegations in complaints are "vague," "alleg[e] monetary and non-monetary harm [that] appear *de minimus*, moot, or mitigated during preliminary investigation," "contain tenuous nexus between protected class and allegedly discriminatory conduct," and where "[t]he public interest requires focusing Commission resources on complaints with greater impact on the mission to eradicate discrimination."[2] These new grounds for dismissal at the preliminary investigation stage are simply not permissible under G.L. c. 151B, § 5.

Massachusetts courts have repeatedly emphasized that Chapter 151B is a broad, remedial statute that must be construed liberally to effectuate its purposes.[3] MCAD itself has long recognized that discrimination in housing often manifests through subtle, structural, or cumulative practices: practices such as tenant screening criteria, income calculation, occupancy standards, or differential treatment throughout the lifecycle of the housing process. These practices may not

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[1] G.L. c. 151B, § 5. Pursuant to G.L. c. 151B § 5:

> After the filing of any complaint, the chair . . . *shall* designate one of the commissioners to make, with the assistance of the commission's staff, prompt investigation in connection therewith. If such commissioner shall determine *after such investigation that no probable cause exists* for crediting the allegations of the complaint, the commission shall, within ten days from such determination, cause to be issued and served upon the complainant written notice of such determination.... (emphasis added)

[2] 804 CMR 1.05(2)(b)(6)-(9) (proposed December 4, 2025).

[3] *See* G.L. c. 151B, § 9; *Turnley v. Banc of America Investment Services, Inc.*, 576 F. Supp.2d 204 (D. Mass. Sept. 17, 2008); *Blockel v. J.C. Penney Co., Inc.*, 337 F.3d 17. 1st Cir. 2003).

appear discriminatory in isolation—or at the early stages of litigation before all the facts are born out through investigation—but nonetheless violate the law and perpetuate segregation.

Provisions that authorize dismissal because alleged harm may "appear de minimis, moot, or mitigated,"[4] or because the Commission determines that other cases have "greater impact"[5] on its mission, risk undermining this established framework. A violation of fair housing law does not become lawful because its effects are difficult to quantify or because in the early stages of a case allegations may be vague or the connection between the protected class and the alleged discriminatory conduct may be tenuous. Those challenges highlight the subtle, structural, and cumulative practices that so many face in housing. MCAD precedent and Massachusetts case law have consistently recognized that post-hoc mitigation does not erase prior discriminatory conduct or negate the public interest in enforcement.[6]

Moreover, authorizing the early dismissal of complaints where the allegations are determined to be "vague," heightens the burden on unrepresented litigants at the exact same time that the Commission seeks to move to a system that removes support for unrepresented litigants in the filing process. Structural safeguards that exist now to avoid vague allegations, like the process of allowing unrepresented complainants to work directly with a representative of the Commission to draft and file their complaint with support and expertise, are removed as part of the Commission's proposal. Together, these proposed regulatory changes make the Commission's process—which has long reflected its role as a forum that largely serves unrepresented and often legally unsophisticated litigants—a less accessible one where justice may be denied to those without representation.

II. Housing discrimination requires full factual development.

Claims of housing discrimination infrequently involve explicit, direct evidence of discrimination and often require careful investigation to uncover patterns, comparator evidence, or policies with discriminatory effects. Early dismissal prior to full investigation is especially concerning in housing cases, where complainants frequently lack access to documentary evidence controlled by real estate agents, landlords, property managers, lenders, or municipalities.[7]

MCAD's investigative function is a core component of its statutory role. Shifting toward early screening based on perceived minimal harm or resource allocation risks transforming MCAD from an enforcement agency into a gatekeeping body that denies complainants the very investigation the statute contemplates. This approach is inconsistent with MCAD's historical role

[4] 804 CMR 1.05(2)7 (proposed December 4, 2025).
[5] 804 CMR 1.05(2)9 (proposed December 4, 2025).
[6] See, e.g., *Stonehill Coll. v. Massachusetts Comm'n Against Discrimination*, 441 Mass. 549, 563 (2004) (noting that "the primary purpose of an administrative proceeding before the MCAD is to vindicate the public's interest in reducing discrimination in the workplace by deterring, and punishing, instances of discrimination by employers against employees.")
[7] Relatedly, here, the regulations also remove the provisions that specifically allow for pre-determination discovery upon motion. See 804 CMR 1.04(13) (deleted text).

and with judicial recognition of the Commission's expertise in developing factual records in discrimination cases.[8]

Decisions to dismiss complaints based on resource allocation could compound the harm on particular populations, for instance, if priority for resources are given to complaints based on geographic location, protected class at issue, the nature or complexity of the investigation that would be required, the experience or knowledge of Commission staff, or whether the complaint involves a housing, employment, or other subject matter. This near unlimited authority to dismiss complaints without full investigation is a concerning apparent abdication of the Commission's statutory responsibility to investigate all discrimination complaints.

III. Appeal process conflicts with MCAD's statutory mandate.

The proposed process for appealing an investigative disposition, Section 1.08(4), also conflicts with MCAD's statutory mandate. Chapter 151B specifically mandates that the Commission hold a preliminary hearing, as a matter of right, at the request of complainants if the Commission finds no probable cause.[9] Despite this clear statutory language, the proposed regulations appear to eliminate all such preliminary hearings except when necessary to accommodate a disability. This is inconsistent with state law and presents a high burden on complainants, particularly unrepresented complainants, to provide, only in writing, reasons and supporting evidence demonstrating that a determination of no probable cause was made by the Commission "in error."[10]

This burden is especially high when considered in light of the proposed expanded grounds for dismissal under 804 CMR 1.05(2)(b)(6)-(9). For instance, it is unclear how a complainant might successfully show that the Commission acted in error when it determines that "[t]he public interest requires focusing Commission resources on complaints with greater impact on the mission to eradicate discrimination."[11]

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[8] *Sch. Comm. of Norton v. Massachusetts Comm'n Against Discrimination*, 63 Mass. App. Ct. 839, 843 (2005) (deference should be given to MCAD's findings in light of the Commission's "experience, technical competence, and specialized knowledge . . . , as well as the discretionary authority conferred on it") (internal citation omitted).

[9] Pursuant to G.L. c. 151B, § 5:

> If such commissioner shall determine after such investigation that no probable cause exists for crediting the allegations of the complaint, the commission shall, within ten days from such determination, cause to be issued and served upon the complainant written notice of such determination, and the said complainant or his attorney may, within ten days after such service, file with the commission a written request for a *preliminary hearing* before the commission to determine probable cause for crediting the allegations of the complaint, *and the commission shall allow such request as a matter of right* .... (emphasis added)

[10] 804 CMR 1.08(4)(b)(5) (proposed December 4, 2025).

[11] 804 CMR 1.05(2)(b)(9) (proposed December 4, 2025).

IV. Section-specific concerns.

The analysis below highlights our concerns with specific sections of the proposed regulations that limit access to the Commission.

a. Section 1.04 – Filing of Complaints

The Case Portal: Section 1.04(2) requires the vast majority of complaints to be filed through the MCAD Case Portal. However, stakeholders and members of the public have not been given an opportunity to view the MCAD Case Portal. Review of this portal has been limited to an unknown number of testers identified by the Commission, rather than made available to the full public for review. Moreover, the test period is extremely limited and to our knowledge there was no advance solicitation from stakeholders as to the scope, purpose, or format of the review process. While some of the undersigned have been invited to test the portal, we have been provided with almost no instruction and extremely limited time to do so. This process does not appropriately reflect the seriousness of the change being proposed, nor provide those few select individuals involved with a meaningful ability to provide feedback.

As such, we request that the MCAD provide public training sessions on the use of the MCAD Case Portal and that the public comment period be extended to allow for further comments before these regulations are implemented.

Personal Filing of Complaints: Section 1.04(2)(a)(1) appears to require personal filing by complainants, raising concerns for housing discrimination victims who rely on authorized representatives, advocates, or family members. Many housing complainants are tenants facing displacement, disabled people, elders, or people with limited English proficiency. Any restriction on representative filing would directly undermine access to MCAD's housing enforcement process.

Hand Delivery of Complaints: The elimination of hand delivery as a filing option further restricts access, particularly for complainants seeking in-person assistance or documentation support. Requiring most complaints to be filed via the Case Portal and substantially reducing the ability to obtain assistance from MCAD staff, with exception only allowed for disability (Section 1.04(2)(a)(4)) or filing by mail (Section 1.04(2)(a)(3)), reduces the ability of individuals with language, technology, or literacy-related needs to obtain assistance with preparing and filing complaints.

b. Section 1.04 – Tolling

Section 1.04(4)(c) raises serious concerns regarding tolling where pre-complaint mediation occurs. Chapter 151B requires claims to be filed in court within three years of the last discriminatory act, however, the regulations only discuss tolling of the 300 day statute of limitation for filing at the Commission. Housing discrimination victims should not be penalized for engaging in early resolution efforts. The regulations should clearly preserve tolling of the

three-year statute of limitations during pre-complaint mediation to avoid inadvertent forfeiture of housing claims.

Although not addressable through these regulations, we also note that the strict three-year statute of limitations by itself is problematic, as it is not uncommon for a complainant to have their claim pending at the Commission for that long or near that long – risking the loss of their right to judicial determination. Ultimately, it would be preferrable for the Commission to seek a legislative change to G.L. c. 151B, § 9 to allow for administrative tolling during the pendency of the administrative process, akin to how tolling is handled under the federal statute.[12]

c. Section 1.05 - Investigation

Beyond the broader issues related to the Commission's statutory mandate and complainants' due process rights described above, Section 1.05(2)(d) contains a typographical error regarding notice of appeal. Given the significance of appeal rights in housing cases, this provision should be corrected and clarified. Suggested correction in bold: "The complainant may appeal a dismissal issued pursuant to 804 CMR 1.05(2)(b) by filing a notice of appeal **pursuant** to 804 CMR 1.08(4)(b)."

V. Conclusion

The Commission has long served as a cornerstone of fair housing enforcement in the Commonwealth. Procedural reforms should strengthen, not narrow, the Commission's ability to investigate housing discrimination, develop factual records, and provide meaningful remedies to aggrieved people. This is all the more true at this particular historical moment, when widespread cuts to civil rights resources means that the infrastructure long in place to support victims of discrimination in vindicating their rights is being actively dismantled. Historically, victims of discrimination could seek assistance at the MCAD, at the U.S. Department of Housing and Urban Development, at the U.S. Department of Justice, from the Massachusetts Office of the Attorney General, and from private fair housing organizations. But federal investigatory mechanisms have been severely constrained over the last year, leaving an enormous enforcement vacuum in their wake. Now more than ever, the MCAD plays an integral role in ensuring victims have a place to seek redress. At a time when housing discrimination remains pervasive and federal enforcement is uncertain, Massachusetts must ensure that the MCAD remains fully accessible, trusted, and effective for all housing complainants.

We respectfully urge the Commission to reconsider its proposed regulations, particularly provisions that expand early dismissals, limit access to complaint filing and preliminary hearings, or weaken investigative protections in housing cases. We also urge the Commission to

[12] See 42 U.S.C. § 3613(a)(1)(B) ("The computation of such 2-year period shall not include any time during which an administrative proceeding under this subchapter was pending with respect to a complaint or charge under this subchapter based upon such discriminatory housing practice.").

extend and expand evaluation process for the MCAD Case Portal, to fully vet its accessibility and workability before committing to it through these regulations.

Thank you for the opportunity to comment. We welcome continued engagement as the Commission evaluates these proposed regulations.

Sincerely,

Jamie Langowski, Esq.
Executive Director & Practitioner in Residence
Center for Housing Justice & Policy

Kristina da Fonseca, Esq.
Executive Director
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MLRI MASSACHUSETTS LAW REFORM INSTITUTE

January 30, 2026

Comments on Proposed Revisions to 804 CMR 1.00
Standard Adjudicatory Rules of Practice and Procedure

My name is Iris Coloma-Gaines, and I am the Statewide Language Access Attorney at the Massachusetts Law Reform Institute (MLRI). MLRI is a statewide, non-profit legal services organization whose mission is to advance economic, social, and racial justice through legislation, advocacy, and litigation. I submit these comments for consideration in response to the Commission's updated draft of the Standard Adjudicatory Rules of Practice and Procedure, 804 CMR 1.00.

Massachusetts is home to a rich and diverse multilingual population. One in four residents speaks a language other than English at home, and there are over 1.4 million residents who are deaf, hard of hearing, late-deafened, Deaf Disabled or Deaf Blind. As the state agency charged with enforcing Massachusetts' anti-discrimination laws, the Massachusetts Commission Against Discrimination (MCAD) has an affirmative obligation to ensure meaningful access to its services and adjudicatory processes for all individuals. In light of this obligation, MLRI offers the following comments on the proposed regulations.

Section 1.13 — Motions and Requests

804 CMR 1.13(1): Requests

MLRI commends the Commission for seeking to streamline procedures related to motions and requests. The increased use of the MCAD Case Portal will likely benefit English-speaking parties who have reliable access to the internet, computers, and sufficient digital literacy.

However, these efficiencies may not be realized by pro se parties who are limited English proficient, illiterate, indigent, or lack reliable access to technology. As discussed further below, the Commission must ensure that procedural streamlining does not come at the expense of meaningful access for the very populations most likely to rely on MCAD's services.

Section 1.15 — Use of the MCAD Case Portal by Pro Se Parties

804 CMR 1.15(16)

The proposed requirement that pro se parties use the MCAD Case Portal as the sole means of case access and communication, absent a showing of good cause, raises serious access concerns. The Commission also proposes to require that requests for language assistance be made through the Portal.

To ensure meaningful access for individuals better served in languages other than English, best practices strongly support translating the MCAD Case Portal into the ten most commonly spoken languages in Massachusetts, with that list updated every two years to reflect the Commonwealth's evolving linguistic diversity. While MLRI recognizes that this may be a significant undertaking, the Commission should begin this work now to meet its legal obligations.

Many pro se parties face overlapping barriers, including limited English proficiency, disabilities, poverty, lack of literacy, or lack of access to technology. Requiring these individuals to submit a written request demonstrating "good cause" in order to access alternative filing or communication methods erects additional barriers and will foreseeably exclude some claimants from the Commission's processes altogether. This requirement is inconsistent with MCAD's mission to eradicate discrimination and should be removed from the proposed regulations. Eliminating the good-cause requirement would better serve the interests of justice.

Section 1.20 — Language Assistance Services

804 CMR 1.20

Language access must be a core priority for the Commission. This section should be revised to reflect established best practices for serving individuals who are better served in a language other than English, as well as individuals who are Deaf, hard of hearing, late-deafened, Deaf Disabled, or DeafBlind.

1.20(2) — Request Required

Rather than placing the burden on claimants to request language assistance, the Commission should adopt a uniform practice of proactively asking all individuals at the intake

stage to identify their preferred language or preferred method of communication. Determining whether language assistance is needed should not be left to staff discretion, as staff lack the expertise to assess an individual's language access needs. Best practice requires asking every person seeking the Commission's services to self-identify their language or communication preferences.

To ensure meaningful access, MCAD should continue to allow language assistance requests to be made by telephone or in person and should not require parties who already face barriers to rely on the Case Portal. Once a claimant's preferred language or communication method is identified, that information should be clearly recorded and flagged in the Portal so that interpretation, translation, CART services, or sign language interpretation are automatically provided at every stage of the case without requiring repeated requests. This approach would promote both access and administrative efficiency.

1.20(3) — Type of Services

The type of language assistance provided must be one that the individual can fully understand. Commission staff do not have the expertise to determine which mode of interpretation or communication is effective for a particular individual. Only the individual receiving services can make that determination, and the regulations should reflect this principle.

1.20(4) — Adequate Notice Required

If language assistance services are not available, proceedings must not go forward. The current language stating that a proceeding "may be continued" should be revised to state that a proceeding "shall be continued" until appropriate services are secured. Conducting proceedings without necessary language assistance violates Title VI of the Civil Rights Act and undermines the fairness and integrity of the adjudicatory process.

1.20(5) — Request for a Specific Interpreter

If a party has had a positive experience with a particular interpreter in a prior proceeding, honoring that request would promote efficiency and continuity. Removing or narrowing the Commission's discretion in this subsection would support effective case processing while respecting the needs of parties.

When language assistance needs are identified at intake, the Commission is far better positioned to meet those needs consistently throughout the life of a case. Relying on claimants to repeatedly request services is inefficient and unreliable. The Commission will obtain more accurate information by directly asking claimants about their needs and relying on their self-identification.

MLRI has received reports from past claimants that MCAD provides strong language assistance during intake but that access significantly deteriorates afterward. One Spanish-speaking claimant reported being assigned a Portuguese-speaking investigator, resulting in an inability to communicate. Despite repeated calls to MCAD's language assistance line, the claimant received no response, and documents continued to be sent only in English.

Another claimant reported being unable to understand his employer's position statement because it was provided only in English. He was informed that the Commission translates only "vital documents" and that a position statement did not qualify. He was told he was responsible for translating the document at his own expense and responding in English. As a result, the claimant was unable to continue pursuing his discrimination claim and felt revictimized by the very agency charged with protecting him.

Any document to which a party must respond is, by definition, a vital document. Position statements are critical to the adjudicatory process, and failure to translate them effectively bars meaningful participation.

Finally, the Commission's 2016 Language Access Plan is outdated. Massachusetts' linguistic landscape has changed significantly in the past decade, and the Plan must be updated to reflect current realities.

As the Commonwealth's anti-discrimination agency, MCAD must ensure that pro se claimants who are limited English proficient or Deaf or hard of hearing are not forced to overcome additional barriers in seeking redress for discrimination. Meaningful access is not optional—it is fundamental to the Commission's mission and legal obligations.

Outlook

Proposed MCAD Rules Limit Access to Justice

From Ivan Espinoza-Madrigal <iespinoza@lawyersforcivilrights.org>
Date Fri 1/30/2026 4:08 PM
To Ivan Espinoza-Madrigal <iespinoza@lawyersforcivilrights.org>

1 attachment (288 KB)
LCR and Partners Public Comment MCAD Regs 1.29.26.pdf;

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Civil Rights Groups Call on Massachusetts to Withdraw Proposed MCAD Regulations That Limit Access to Justice

Victims of Discrimination Will Face Further Limits to Accessing Justice Under New Rules

January 30, 2026

BOSTON – Civil rights leaders across Massachusetts are calling on the Massachusetts Commission Against Discrimination (MCAD) to withdraw newly proposed regulations that would make it even harder for people facing discrimination to seek justice. MCAD is the state agency responsible for enforcing Massachusetts' anti-discrimination laws. For many victims of discrimination, filing a complaint with MCAD is not optional—it is required before they can pursue their rights in court. Yet for years, MCAD has been difficult to access, especially for low-income people without lawyers. The proposed new regulations would deepen these barriers, rather than fix them.

The proposed rules, which are open for public comment through the end of January 2026, include significant procedural changes. The rules would require unprecedented changes, including pre-investigation screening steps and complex electronic filings. These measures are not authorized by the Commonwealth. They reduce transparency, create hurdles, and prevent people from having their complaints fully reviewed, especially if they are low-income and navigating the process without access to counsel.

In response to the seismic changes, **Lawyers for Civil Rights (LCR), the Brazilian Worker Center, Justice at Work, the Massachusetts Coalition for Occupational Safety and Health, the NAACP–Boston Branch, and the Urban League of Eastern Massachusetts** are demanding that MCAD withdraw the proposed regulations and restart the process with meaningful input from the communities most affected.

In 2024, LCR and the Urban League of Eastern Massachusetts detailed serious barriers facing people who try to file discrimination complaints at MCAD. Their findings highlighted the agency's failure to

provide unrepresented individuals with a meaningful intake process and its chronic delays in handling cases. MCAD's own FY 2025 Annual Report confirms that these problems have worsened. The agency's case backlog—already at record levels in 2024—increased by more than 26% in the last fiscal year and now exceeds 2,300 cases. That means more than 2,300 people experiencing discrimination are waiting—often for years—for their cases to move forward.

Rather than addressing these failures, the proposed regulations would make matters worse. By shifting filing and key stages of the process entirely online, the rules ignore the digital divide that disproportionately affects communities of color, older adults, people with disabilities, and low-income residents. The introduction of a so-called "preliminary investigation" would also allow MCAD to dismiss more complaints before a full review, weakening protections for victims of discrimination. This process and outcome were never intended by the Commonwealth and would require legislative approval, as it directly conflicts with the statute that created MCAD and defines its mandate.

Civil rights organizations are urging MCAD to withdraw the proposed regulations and work collaboratively with community members, advocates, and affected residents to create a system that is accessible, transparent, and worthy of the Commonwealth's civil rights laws.

"At this historic time, when federal authorities are abandoning and even reversing their civil rights commitments, we need the MCAD to step-up to ensure that survivors of discrimination have an open, transparent process available to freely pursue their claims. These proposed regulations do the opposite, making it far harder for legitimate claims to survive, and adding more delays and unnecessary complications to an already clogged system. The MCAD should start over and this time, before issuing new regulations, listen to input from the communities that they deeply affect," said **Ellen Messing, Access to Justice Fellow at Lawyers for Civil Rights.**

"When workers come forward, they are taking a real risk," said **Lenita Reason, Executive Director of the Brazilian Worker Center.** "These proposed changes at the MCAD would make that risk even greater by closing doors instead of opening them."

"People in low-paying jobs face barriers due to language, technology and other factors," said **Thomas Smith, Executive Director of Justice at Work.** "Let's ensure we are expanding rather than restricting access to justice for this workforce."

"When workers have real access to enforcement, workplaces become safer and fairer," said **Tatiana Sofia Begault, Executive Director of the Massachusetts Coalition for Occupational Safety and Health.**

"We must maintain the Commonwealth's infrastructure for civil rights enforcement, and that includes demanding that the MCAD operates in a fair and equitable manner for all," said **Royal Smith, President of the NAACP-Boston Branch.**

"Our members deserve access to employment and opportunities in economic development free of discrimination and inequality, but that can only be realized when our institutions operate in a fair and transparent manner, said **Rahsaan Hall, President & CEO of the Urban League of Eastern Massachusetts.** "These regulations lacked community insight and voice, and must be reassessed with a true community process."

The testimony is attached and available here.

Iván Espinoza-Madrigal (he/el)

Executive Director

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January 30, 2026

Sunila Thomas George, Chair
Massachusetts Commission Against Discrimination (MCAD)
One Ashburton Place, Suite 601
Boston, MA 02108
MCADProRegs@mass.gov

Re: Public Comment on MCAD's Proposed Procedural Regulations

Dear Chair George and MCAD Commissioners:

On behalf of Lawyers for Civil Rights and our concerned community partners—the Brazilian Worker Center, Justice at Work, the Massachusetts Coalition for Occupational Safety and Health, the NAACP–Boston Branch, and the Urban League of Eastern Massachusetts—we respectfully submit these comments regarding the recently-proposed changes to MCAD's procedural regulations.

We certainly acknowledge and appreciate the workload pressures MCAD staff are navigating, and we support efforts to better fund the agency so that it can meet community needs. However, we are concerned that the proposed regulations are unlawful and would ultimately increase administrative burdens at a time when staff caseloads are already under great strain.

As detailed below, the proposed regulations impermissibly curtail the rights of victims of discrimination who seek redress from MCAD. If adopted, the regulations would further weaken MCAD's protections and would particularly impact those who most need MCAD's assistance: people of color, low-wage workers, immigrants, non-English speakers, and other marginalized populations. Further, unlike previous MCAD regulations, they were proposed with no meaningful input from the signatories to this letter or from other organizations representing impacted communities.

Accordingly, we respectfully urge MCAD to withdraw the proposed regulations in their entirety because they are incompatible with the agency's legislative mandate. At a minimum, MCAD should make significant changes to address the existential concerns outlined below, and the revised regulations should be re-issued for an additional round of public comment.[1]

[1] In light of the gravity of the changes proposed, we requested on December 15, 2025 that MCAD extend the time for public comment. To date, that request has not been formally acted upon, although we understand that comments submitted after January 30, 2026 might still be considered. To the extent that MCAD does not withdraw the proposed regulations entirely, we respectfully renew our request that the public be given more meaningful time to weigh in on these significant changes.

I. Interest of Commenters

The **Brazilian Worker Center (BWC)** is a nonprofit, membership organization that supports and educates immigrant workers about workplace rights, immigration issues, and health equity. The organization empowers immigrants with the knowledge and skills needed to advance economic, social, political, and racial justice for all.

Justice at Work is a multilingual legal nonprofit that supports organizations of workers in low-paying industries. Its staff offer direct legal services to members of worker organizations, train workers and organizers on their workplace rights and ways to assert them, and provide ongoing legal counsel to groups of workers organizing for better conditions. In this context, Justice at Work regularly directs workers to the MCAD's processes for *pro se* complainants and also handles matters before the MCAD.

Lawyers for Civil Rights (LCR) is a non-profit organization that provides free legal services to individuals and families in Massachusetts. For over 50 years, LCR has fought against discrimination and sought equal opportunity for people of color and immigrants through creative and courageous legal action, education, and economic empowerment in collaboration with law firms and community partners. LCR represents clients in numerous impact areas, including employment and housing discrimination, and, in this capacity, regularly works with clients who are directly impacted by MCAD's policies and practices.

The **Massachusetts Coalition for Occupational Safety and Health (MassCOSH)** is a nonprofit membership organization dedicated to advancing safe, healthy, and equitable workplaces across Massachusetts, particularly for immigrants, low-wage workers, and workers of color. MassCOSH provides support services to its members, including information and support with MCAD complaints.

The **NAACP, Boston Branch,** is a nonprofit civil rights organization dedicated to eliminating racial discrimination and advancing social, economic, and political equity, including by addressing employment discrimination through advocacy, community engagement, and coalition-building in the Boston area.

The **Urban League of Massachusetts (ULEM)** is a non-profit, membership- and community-based organization committed to eradicating racial, social, and economic barriers to employment and promoting economic development, including by connecting affected members to legal support for filing employment discrimination complaints with the Commission.

II. The Proposed Regulations Run Counter to MCAD's Statutory Mandate

Massachusetts has a long and proud tradition of civil rights enforcement. In 1946, we became the first state to adopt an omnibus civil rights statute, codified as Chapter 151B of Massachusetts General Laws.[2] The law is intended to be sweeping. Its drafters wrote that

[2] G.L. c. 151B, inserted by St. 1946, c. 368, § 4.

discriminatory conduct serves as a "harmful influence to our democratic institutions" and proclaimed that "no well-informed, right thinking person can be oblivious or indifferent to this evil." *Report of the Special Commission Relative to the Matter of Discrimination Against Persons in Employment Because of Their Race, Color, Religion, of Nationality*, H.R. Rep. No. 337, 154th Leg., 1st Sess. at 2 (Mass. 1945). Further, the elimination of discrimination, the Legislature declared, is a "corner-stone" upon which "world peace must be based." *Report of the Governor's Committee to Recommend Fair Employment Practice Legislation*, H.R. REP. No. 400, 154th Leg., 2nd Sess., at 7 (Mass. 1946).

In keeping with its mandate to eliminate the scourge of discrimination, the statute makes clear that "this chapter shall be construed liberally for the accomplishment of its purposes, and any law inconsistent with any provision of this chapter shall not apply." G.L. c. 151B, § 9. Under section 3 of the statute, the MCAD is charged with effectuating the purposes of the statute, including promulgating rules and regulations to implement its statutory commands.

Unfortunately, MCAD has failed to meet these statutory directives for many years. In 2024, LCR and ULEM summarized many of these failings in a detailed letter, focusing in particular on MCAD's failure to afford *pro se* individuals a meaningful opportunity to file complaints by intake and its failure to conduct timely investigations or render timely adjudications. Since that time, these problems have only escalated. MCAD's backlog (*i.e*., non-housing investigations pending for over 18 months), which was already at record levels in 2024, skyrocketed over 26% in the last Fiscal Year and now exceeds 2300 cases.[3]

Rather than addressing these deficiencies, the proposed regulations move further in the wrong direction. In a variety of ways, they narrow access to the MCAD and make it even more likely that the law's intended beneficiaries—victims of discrimination—will be left without redress.

III. Specific Problems With Proposed Regulations[4]

A. The Proposed Regulations Impose Severe Restrictions on the Manner of Filing Complaints

1. Mail-In Filings

Currently, complainants may file an initial complaint (1) by "delivery" in person or through the mail, (2) through in-person or virtual intakes with MCAD staff, or (3) for complainants represented by lawyers or Duly Authorized Representatives ("DARs"), through the online portal. 1.04(a)(b) (current form of regulation); MCAD website, https://www.mass.gov/decision-tree/file-a-complaint-of-discrimination-at-the-mcad. The mail and walk-in intake options remain an important avenue for many victims of discrimination. In the last fiscal year, 7% of complaints

[3] *See* MCAD Annual Report FY 2025 ("2025 Annual Report") at 9, available at https://www.mass.gov/lists/mcad-annual-reports.

[4] The existing/proposed regulations are found at 804 CMR 1.00 *et seq*. and are referenced below as "1.xx."

were filed by mail, while 26% were filed after a virtual intake, and 36% were filed after a walk-in intake. 2025 Annual Report at 8.

The proposed regulations, however, would require virtually all complainants to use the on-line portal, with only very limited exceptions—such as the submission of a request for reasonable accommodation. *See* Proposed Regulations 1.15(16) (filings other than through the portal will not be permitted "absent good cause," *i.e.* a "compelling inability" to access or use the portal). Even then, the proposed regulations state that "such filings are strongly discouraged," and filing in this manner "may cause delay in the processing of the complaint . . . "1.04(2)(a)(3).

Even if a complainant is permitted to file an initial complaint by mail, under the proposed regulations they are still required to handle all future filings via the portal, unless they prove (through the same undetermined process) that they can demonstrate a *compelling* inability to access or use the portal. The electronic filing requirement and the unclear nature of the exception to the general rule are barriers to access that are extremely problematic for *pro se* complainants who may lack technical skills or access to computers.

The pandemic brought to the forefront the inequity of access to technology and the severity of the digital divide plaguing the Commonwealth. Even before the pandemic, in Massachusetts, 42,260 households with school aged children were without internet subscriptions, and 14,047 households with school-aged children were without any computing device.[5] Even for Massachusetts households with internet at home, about 9% of those households depend solely on unstable connections to the internet such as mobile phone data plans.[6] Certain areas of Massachusetts are more affected than others by the digital divide. In Franklin County, towns such as Monroe and Wendell contain 51% of households and 40% of households without internet service subscriptions respectively.[7] Low-income urban communities are also affected with areas like Springfield (31 percent), Lawrence (31 percent), Holyoke (29 percent), and Lowell (27 percent) demonstrating severe lack of internet access.[8] The lived reality of victims of discrimination who are affected by the digital divide underscores the importance of ensuring that mailed complaints are never treated differently for timing and investigation purposes than any other complaints.

2. *Pro Se* Portal Filings

Currently, *pro se* complainants lack the option of filing through an electronic portal. While expanding portal access could increase filing convenience for unrepresented complainants, it

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[5] U.S. Census Bureau, *Age By Presence Of A Computer And Types Of Internet Subscription In Household*, (ACS Survey 2019), https://data.census.gov/cedsci/table?q=internet&g=0400000US25&tid=ACSDT1Y2019.B28005&hidePreview=true.

[6] *Id.*

[7] *Gateway Cities at the Center of the Digital Divide in Massachusetts*, MassINC (May 5, 2020), https://massinc.org/2020/05/05/gateway-cities-at-the-center-of-the-digital-divide-in-massachusetts/.

[8] *Id.*

would also eliminate the meaningful assistance that MCAD staff currently provide in helping complainants marshal their facts or formulate their claims into an adequate complaint. That differs from the current situation, in which anyone seeking to file a complaint can obtain assistance from MCAD staff. This serves as a critical safeguard for *pro se* litigants who lack legal training and may struggle to articulate their claims clearly or in legally cognizable manner. This new reality is likely to undermine and defeat many complaints, including legitimate ones, for failure to meet an impermissibly harsher standard for filing and surviving dismissal.

B. The Proposed Regulations Impermissibly Allow MCAD To Reject Claims Without Investigation

The authorizing statute states that MCAD "shall . . . make . . . prompt investigation in connection" with "the filing of any complaint." G.L. c. 151B, § 5. This statutory command for MCAD to promptly investigate *all* filed complaints is both unequivocal and mandatory. *Oberlies v. Attorney General,* 479 Mass. 823, 838 n.13 (2018) ("It is well established that use of the word 'shall' [in a law] indicates a mandatory duty"); *Patel v. 7-Eleven, Inc.*, 494 Mass. 562, 567 n.14 ("the word 'any' has an expansive meaning, that is, one or some indiscriminately of any kind . . . .") (internal quotation omitted).

Under the current version of 1.05(2)(b), MCAD is authorized to dismiss complaints without an investigation only for very narrow threshold reasons, such as jurisdictional or frivolousness issues. Otherwise, as required by section 5 of the authorizing statute, MCAD must investigate and make a finding as to probable cause (or lack thereof) for each filed complaint.

The proposed regulations would impermissibly expand MCAD's authority to dismiss a complaint without any factual investigation, under any of the following circumstances:

- the complaint is "vague";
- the monetary/non-monetary harm alleged is "de minimus" (sic), moot, or mitigated;
- there is a "tenuous nexus" between the protected class and the complained of discriminatory conduct; or
- the "public interest" requires the MCAD to focus on complaints with "greater impact" on its mission.

1.05(2)(b)(6)-(9).

Allowing dismissals on these grounds would be flatly contrary to the authorizing statute and, therefore, if adopted, would be invalid. *See Electronics Corp. of America v. Commr. of Revenue*, 402 Mass. 672, 676-77 (1988) (a regulation that is more restrictive than its authorizing statute is invalid; an administrative board has no authority to promulgate a regulation in conflict with the statute creating that board).

Section 5 requires a prompt investigation of *all* filed complaints. The proposed regulation attempts to circumvent this clear inconsistency with the statute by calling the new screening mechanism a "preliminary investigation." 1.05(2). But MCAD cannot evade its statutory mandate in this manner. Chapter 151B's use of the term "investigation" means a factual inquiry, not an on-

the-papers assessment before the facts have been developed. *See United States v. Allergan, Inc.*, 46 F.4th 991, 998 & n.7 (9th Cir. 2022) ("investigation" means a fact-finding process to obtain information) (citation omitted); *see also* Cornell Law School, Legal Information Institute ("an investigation is an inquiry, whether formal or informal, intended to develop a factual record"), *available at* https://www.law.cornell.edu/wex/investigation (last visited Jan. 21, 2026).

Further, each of the stated grounds for dismissal is problematic. Many *pro se* complaints can be characterized as "**vague**" simply because non-lawyers often submit allegations that are conclusory, lack clear timelines, or describe events imprecisely, not because the underlying claims lack merit. The very task of MCAD's investigation is to flesh them out. Indeed, many pathbreaking employment cases have begun with "vague" complaints that may appear to have a "tenuous nexus" to discrimination or another of the proposed grounds for dismissal. *Sanchez v. Standard Brands, Inc.*, is a classic example of a case where agency staff revised an arguably "vague" and "tenuous" complaint into an EEOC charge that became a major lawsuit. 431 F.2d 455 (5th Cir. 1970). There, the complainant's *pro se* charge to the EEOC read in its entirety:

> . . . my boss lady hit me at my rear end and about a month before that I hurt my thumb and was out of work for seven days and the Company didn't pay me. I hurt my thumb at work.

Id. at 458. After consultation with the EEOC staff, the facts were contextualized as an allegation that Sanchez's supervisor singled out Mexican-American women for physical and verbal aggression and denied them promotional opportunities. Ultimately, the case was filed as a class action in federal court. *See id*. at 459-60. As this case amply demonstrates, limitations arising from imperfect exposition of a claim do not warrant or authorize premature dismissal of a complaint.

Similarly, "**de minimis**" is a standard that has been applied in various areas of law, including areas of labor law other than discrimination. For example, the Occupational Safety and Health Administration ("OSHA") applies it to decline to penalize technical non-compliance with health and safety standards where the same safety goal is achieved by alternate methods or the non-compliance is inconsequential. OSHA Standard 1903.14(a). However, this rationale does not translate to discrimination cases where the harm is substantive, not technical. Indeed, the "de minimis" doctrine is specifically disfavored in employment law. For example, a recent Ninth Circuit decision, *Cadena v. Customer Connexx LLC*, held that there was no "de minimis" exception for non-payment of wages for the time it took workers to boot up and shut down their computers daily. 107 F. 4th 902, 915 (9th Cir. 2024).

Attempting to import a "de minimis" exception into discrimination law is particularly inappropriate. Chapter 151B does not allow an employer to discriminate against, or racially harass, a worker, "just a little." Nor is it the law that an employer may pay one worker less than another for discriminatory reasons by "just a few dollars" if the reason for that is discriminatory. *See, e.g., Muldrow v. City of St. Louis*, 601 U.S. 346, 355-56 (2024) (under Title VII, any difference in a term or condition of employment because of an employee's protected class is illegal; the harm need not be significant, serious, or substantial). There is no "de minimis" exception in Chapter 151B—and MCAD cannot unilaterally create one by regulation. *See Electronics Corp. of America*, 402 Mass. at 676-77.

The proposed regulations are also unclear about what it means for harm to be "**moot**" or "**mitigated**," and provide no definition for these terms. Mootness generally refers to circumstances or actions by the parties that end a controversy without court intervention. *E.g.*, *PIC Vokey v. Massachusetts Insurers Insolvency Fund,* 381 Mass. 386, 388 (1980) (settlement of claim rendered arbitration proceedings moot); *EEOC v. Goodyear Aerospace Corp.*, 813 F. 2d 1539, 1543 (9th Cir. 1987) (individual's settlement of claim rendered case moot). However, it is unclear what "moot" means in the proposed regulations. Cases are not automatically moot, for example, if an employer voluntarily ends discriminatory conduct without agreeing not to resume it, or if the conduct's harm persists. *See, e.g.*, *A.Y. Allee v. Medrano*, 416 U.S. 802, 811 (1974) ("an action . . . does not become moot merely because the conduct complained of has terminated, if there is a possibility of recurrence, since otherwise the defendants would be free to return to [their] old ways"); *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 189 (2000) (defendant's "voluntary cessation" of allegedly wrongful conduct does not render claim moot unless "absolutely clear" that challenged conduct "could not reasonably be expected to recur").[9] Cases should not be dismissed as moot unless it is evident that the issue is fully resolved, and that all concomitant and attendant harms have been redressed, with no continuing effects. But the proposed regulations do not require that. The meaning of "mitigated" in the proposed regulations is equally unclear and concerning because it risks leaving victims of discrimination without meaningful redress.[10]

Similarly, if the filed complaint sets forth only a "**tenuous nexus**" between a protected class and the complained-of discriminatory conduct, this nexus should be fleshed out by MCAD's investigation. There is an established body of caselaw recognizing that proving discrimination is difficult and that the complainant may rely on indirect evidence, including proof of pretext, evidence of comparator treatment, and evidence of the employer's disingenuousness. *See, e.g.*, *Bulwer v. Mt. Auburn Hospital,* 473 Mass. 672, 689 (2016) (employer's motive is "elusive and rarely is established by other than circumstantial evidence") (citing authorities) (cleaned up). If those methods fail, then these cases should receive a lack of probable cause determination. But it is contrary to law to make that determination at a preliminary stage, without the benefit of further development—particularly for *pro se* litigants.

By diluting its own standards—in contravention of the governing statute—MCAD sends a dangerous message: discrimination is permissible so long as the harm can be obscured as "vague," "de minimis," or papered over through superficial "mitigation." This framework does not deter discrimination; it invites it. It predictably encourages strategic wrongdoing by rewarding defendants who calibrate discriminatory conduct to evade scrutiny rather than comply with the law—and by incentivizing ever more sophisticated forms of discrimination. The result is entrenched discrimination and victims left without meaningful protection or redress.

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[9] *See also Sheely v. MRI Radiology P.A.*, 505 F. 3d 1173, 1184-89 (11th Cir. 2007) (case not moot where employer ended challenged practice but refused to acknowledge wrongdoing).

[10] If the intent is to refer to cases that have been resolved by the parties between themselves, these cases should go through the MCAD settlement-approval process to help preclude future retaliation, ensure that the resolution is adequate, and preserve a record of the complaint should the issues recur.

Moreover, the "**public interest**" criterion for dismissal is particularly problematic, since it is completely subjective and essentially standardless. Inclusion of this criterion would allow MCAD unlimited discretion not to investigate complaints for reasons that the public will never learn. That is the antithesis of the transparent approach that a public agency should take. Moreover, it is directly contrary to MCAD's authorizing statute. As explained above, under Chapter 151B, MCAD is *required* to investigate all cases to determine whether there is probable cause.

Even apart from the criteria to be used in this pre-screening, the process itself is problematic and contrary to law. While this newly-expanded pre-screening process is underway, untrammeled by any time limits, the complainant's clock for a court complaint continues to tick. The respondent may or may not be notified that a case is pending, and otherwise, MCAD does not obligate itself to engage or communicate with the parties in any way. This will inevitably lead to even longer delays than are currently experienced. The lack of any required input whatsoever from the complainant into this process almost ensures that there will be confusion and misunderstandings of the nature of the claims, and an over-eagerness to dismiss complaints. This process also forces the MCAD into the highly inappropriate role of a pseudo-respondent, looking for holes or cracks in complaints to eliminate them, rather than an independent investigator. This threatens the integrity of the complaint adjudication process and fundamentally undermines MCAD's credibility, legitimacy, and trust with the communities it is charged to serve.

C. The Proposed Regulations Impermissibly Alter the Probable Cause Standard

Under the authorizing statute and the current regulations, in order for a claim to progress out of the investigative stage toward a hearing, MCAD must find "probable cause," *i.e.* whether it is "more probable than not" that discrimination has occurred. 1.08(1)(f)(1). In determining whether that standard is satisfied, the current rules provide that "disputes involving genuine issues of material fact shall be reserved for a factfinder at a public hearing" —and are not to be made by the investigator. *Id.* This is, of course, the standard for denying summary judgment in court and permitting civil cases to go to trial. This is an appropriate standard as it provides a methodology for investigators to use: accept undisputed facts, refrain from weighing competing evidence where facts are contested, and ask only whether, if the complainant's version of the disputed facts were credited, the facts would support a finding of discrimination. If so, the case should proceed.

At least in theory, that standard prevents investigators from trying to decide the facts themselves, which is not their role, and which could lead to unwarranted lack of probable cause determinations. Without this explicit legal standard in place, an investigator could simply reject the complainant's account and recommend a lack-of-probable-cause finding, even where evidence supports the claim. That outcome usurps the role of the public hearing required by c. 151B, § 5 and as such, is illegal, yet the proposed change appears to allow it.

D. The Proposed Regulations Impermissibly Eliminate In-Person Appeals

Under the existing rules, if a lack of probable cause determination issues, the complainant may appeal and receive a hearing before an MCAD Commissioner. At the hearing, the complainant may present "oral or written reasons," as well as evidence, why the lack of probable

cause decision was wrong. In practice, represented parties typically submit a written argument in advance of or at the hearing, along with an oral argument at the hearing, while *pro se* parties typically present their arguments orally at the hearing. Although these appeals are seldom successful, their success typically depends on the ability of the complainant to respond to the issues raised by the presiding MCAD Commissioner at the live hearing.

The proposed rules eliminate all live hearings, except as a reasonable accommodation, and require complainants to make appeal arguments only in writing. This sets up a major disadvantage for most *pro se* parties, as many lack access to the technology necessary to prepare written submissions or the legal training required to draft effective written arguments. The practical effect would be to foreclose meaningful appellate review for most unrepresented parties. Moreover, it also violates c. 151B, § 5, which requires a "preliminary *hearing*" upon a complainant's written request "as a matter of right" after an adverse causal ruling.

E. The Proposed Regulations Exacerbate the Information Imbalance Between Complainants and Respondents

It is a truism that employers typically hold most of the information needed to develop a case, but the proposed regulations prevent the disclosure of that information in at least two ways: the parties are no longer permitted even the opportunity to request permission to conduct pre-determination discovery; and the parties are not authorized to obtain the other party's responses to information requests.

Elimination of pre-determination discovery. Section 1.05 (13) as currently written allows parties represented by counsel to seek the opportunity to conduct limited pre-determination discovery and allows Commissioners to independently authorize such discovery on their own initiative. The proposed regulations strike that section in its entirety. The MCAD should not eliminate even the opportunity to ask for an important fact-gathering tool.

No requirement to share information provided to the MCAD. The proposed elimination of section 1.05(13) makes section 105(4)(d) even more problematic. When employers answer MCAD Requests for Information, they are not required to provide their responses to complainants, and investigators are barred from requiring them to do so, even with confidential information redacted. This effectively keeps complainants in the dark and limits their ability to build their cases. It also deprives a complainant of the ability to dispute, explain, or contextualize facts that the employer has provided to the Investigator.

The proposed regulations should require this information to be shared to help level the informational playing field, develop narratives for proper legal assessment of probable cause, and enhance transparency at MCAD.

The opaque "preliminary" investigation tool, taken with the information imbalance noted above, communicates that the MCAD believes that complainants have nothing to contribute to the factual or analytical development of their cases. Complainants are very likely to understand what information is important to pursue, and how it fits into a larger understanding of the case, in ways that an Investigator unfamiliar with the particular workplace may not.

F. The Proposed Regulations Introduce DARs Without Appropriate Guardrails

The proposed regulations allow parties to designate a DAR to make filings on their behalf with the MCAD through the new portal pre-causal determination. While the undersigned generally do not oppose innovative ways to assist *pro se* individuals, appropriate guardrails must be in place to ensure against problematic practices.

In theory, DARs could assist complainants, particularly *pro se* individuals, in navigating the new portal or improving the clarity of their complaints, especially where the DAR is a trusted friend or family member. In practice, however, the proposed regulations risk creating an unregulated intermediary role that could be exploited. Without clear limitations or safeguards, there is a substantial risk that a cottage industry may arise similar to the infamous "notario" system in the immigration context, in which unqualified individuals charge vulnerable individuals, similar to victims of discrimination, for assistance that is ineffective, misleading, or harmful.

G. The Proposed Regulations Apply an Incorrect Standard to Deciding Attorneys' Fee Awards

Successful complainants are entitled to an award of attorneys' fees. The proposed regulations state that attorneys' fees petitions must include "information about average hourly rates for attorneys with similar experience." But "average" hourly rates are not the correct standard. Under well-established caselaw, attorneys' fee awards must be based on "fair market rates" or "reasonable rates." *See, e.g.*, *Fontaine v. Ebtec Corp.*, 415 Mass. 309, 325-26 (1993) (adopting lodestar method for use in c. 151B cases; a "fair market rate for time reasonably spent . . . is the basic measure of a reasonable attorney's fee under State law"). Adopting the standard set forth in the proposed regulations would be inconsistent with state civil rights case law and would discourage competent counsel from taking on employment discrimination matters, resulting in even more cases proceeding *pro se* and further straining an already overburdened MCAD docket.

IV. CONCLUSION

If adopted, the proposed regulations would significantly undermine the remedial and adjudicatory purpose of G.L. c. 151B, restricting access to justice for the very communities the MCAD is charged with protecting, and prioritizing administrative shortcuts over meaningful civil rights enforcement. MCAD has long served as a critical bulwark against discrimination in the Commonwealth. Preserving that role requires regulations that expand access, promote transparency, and ensure that complaints are fully and fairly investigated—not prematurely or impermissibly screened out.

For these reasons, we respectfully request that the regulations be withdrawn in their entirety. Any new regulations should be adopted only after full engagement with the communities affected, especially marginalized communities. They should then be subject to a subsequent round of public comment. At a minimum, to avoid inconsistency with the authorizing statute that would subject the proposed regulations to legal challenge, these regulations must be significantly modified to eliminate the significant deficiencies cited above.

Respectfully submitted,

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January 30, 2026

VIA EMAIL: MCADProRegs@mass.gov

Justine LaVoye
Massachusetts Commission Against Discrimination
1 Ashburton Place, Suite 601
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Re: MCAD Draft Procedural Regulations

Dear Ms. LaVoye:

Thank you for the opportunity to provide comments regarding the Commission's draft updated procedural regulations. First, let me commend the Commission on the effort it has dedicated to improving the Commission's organization, processes, and procedures.

My practice involves representing employers and other organizations as well as their management and executives. The majority of my practice is devoted to representing clients in the defense of claims by employees for discrimination, harassment, and retaliation. I additionally represent clients in the defense of housing and public accommodations claims. In addition to working in private practice, I worked as Commission Counsel for the MCAD for almost three years, during which time I represented the Commission and the public interest in prosecuting claims of discrimination.

While I represent clients against claims of discrimination, I endorse and support the Commission's mission to eradicate discrimination in the Commonwealth. However, many complaints that are filed have little or no merit and/or have a nebulous or specious connection to a complainant's protected class. Instead, they can take the form of generalized employee complaints or disputes in the form of a claim of discrimination. While I have witnessed recent improvement, I believe the time it has taken the Commission to conduct its investigations over the past several years to be unacceptable, and I suspect the Commission agrees. Critically, I strongly believe that the group most harmed by the investigation delays are complainants; individuals who were actually victims of discrimination.

I had the opportunity to observe the first of the public hearings held by the Commission and the objections by members of the plaintiffs' bar and employee groups to the revised regulations, including the preliminary investigation procedures and case portal requirements. While certainly not all comments were without merit, starkly absent was any acknowledgment of the reality of the limitations of the Commission's resources over the past years and, notably, any proposed alternatives to address the clear deficiencies with the status quo.

With this background, I offer the following comments on the draft procedural regulations, some of which are not related to any proposed revisions, but to the regulations as currently in effect:

1. I support the Commission's proposed regulations regarding the conducting of Preliminary Investigations prior to authorization of a formal investigation and giving the Commission the power to dismiss complaints that do not meet a minimum threshold of merit on their face. I believe this will dramatically improve the efficiency of the Commission in investigating complaints and allow it to dedicate its limited resources to the more meritorious complaints among the thousands filed each year.

2. In Section 1.05(a), the Commission has discretion to preliminarily investigate a complaint in any manner necessary, including outreach to parties and witnesses. However, my understanding is that at this stage, respondents would not have received notice of the complaint and investigation. I have concerns that the Commission would contact alleged offenders or witnesses who are employees of respondents without the employer having awareness. This is concerning, particularly for larger employers, which are unable to notify their employees in advance and protect their and the employer's interests. I would propose that prior to the Commission communicating with a respondent or employee of a respondent, that notice of the complaint be provided to respondent.

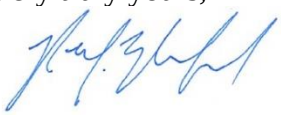
3. I fully support the implementation of the MCAD Case Portal and the requirement for all parties to utilize the portal for filing and communication with the MCAD. Often, investigators change or it is uncertain which administrative staff should receive filings and communications, and communication can be unpredictable and ineffective. It is reasonable to require complainants to utilize this portal as well, absent good case.

4. I propose that the time period within which to file position statements be extended from 21 to 30 days, at least, with an extension of 30 days being available. I believe any practitioner before the MCAD would agree that 21 days is rarely sufficient for a respondent to receive the complaint, engage counsel, investigate the allegations, and prepare a complete response. I believe that allowing the time necessary to fully investigate and provide a complete response provides the investigator with the full information necessary to investigate a complaint and limits the need for supplemental information or requests. The additional time will also not delay the investigation in any material way.

5. I recommend that language be included in the regulations regarding amendments to complaints to be clear that a complaint is not amended until and unless the Commission allows a motion to amend and issues/accepts the amendment. I have encountered situations where amendments are filed without motion or motions are filed without action by the MCAD and it can be unclear whether the amendments are effective or whether a response is required.

Thank you very much for the opportunity to comment and for your work on these revised regulations.

Very truly yours,



Reid M. Wakefield

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January 30, 2026

VIA E-MAIL

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Boston, MA 02108

Re: MCAD Proposed Procedural Regulations

Dear Massachusetts Commission Against Discrimination:

On behalf of Seyfarth Shaw LLP, we submit these comments to the Massachusetts Commission Against Discrimination ("MCAD" or the "Commission")'s proposed changes to its Rules of Procedure. The comments contained in this letter are not provided on behalf of any client that we represent. Rather, these comments are informed by our firm's considerable experience that we have gained by representing employers in a myriad of industries across Massachusetts and the country in connection with discrimination matters.

Seyfarth Shaw is a global, full-service law firm with 13 offices in the United States and approximately 400 attorneys who represent employers in labor and employment matters. We devote a considerable portion of our time to counseling and defending employers in matters arising under state and federal employment laws, including Chapter 151B. We work hard to explore the unique challenges each of our clients face and to understand how those challenges impact the objectives they strive to meet. In Massachusetts, our team of 31 Labor & Employment attorneys earned a Band 1 ranking from Chambers USA in 2025 – the 19th straight year we've received this high-level recognition, which is based on independent research and direct client feedback.

Based upon our experience representing employers in discrimination matters and feedback we have received from our clients, our clients are interested in a process that is fair, efficient, and proportional to the scope of the case. We submit the following comments with respect to several of the key proposed changes in light of these principles and hope the Commission will give meaningful consideration to our comments.

I. Proposed Rule 1.04(2) Regarding Filing Through the MCAD Case Portal

Seyfarth supports the establishment of an electronic case filing system and the requirement that all complaints shall be filed through the new MCAD Case Portal. For this reason, we recommend eliminating proposed Rule 1.04(2)(a)(3) which would nonetheless permit the filing of a complaint by U.S. Mail. While the proposed rule acknowledges that filing by mail is discouraged and could lead to delays in processing, the proposed rule ought to bar filing by mail

altogether or limit its use to complainants who in good faith are not able to file electronically. Alternatively, in order to discourage filing by mail, the complaint should be treated as filed on the date it is received by the Commission.

II. Rule 1.04(4)(b) Regarding What is a Continuing Violation

The Commission did not propose to alter this rule, but it ought to. Courts have held that the continuing violation doctrine does not apply to discrete acts. *Ocean Spray Cranberries, Inc. v. Mass. Comm'n Against Discrimination*, 441 Mass. 632, 644-45 (2004). Thus, the current regulation does not accurately set out the standard for what is a continuing violation under Chapter 151B.

III. Proposed Rule 1.04(4)(c) Regarding Tolling Related to Mediation

The current and proposed versions of Rule 1.04(4)(c) allow the Commission to toll the statutory filing deadline during mediation prior to the filing of a complaint with the Commission. The current and proposed versions of Rule 1.04(d) also allow the Commission to toll a complainant's filing deadlines based on equitable considerations. These powers are beyond the agency's authority under Chapter 151B.

Although Massachusetts courts have recognized several bases for equitable tolling under Chapter 151B, *see e.g. Pettengill v. Curtis*, 584 F. Supp. 2d 348 (D. Mass. 2008); *Andrew v. Arkwright Mut. Ins. Co.*, 423 Mass. 1021, 1022 (1996), the authority to toll statutory filing deadlines under Chapter 151B is beyond the powers of the Commission. Rather, the Commission has only the authority granted to it by statute and cannot adjudicate actions beyond those specifically allowed by statute. The tolling of filing deadlines supplied by the Commission's enabling statute is not among those powers. M.G.L. ch. 151B § 3. And of course, many complaints of discrimination are filed under both federal and state law, and the MCAD does not have authority to change the filing deadlines under Title VII or other federal anti-discrimination laws. The current rule runs the risk of giving complainants a false sense of security. Accordingly, the Commission should eliminate this rule.

If the Commission nonetheless maintains some sort of rule permitting tolling, the proposed rule is contrary to the statutory filing deadline. The proposed rule provides that the complainant must file a complaint within 120 days of filing the agreement to mediate with the Commission. When the parties are represented by counsel (which the rule requires), a typical tolling agreement will specify how long the tolling will last if mediation is unsuccessful. Excluding the parties' agreed upon tolling period, the complainant should have 300 days to file the complaint, no more and no less. A rigid 120-day period could deprive the complainant of some portion of the 300 days, if the parties agree to mediate early during the normal filing period, or could act to extend the 300 days, even with a tolling period, improperly. If the Commission is inclined to have a rule, it ought to make clear that the complainant is entitled to 300 days to file the complaint, excluding the agreed-upon tolling period.

IV. Proposed Rule 1.04(5) Regarding the Verification

The proposed rule suggests that a complainant who is represented is not required to verify the allegations of the complaint. This should be rejected. All complainants should be required to provide a verification, irrespective of whether they have counsel. As respondents are required to

verify their positions statements, regardless of whether they are represented by counsel, the same should be true of complainants. Plus, the proposed rule is illogical. There is no reason why a complainant who has counsel is unable to verify the allegations in her complaint.

V. Proposed Rule 1.05 Regarding Investigation of Complaints

Preservation of evidence is key to the development of the investigative and factual record—both for complainants asserting their claims and respondents defending against claims. The proposed Rule 1.05(1) provides that upon notice of the complaint—which "may occur during preliminary investigation…or after formal service of the complaint"—parties have the duty to preserve evidence, and the Commission may impose sanctions for failure to preserve evidence. Under the proposed Rule 1.05(3), however, the Commission must serve the complaint upon a respondent only after it has completed a mandatory preliminary investigation of the complaint—currently a preliminary review of a complaint is optional—and after the Commission has authorized a formal investigation of the complaint. As a result, a respondent may be unaware of a filed complaint during the Commission's preliminary investigation. Moreover, because the proposed Rule 1.05(2) does not set a temporal deadline for completion of the preliminary investigation, substantial time may pass between the alleged discriminatory conduct, the filing of the complaint, and the respondent's notice of such complaint. This increases the risk that relevant evidence to alleged claims and defenses are lost in the ordinary course of business rendering an incomplete factual record, which disadvantages both complainants and respondents. For example, many employers do not maintain former employees' email accounts some period of time after the termination of their employment.

To address preservation of evidence concerns, the Commission should amend the proposed Rule 1.05 to notify all respondents of complaints filed against them within 10 days of a complaint being filed with the Commission. This will provide respondents notice of such complaints and allow respondents to timely implement protocols to preserve relevant evidence in the event a complaint is authorized for a full investigation. Providing respondents prompt notice of complaints filed against them will protect the integrity and completeness of the investigative record without compromising the Commission's ability to screen complaints efficiently.

VI. Proposed Rule 1.06 Governing Mediation Does Not Adequately Address Confidentiality Concerns Fundamental to the Mediation Process

Mediation can be an important tool for resolving complaints short of a public hearing, which serves the interests of complainants and respondents alike. Currently, Rule 1.06 grants the Commission the authority to offer parties the opportunity to engage in Commission-sponsored mediation under the oversight of the Investigating Commissioner. The proposed Rule 1.06 eliminates language explicitly granting the Investigating Commissioner oversight over such mediation. Under the proposed Rule 1.06, it is unclear who would perform Commission-sponsored mediation. Regardless, we are concerned about the Commission's role in the process.

Although Rule 1.06(c) provides that the confidentiality required by Massachusetts law will govern any mediation, the Rule nonetheless allows information disclosed at mediation to be shared within the Commission. Moreover, because the Commission serves as the mediator during the mediation process, information that is shared during the course of mediation will consequently become known to the Commission should mediation conclude unsuccessfully.

The foundation of a successful mediation is the parties' ability to freely share information with the mediator without the risk of such information being used against the parties. By allowing the Commission to act as the mediator, the Commission creates a substantial disincentive for parties to share information with the mediator.

For the Commission's mediation program to be successful, the Commission should designate a person to oversee mediation and preclude this designated person from sharing information disclosed to them during the course of mediation with the any member of the Commission involved in evaluating the merits of the parties' litigation. Accordingly, we strongly suggest that the Commission reconsider its position with respect to mediation in order to provide employees and employers with the proper incentives to be open and candid with respect to their positions.

VII. Proposed Rule 1.05(10) Regarding the Investigative Conference

The proposed Rule 1.05(10) largely maintains the current practice of holding an investigative conference. Although the proposed rule states that the purpose of the investigative conference is to obtain evidence, identify issues in dispute, ascertain the position of the parties and explore the possibility of settlement, in practice, the investigative conference oftentimes does not involve any of those purposes. Rather, at present, the typical investigative conference involves an investigator communicating document and information requests to each party. Further, because the rule makes clear that the conference is not recorded in any way, any substantive statements made by either party are not preserved as evidence. We suggest that the Commission eliminate the investigative conference as it currently exists.

VIII. Proposed Rule 1.08(4)(b) Regarding Appeal of an Investigative Disposition

The proposed rule contemplates that a complainant's written appeal shall include "supporting evidence." This should be eliminated or clarified. Under current practice, a complainant who appeals an investigative determination oftentimes asserts new allegations that were not in the underlying complaint or raised during the investigation. An appeal is not supposed to be a moving target; it should be based on the investigative record. To the extent that a complainant believes there is additional evidence or allegations in support of their complaint, they should be required to put forth such evidence or new allegations during the investigation and not during an appeal and after the Commission has dismissed the complaint for lack of probable cause.

IX. Rule 1.09(11) Should Require the Commission to Consider Costs and Whether a Complainant is Represented by Counsel

The proposed regulations obscure the Chair's authority to consider costs and whether a complainant is represented by counsel. We recommend that the Commission explicitly incorporate those considerations into Rule 1.09(11). When evaluating whether a complainant has refused to accept a reasonable settlement offer, the Chair should be able to consider the relative sophistication of the parties and the costs at stake in litigating the claims. Too often, complainants and their counsel take settlement positions that are disproportionate to the alleged facts of the case. If the respondent nonetheless makes a reasonable settlement offer, the Chair should be empowered and encouraged to consider the costs of further litigation and a complainant's represented status when assessing whether the Commission should use its limited resources to

continue pursuing the case. We recommend that the Commission explicitly state such considerations.[1]

X. Rule 1.10 Unnecessarily Expands the Litigation Process at the Agency Level

The proposed Rule 1.10 provides an unnecessary expanse of the litigation tools available to parties during post-determination discovery.

First, the proposed rule eliminates all general objections to interrogatories. This is impractical and should be rejected. For example, it is typical to assert as a general objection that the responding party objects to producing privileged information or work product. The proposed rule would require a party to assert the objection as to each interrogatory and "describe the nature of the information being withheld." Thus, for each interrogatory, a responding party would have to object to the interrogatory on privilege grounds and then provide a mini-privilege log as to every privileged communication being withheld. This is burdensome, unnecessary and will increase objections rather than limit them.

Second, the current number of interrogatories allowed exceeds the number of interrogatories allowed under the Massachusetts Rules of Civil Procedure. In the vast majority of cases, neither party has need for 30 interrogatories. Our view is that 15 interrogatories, inclusive of subparts, is sufficient. A party may ask for more upon a showing of good cause.

Third, the proposed rule regarding the production of documents is out of step with modern civil practice. The proposed rule should state that a party is required to do a *reasonably* diligent search among custodians *most likely* to have responsive information, and the scope for such discovery should be proportional to the needs of the case. Further, the rule ought to contemplate the significant burden and expense of producing electronically stored information ("ESI"). The parties should be required to confer about the scope and burden associated with producing ESI, including potential cost-shifting. Too often, overly broad requests for ESI are used as a sword to increase the litigation costs of the responding party, especially employers.

Fourth, current Rule 1.10(6)(d) allows for Massachusetts Rule 30(b)(6)-style depositions of organizations. This should be eliminated. As a practical matter, this rule only impacts respondents and imposes an unnecessary burden. 30(b)(6) depositions are incredibly burdensome on organizations and are a source for opportunistic parties to generate unreasonable litigation costs. It requires a witness to familiarize himself or herself with an organization's entire knowledge on a topic. And of course, the rule imposes no limitations on the number of topics, meaning that multiple witnesses could be necessary to satisfy a single 30(b)(6) style deposition. For this reason, a Rule 30(b)(6) deposition in court litigation can be extremely costly and burdensome. However, the rule exists in court practice because it is a mechanism by which parties can learn information when they otherwise do not know who within an organization is the person with knowledge of the topic. That concern does not exist in the vast majority of cases before the Commission. Complainants at the Commission are typically current or former employees of the organization and are uniquely situated to notice appropriate depositions of the

[1] Although we recognize that the current Rule 1.09(11) states that the list of considerations is non-exhaustive, we nonetheless feel strongly that the rules should explicitly reflect the consideration of costs and a complainant's self-represented status.

relevant individuals. Plus, even if complainants lacked some information, the respondent's answer and position statement is required to be more fulsome than in court. Other discovery tools also allow a complainant to identify who made decisions at issue. As the process before the Commission is supposed to be expedient and focused, the 30(b)(6) deposition is unnecessary at the agency level, and should be rejected.

Relatedly, we suggest that the Rule 1.10(6) limit the number of depositions permitted by each side to five depositions and limit each deposition to seven hours in length. A party seeking to take more could request leave to take additional ones where good cause exists.

Finally, the Commission should not add a new rule providing for requests for admissions. The respondent's position statement is already under oath, and there are other discovery mechanisms to confirm other factual issues. Further, the Commission's proposed rule on admissions is not consistent with the Massachusetts Rules of Civil Procedure. If the Commission is inclined to have such a discovery mechanism, then it ought to include the provision for an award of attorneys' fees contemplated by Rule 37(c) of the Massachusetts Rules of Civil Procedure. Further, a response to an admission must be binding in any other proceeding. It is odd to suggest that an admission of a fact by a party is binding before the Commission, but that party could disclaim the same fact in another proceeding. Finally, the cap of 50 requests for admissions is way too high and unnecessary. We suggest that if the Commission permits admissions, they ought to be limited to 15 requests.

XI. Proposed Rule 1.13(3) Regarding Predetermination Motions

The proposed rule limiting permitted motions to dismiss should be rejected. A respondent ought to be permitted to file a motion to dismiss if it contends that the complaint as drafted fails to state a claim. A respondent should not have to answer a complaint that is legally insufficient. Given the Commission's liberal rules relating to amendment, a complainant can always seek to amend their complaint in response to such a motion.

The proposed rule's statement that "[p]redetermination motions slow the investigative process and interfere with the timely investigation of complaints" is not appropriate to be included in the rules. A complaint that alleges legally insufficient claims also slows the investigative process. A respondent's due process rights are not an administrative inconvenience.

XII. Proposed Rule 1.15(3) Regarding Additional Parties is Problematic.

The proposed Rule 1.15(3) contemplates that the Commission may permit post-determination addition of parties. Such a rule is problematic and should be rejected. Section 5 of Chapter 151B requires the Commission to investigate an allegation against a party before making a determination. The Commission is not permitted to allow a complainant to add a respondent post-determination. Nor can the Commission permit the adding of additional complainants, since an aggrieved person must file a timely complaint.

XIII. Current Rule 1.15(4) Governing Class Actions Calls for Powers Beyond the Commission's Statutory Authority and Raises Substantial Due Process Concerns

Current Rule 1.15(4) allows the Commission to preside over class actions brought either by individual litigants or initiated *sua sponte* by the Chair after receipt of a complaint. We propose that the Commission eliminate Rule 1.15(4) in its entirety for several reasons.

First, Chapter 151B does not authorize the maintenance of class actions before the Commission. *See Mass. Elec. Co. v. Mass. Comm'n Against Discrimination*, 375 Mass. 160, 176 (1978). Nor can the Commission establish a class action device by rule. Although the Commission is empowered to promulgate regulations necessary to carry out the provisions of Chapter 151B, *id.*, and prior rules have contemplated the use of class actions before the Commission, the class action device is not "reasonably necessary for [the Commission's] proper functioning." *Mass. Comm'n Against Discrimination v. Liberty Mut. Ins. Co.*, 371 Mass. 186, 189 (1976). To the extent a complainant seeks to bring her claims on a class basis, she can elect to pursue her claims in court.

Second, the rule is procedurally deficient. While it purports to mirror in part Rule 23(a) of the Massachusetts Rules of Civil Procedure, it ignores the requirements of Rule 23(b) which are intended to ensure that a case can be fairly and appropriately maintained as a class action: whether common questions of law and fact will predominate over questions affecting individual members and whether a class action is superior to other methods for the fair and efficient adjudication of the case. As the Supreme Judicial Court has made clear, the requirements of Rule 23(b) are intended to ensure that a class action will aid judicial economy and that the resolution of the common questions will signal the beginning of the end of the controversy, rather than devolve into mini-trials on individualized issues. *See Fletcher v. Cape Cod Co.*, 394 Mass. 595 (1985). The absence of the protections of Rule 23(b) in the proposed rule risks undermining due process for both absent class members and for respondents defending against such claims. *See, e.g.*, *Baker v. Equity Residential Mgmt.*, 390 F. Supp. 3d 246, 259–60 (D. Mass. 2019) (quoting *In re Nexium Antitrust Litig.*, 777 F.3d 9, 19 (1st Cir. 2015)) ("[A] class may be certified notwithstanding the need to adjudicate individual issues so long as the proposed adjudication will be both 'administratively feasible' and 'protective of defendants' Seventh Amendment and due process rights.").

The rule is also deficient because it does not understand or contemplate the administrative burdens implicated by treating a case as a class action. The Commission needs to give written notice to absent class members since they would be bound by any decision. The rule also fails to consider whether absent class members should be given the opportunity to opt-out from the case. Some class members may prefer to litigate any claims individually, may have unique claims, or may have no claims at all. In this respect, the rule also fails to account for absent class members who may have no injury, a significant due process issue. If the lead complainant chooses to remove the case to court, the rule ought to address what happens to absent class members in that instance. Obviously, it will be up to the court to determine whether the court case can proceed as a class action. And to the extent that there is a settlement, the rule fails to give absent class members an opportunity to comment on any proposed settlement. We submit that the Commission lacks the resources and experience to manage these issues. All of these concerns suggest that class actions are better brought in court.

Finally, if the Commission insists on preserving the current class action rule, the rule should be amended so that the Chair cannot *sua sponte* convert an individual action into a class action. If a complainant – and it is likely limited to complainants – seeks to bring the case as a class action, the complainant should bear the burden of proving that the case is appropriate for class treatment and the respondent should have the opportunity to respond. Further, any order certifying a case as a class action ought to be immediately appealable to the Commission. The use of a class action device often creates pressure for settlement and thus a respondent who

challenges the appropriateness of a class action ought to have a mechanism to appeal the issue before a public hearing.

XIV. Proposed Rule 1.22 Regarding Sanctions

We support the inclusion of the sanction provisions. We propose adding a provision consistent with Rule 11 of the Massachusetts Rules of Civil Procedure that permits sanctions against a party or their attorney for allegations that are not supported by a good faith basis. We also propose adding a provision that permits sanctions against a party or their attorney for failure to comply with service obligations, including but not limited to service of filings and responses to requests for information on the opposing party. Further, any represented party should be permitted to recover reasonable attorneys' fees and costs as a sanction for discovery non-compliance.

* * * *

We appreciate the opportunity to respond to the proposed changes to the MCAD's Rules of Procedure and look forward to working with the Commission on this important issue.

Very truly yours,

SEYFARTH SHAW LLP

Robert A. Fisher
Erin Chow
Madeline Comer

Memorandum

To: The Massachusetts Commission Against Discrimination
Attention: Sunila Thomas-George, Chair

Cc: The MCAD Advisory Board
Jesse Boodoo, Chief Legal Counsel to Governor Maura Healey

From: Individuals and Organizations Listed Below

Re: Comments on Proposed Changes to the MCAD's Procedural Regulations

Introduction

The MCAD has recently issued proposed revisions to its procedural regulations that depart from its compelling statutory mission and that, in some instances, are inconsistent with the statute that the MCAD is mandated to enforce. These changes have the overall effect of denying or materially limiting meaningful access to the agency charged the enforcement of the Commonwealth's antidiscrimination laws. These proposed changes come at a time when the effort to combat discriminatory practices is under attack at the federal level, and when Massachusetts has thus far stood out as a jurisdiction which rightly distinguishes itself, under its own Declaration of Rights, its statutes, and its controlling state precedents, as a place where discrimination is not tolerated. There is no more important time than the present for Massachusetts to stand up for, rather than walk back from, its proud history of protecting its residents' civil rights, including our long-recognized right to be free from unlawful discrimination.

The Legislative Rationale for Creating the MCAD as the Agency Charged with Enforcement of G.L. c. 151B

When reviewing the MCAD's proposed changes to its procedural regulations, the question must be whether and to what extent these proposed changes serve or do not serve the vital interests protected by G.L. c. 151B and whether and to what extent the proposed changes conform to the MCAD's statutory duty, as set forth in G.L. c. 151B, § 3(5), to "adopt, promulgate, amend and rescind rules and regulations *suitable to carry out the provisions" of G.L. c. 151B* (emphasis supplied). To answer these questions, it is important to consider the unique background and venerable history of G.L. c. 151B, including the legislative rationale for creating the MCAD as the agency charged with the responsibility of enforcing the protections of G.L. c. 151B.

Enacted as The Fair Employment Practices Act in 1946, G.L. c. 151B represents the Commonwealth's first and most comprehensive effort to eliminate discrimination in the workplace. The statute came at a time when soldiers returning from battle in World War II, after having put their lives on the line for our country, faced insuperable barriers to workplace opportunities on account of their race, religion, and/or national origin.

The problem of workplace discrimination was seen at the time as shocking and immoral; as a most "harmful influence to our democratic institutions," Report of the Special Commission Relative to the Matter of Discrimination Against Persons In

Employment Because Of Their Race, Color, Religion, Or Nationality, House No. 337, 15 Leg., Second Sess. (Mass. 1944) (hereinafter, "House No.337") at 2; and as "a hideous evil which must be extirpated from our soil forever." Report of the Governor's Committee To Recommend Fair Employment Practice Legislation, House No. 400, 154 Leg., Second Sess. (Mass. 1946) (hereinafter, "House No. 400") at 7. The Governor established a Commission to study this issue and to recommend a legislative scheme that would be most effective in combatting it.

Legislative reports note that, while the problem of workplace discrimination could be easily acknowledged, there are particular difficulties inherent in combating it by prescriptive legislation alone:

> Often in the companies where we find evidence of such practice their officers claim that there is no official sanction of such conduct, but it is obvious that individuals who are responsible for the employment and promotion of employees sometimes subtly, and sometimes rather crudely, engage in this practice, without any restraint or admonition from the executive powers. The object is accomplished by so many devious and various means that no single corrective rule can be applied to prevent the injustices committed.

House No. 337 at 2.

Given these considerations, it became apparent that simply outlawing discrimination was not enough. The Legislature concluded that, in order to address the problem of discrimination effectively, the General Court would have to go further, and, "in the public interest," craft "appropriate machinery to protect those who are thus discriminated against." House No. 337 at 3. *See,* House No. 400 at 7.

Thus, in enacting G.L. c. 151B, the legislature not only proclaimed that "[t]he right to work without discrimination because of race, color, religious creed, national origin or ancestry is hereby declared to be a right and privilege of the inhabitants of the commonwealth," but it also created a Commission empowered, among other things, to enact regulations, to receive, investigate, and pass on complaints of unlawful practices, to hold hearings, and to issue orders consistent with the purposes of the Act. *See,* House No. 400 at 13-15, 17-20; G.L. c.151B, §§3, 5.

The legislative judgments underlying the passage of G.L.c 151B have proven sound and have been accorded great deference by the Supreme Judicial Court. In this Commonwealth, there has been no retreat from the acknowledgement that workplace discrimination is a particularly harmful societal problem, or from the effort to eradicate it. Since the passage of G.L. c. 151B in 1946, the statute's protections have only expanded, making it unlawful to discriminate on the basis of age, sex, sexual orientation, gender identity, pregnancy, veteran status, handicap, or genetic information. *See,* G.L. c. 151B, §4.

The existence of a meaningful enforcement mechanism has proven vital in the effort to protect civil rights and to accomplish the purposes of antidiscrimination laws:

> The major key to the success of [such] commissions to date has been their ultimate power to enter enforceable orders. Those few states and more numerous city agencies permitted only to accept complaints and conciliate but not given enforcement powers have been relatively unsuccessful. Although the moral force of the mere existence of an antidiscrimination statute is by no means negligible, a determined respondent cannot be won over by persuasion alone.

Note, *The Right To Equal Treatment: Administrative Enforcement Of Antidiscrimination Legislation,* 74 Harvard L. Rev. 526, 548 (1961).

In other words, it is well-recognized that the statutory promise of nondiscrimination is, at bottom, no more than words on paper without a robust mechanism to ensure that antidiscrimination laws are actually enforced. Effective enforcement is the key to the accomplishment of G.L. c. 151B's remedial imperative of eradicating discrimination in the Commonwealth. The MCAD was expressly created for this purpose.

The Proposed Regulations

As set forth below, several of the changes that the MCAD has proposed run counter not only to its important statutory mandate but also to the specific requirements of G.L. c. 151B:[1]

1. Limitation of access to the MCAD.

G.L. c. 151B, § 5 provides, ***as a matter of right***, that "any person claiming to be aggrieved by an alleged unlawful practice . . . may, by himself or his attorney, make, sign, and file with the commission a verified complaint. . . ."

A significant feature of the proposed regulations is its new requirement that, with certain narrow exceptions, complainants and their counsel must use an electronic MCAD Case Portal to file complaints (as well as many other complaint-related documents). The potential adverse effect of such a requirement on *pro se* complainants, particularly those without access to computers and/or the internet, is obvious. According to the MCAD's 2025 Annual Report, more than one third of the complaints filed with the agency were filed by walk-in complainants.

As a practical matter, the requirement, at this juncture, is of questionable wisdom with respect to *all* parties, given that the MCAD Case Portal to which the proposed regulations refer has not yet been fully implemented or tested. Until the MCAD has

[1] The signatories below acknowledge with appreciation the thoughts and comments of various members of the Massachusetts Employment Law Association ("MELA") and of the Lawyers for Civil Rights. In some sections, this Memorandum borrows heavily from those comments due to their critical importance in assessing the impact of the proposed revisions.

had the opportunity to work with this new system and iron out any problems that emerge, it makes no sense to require parties to use this portal as the near-exclusive means of access to the MCAD. Under these circumstances, the requirement that all parties use an electronic portal that does not yet exist in operational form simply stands as a barrier to complainants who have the statutory right to file a complaint of discrimination with the Commission.

2. <u>Proposed expansion of the MCAD's ability to dismiss a complaint without an investigation.</u>

One of the most notable of the proposed changes to the regulations is a significant expansion of the MCAD's ability to decline to proceed with a "formal" investigation of a complaint once it is filed. Currently, 804 CMR § 1.05(2)(a) allows the MCAD to dismiss a complaint at the "review and authorization" stage due to "lack of standing, lack of jurisdiction, untimeliness, failure to state a claim of discrimination, frivolous claims, or where allegations are facially implausible or incapable of verification." In other words, under current "review and authorization" practice, the MCAD may only dismiss a complaint which, on its face, is simply not within the purview of G.L. c. 151B. Indeed, the MCAD's current website informs the public that the "review and authorization" process exists to screen out complaints over which the MCAD has no jurisdiction.

The proposed changes would allow the MCAD to dismiss a complaint prior to authorizing an investigation for several additional reasons, even where the allegations *are* within the purview of the statute – namely, if, on preliminary review,[2] the complaint is somehow "vague," if the "allegations of monetary and non-monetary harm appear *de minimus,* moot, or mitigated," if the "allegations contain tenuous nexus between protected class and allegedly discriminatory conduct; or if "[t]he public interest requires focusing Commission resources on complaint with greater impact on the mission to eradicate discrimination." It is not clear in the proposed regulations whether dismissal after "preliminary review" is to be treated as an "administrative dismissal" of the complaint which, according to the proposed regulations, "means a case dismissal that may occur at any time in the processing of a complaint for which no preliminary appeal is available." Nor is it clear whether dismissal after "preliminary review" is to be treated as a final order of the Commission subject to review under G.L. c. 30A.

These proposed changes are so broad as to grant the MCAD the discretion to dismiss *any* complaint without an investigation, and possibly, without any right to an internal appeal. Yet the statute does not afford the MCAD that discretion – or, indeed, *any* discretion to dismiss complaints that fall within the purview of G.L. c. 151B. On the contrary, the proposed language runs afoul of G.L. c. 151B, § 5, which *requires* the MCAD to

[2] In the proposed regulations, this preliminary review is now called a "preliminary investigation" -- a newly proposed process under which -- with no transparency -- the MCAD may, but is not required to, reach out to the parties and/or others to gather facts. In other words, under the proposed regulations, the MCAD may dismiss a complaint without any fact-gathering process at all. As noted more fully herein, this "preliminary investigation" is designed to take place even before a respondent is served with the complaint, much less asked to provide a response.

investigate complaints alleging discrimination: "After the filing of any complaint, the chairman of the commission ***shall*** **designate one of the commissioners to make, with the assistance of the commission's staff, prompt investigation in connection therewith.**" G.L. c. 151B, § 5 (emphasis added). This investigation must conclude with a finding of probable cause or lack of probable cause and must provide a right to an internal appeal. *Id.*

Regulations that allow the MCAD to screen out cases without a formal investigation simply because the damage to the complainant appears, on initial review, to be "*de minimus*," or where the allegations as initially stated in the complaint seem too "vague" or seem to have a "tenuous" nexus between the class and discriminatory conduct, or, even more dangerously, where the Commission decides it wants to focus its resources elsewhere, are inconsistent with the statute that the Commission was created to enforce. Nothing in the statute or its legislative history suggests that an incident of workplace discrimination is too "*de minimus*" to warrant a denial of the protections of G.L. c. 151B. Nor is there any suggestion in the statute that the Commission may decide what types of complaints of discrimination have more "public interest" value such that they are more worthy than others of an adequate investigation.

At bottom, these proposed changes deprive employees of their statutory right to have complaints that meet the MCAD's jurisdictional requirements be investigated. The proposed changes may have the harshest effect on *pro se* complainants, who may not understand how best to frame their complaint until the MCAD has assigned an investigator who can follow up with questions. But they also affect all complainants who may have suffered a type of unlawful discrimination that the Commission is not currently interested in investigating; who may have suffered discrimination whose harmful effects may not be immediately apparent to the staff member assigned to make the initial determination; and/or who may have been fortunate enough to have mitigated the damage done by the unlawful practice that a wrongdoer may now be left to repeat. None of these scenarios appears to be consistent with G.L. c. 151B's explicit promise that complaints filed with the Commission will be investigated. This statutory promise is a right, not a privilege that the MCAD has the discretion or authority to deny.

3. **Proposed changes to the review and authorization process affecting service of a complaint**.

As noted above, G.L. c. 151B, § 5 states that "after the filing of any complaint, the chairman of the Commission ***shall*** **designate one of the commissioners** ***to make, with the assistance of the commission's staff, prompt investigation in connection therewith***." (Emphasis supplied).

Aside from the concerns set forth above, proposed changes to 804 CMR § 1.05(3) provide an additional barrier to the statutory right to a full investigation of the complaint, stating that the Commission will only serve the respondent with the complaint after first

conducting a preliminary investigation before authorizing a formal investigation – in other words, before authorizing the type of investigation that the statute requires.

Aside from the fact that the statute provides no such barrier to proceeding with a formal investigation, the proposed regulations provide no time frame, required steps, or standards to be followed for the preliminary investigation, nor do they provide a complainant with an opportunity to offer the commission further information where that may be needed in order to determine whether to proceed with a formal investigation.

Under this proposed system, a complaint could conceivably sit for months without even an indication of whether the Commission will investigate further. This deprives both sides of timely notice of the complaint and of how the Commission will proceed. In cases where employees and employers are engaged in discussions about whether and how to resolve a complaint, this new step creates a disincentive for a respondent to participate in a settlement discussion until the MCAD has made a decision whether to serve the complaint at all.

The current and proposed regulations, in 804 CMR § 1.05(1), appropriately impose an obligation to preserve evidence, but if the respondent is not timely served with the complaint, relevant evidence may be lost. Furthermore, delayed service of the complaint means that there is less time for the formal investigation to meet the goal in 804 CMR § 1.05(5) of completion within 18 months of receipt of the complaint, or the three-year statute of limitations to elect determination in court under G.L. c. 151B, § 9.

4. <u>Access to information during the investigation.</u>

Employers typically hold most of the information needed to develop a case, but the proposed regulations prevent the disclosure of that information in two ways: the parties are no longer permitted even the opportunity to request permission to conduct pre-determination discovery; and the parties are not authorized to receive the other party's responses to information requests.

<u>Elimination of pre-determination discovery</u>. Section 1.05 (13) as currently written allows parties represented by counsel to seek the opportunity to conduct limited pre-determination discovery and allows Commissioners to independently authorize such discovery on their own initiative. That section has been stricken in its entirety. It does not make sense for the Commission to eliminate a fact-gathering tool allowed only in the discretion of the Commission, in cases where discovery may be helpful.

<u>No requirement to share information provided to the Commission</u>. Although this is not a change as such, section 1.05(4)(d) does not require that the information provided to the Commission in response to information requests be shared with the opposing party (and the current practice of the Commission is to prohibit investigators from requiring the sharing of those responses, even where appropriate confidentiality protections are available). This effectively keeps complainants in the dark and limits them in their ability to build their

cases. It also deprives a complainant of the ability to dispute, explain, or contextualize facts that the employer has provided to the Investigator. As a result, complainants may receive Lack of Probable Cause determinations that rely on allegations and information that is completely new to them, and to which they have had no opportunity to respond.

Complainants may understand what information is important to pursue, and how to understand its importance, in ways that an Investigator unfamiliar with the particular workplace does not. Their role in the investigative process should not be so sharply limited. Cutting complainants out of the investigative process in this fashion deprives the Commission itself of the tools it needs to assess the facts. It is inconsistent with the best practice standards to which the law holds employers when conducting internal investigations of workplace complaints of discrimination. *See, e.g., Gyulackian v. Lexus of Watertown,* 475 Mass. 290, 301-03 (2016) (and cases cited). The MCAD's investigative process should stand as an example of what a full, fair, and complete investigation should look like rather than as a way for an agency to move through a large caseload as quickly as possible, without the benefit of the kind of information exchange that actually gets to the facts.

5. <u>Articulating the standard for a "probable cause" finding</u>

Currently the standard for probable cause is whether it is "more probable than not" that discrimination has occurred. And in determining whether the probable cause standard is satisfied, the current regulations provide that "disputes involving genuine issues of material fact shall be reserved for a factfinder at a public hearing." 1.08 (1)(f)(1)). This is, of course, the summary judgment standard – a standard that is particularly important (and consistently recognized as such) in discrimination cases, (a) where a respondent's motive is invariably a key issue, and (b) where questions of credibility are best determined by the factfinder, who has had the opportunity to hear and assess the live testimony of witnesses.

The current probable cause standard provides a useful and clear methodology for investigators to use: assume the undisputed facts are true; don't decide disputed facts; and, assuming that the complainant's version of those facts is found by a factfinder, determine whether it is more probable than not that this adds up to discrimination. At least in theory, this standard prevents investigators from simply adopting respondents' version of the facts, ignoring complainant's version even when supported by evidence, and issuing a lack of probable cause determination.

The proposed standard strikes out the language making clear that disputed issues of material fact are not for the investigator to determine, but are reserved for the Hearing Officer at a public hearing. Without that regulatory language, an investigator is theoretically free to decide not to believe the complainant or the complainant's evidence and to decide, accordingly, that there is no reason to believe that discrimination has occurred. This should not be permissible, but the proposed regulations would appear to allow it. Allowing the investigator to make credibility determinations and to choose among conflicting evidence, particularly where the investigator has not shared information obtained from the parties so that the parties can challenge its accuracy, serves no statutory purpose.

6. <u>Removal of the Appeal Hearing upon issuance of an LOPC determination</u>

Under the existing regulations, if an LOPC determination issues, the complainant may appeal, seeking hearing before a Commissioner where he or she may present "oral or written reasons," as well as evidence, demonstrating why the LOPC was wrong. Typically, under existing regulations, represented parties submit a written argument in advance of the hearing and argue it at the hearing, while *pro se* parties simply show up at the hearing and explain their reasons. The current process is consistent with G.L. c. 151B, which makes clear that, **upon a written request for a preliminary hearing to appeal a decision of no probable cause, "the commission shall allow such request *as a matter of right*.**" G.L. c. 151B, § 5 (emphasis supplied).

Notwithstanding the plain language cited above, the proposed regulations would eliminate all hearings except as a reasonable accommodation and would reduce a complainant's statutory right to a "preliminary hearing" to a written appeal alone.

Aside from its departure from statutory requirements, the proposed regulation works a major disadvantage to complainants and to the Commission. In fact, appeal hearings can be effective in addressing misunderstandings and errors in LOPC findings in a way that a written appeal cannot. Assuming that the new categories of grounds for dismissal are reviewable through the appeal process, this may be the only opportunity for a complainant, particularly a *pro se* complainant, to be heard as to why their complaint has merit. It would be extremely disheartening for a complainant without counsel or the resources to bring suit in court to receive a notice that their claim has been dismissed because it is not worth the Commission's resources, and then have no possibility of speaking with anyone to discuss why that is the case or to address any deficiencies the Commission may have found in the complaint.

7. <u>Adding an inappropriate factor to consider when awarding attorneys' fees to prevailing complainants.</u>

If represented complainants manage to achieve probable cause, get to a public hearing, and prevail, they will be entitled to an award of attorneys' fees. The right to such a attorneys' fee award is designed to encourage competent counsel to represent complainants with civil rights claims, *Haddad v. Wal-Mart Stores, Inc*., 455 Mass. 1024, 1025 (2010), even where such claims "are not likely to pay for themselves but are nevertheless desirable because they vindicate important public rights." *Stratos v. Department of Public Welfare*, 387 Mass. 312, 323 (1982). As the First Circuit has recognized, "If our civil rights laws are not to become mere hollow pronouncements which average citizens cannot enforce, we must maintain the traditionally effective remedy of fee-shifting in these cases." *Furtado v. Bishop*, 635 F. 2d 915, 918 n.6 (1st Cir. 1980). In other words, attorneys' fee awards serve a key role in the effective enforcement of civil rights laws, including G.L. c. 151B

The standard governing the award of attorneys' fees to prevailing 151B complainants is well-settled. Such awards are determined by the "lodestar" method, which multiplies the

number of hours reasonably spent by the reasonable hourly rate. *See, Fontaine v. Ebtec*, 415 Mass. 309, 326 (1993). This produces a presumptively reasonable fee, which then may be adjusted within certain accepted guidelines. The goal is to arrive at an award that reflects the "fair market rate for time reasonably spent preparing and litigating" the case. *Id.*

Despite the clarity of controlling case law on this subject, the proposed regulations state that attorneys' fees petitions must include "information about *average* hourly rates for attorneys with similar experience." Of course, "average" hourly rates is not the lodestar standard – it's "fair market rates" or "reasonable rates." "Average" suggests that the petitioning lawyer must do some kind of survey of attorneys with similar experience (as if such data could be gathered), or only seek an arithmetic mean in rates, which is inconsistent with controlling precedent. An "average" rate appears to preclude consideration of a variety of factors such as geography, and appears to preclude an award on a higher or lower end based upon other recognized considerations.

If not changed, this proposed regulation's reliance on an "average" rate could discourage competent counsel from taking on these cases.

8. <u>Time of filing/Discovery Rule/Statute of Limitations</u>

At 804 CMR 1.04(3), the proposed regulations define the "discovery rule," for statute of limitations purposes, as the date that the Complainant "knew or should have known of the unlawful conduct." This language is susceptible to interpretation as an accurate statement of the law, it may also suggest, incorrectly, that the statute of limitations starts to run when a complainant knew or should have known that an adverse action has occurred, even if the complainant did not know or have reason to know that the adverse action was discriminatory.

A more accurate description of the discovery rule could be: "The period in which to file a complaint under any statute within the Commission's jurisdiction commenced on the date that the Complainant knew or should have known of **the cause of action**." This language is consistent with the Supreme Judicial Court's language in *Riley v. Presnell*, 409 Mass. 239, 244 (1991), which commences the limitation period where "the plaintiff actually knows of the cause of action or when the plaintiff should have known of the cause of action." Likewise, in *Silvestris v. Tantasqua Reg'l Sch. Dist.*, 446 Mass. 756, 767 (2006). the Supreme Judicial Court stated that the discovery rule applies, specifically to c. 151B, "when a plaintiff knew or should have known of the existence of a cause of action." For example, a limitations period does not begin the run in an age discrimination claim until the plaintiff knows or reasonably should know that he or she was replaced by a younger employee, even where the adverse action (namely, the termination) occurred earlier. *Wheatley v. American Tel & Tel. Co.,* 418 Mass. 394, 398 (1994). It cannot be wrong to quote the Supreme Judicial Court, and the MCAD should do so in this regulation.

In the alternative, the discovery rule is also mentioned in 804 CMR 1.04(4)(a), which talks about when a complainant "knew or should have known that the matters raised in the grievance would support a claim of discrimination." That rendition of the discovery rule is

clear and correct and would eliminate the doubt caused by the language used in the proposed regulations.

Finally, it would provide additional clarity to add to the following: "The filing deadline does not begin to run on an adverse action unless and until the complainant has received final, unequivocal notice that the adverse action will occur." This merely effectuates the holding in *Wheatley*, 418 Mass. at 398.

Conclusion

The proposed changes to the MCAD's procedural regulations may make the staff's jobs easier. However, this cannot and should not come at the expense of procedural protections that ensure full and fair consideration of complaints of discrimination. The MCAD is the agency charged with the enforcement of G.L. c. 151B, whose purpose is the eradication of discrimination in the Commonwealth. The protections conferred by the statute are rights that the MCAD was created to enforce -- not mere privileges that may or may not be granted in the agency's discretion. The proposed changes in the MCAD's procedural regulations are inconsistent with these principles and, as such, diminish the rights of the residents of this Commonwealth to be free from unlawful discrimination.

Respectfully,

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MEMORANDUM

TO: COMMISSIONERS OF THE MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION

FROM: PAUL H. MERRY

IN RE: COMMENTS ON PROPOSED NEW PROCEDURAL REGULATIONS 804 CMR

DATE: JANUARY 29, 2026

TO THE HONORABLE COMMISSIONERS:

I am a Massachusetts lawyer practicing almost exclusively in the employment discrimination and civil rights areas since approximately 1990. From 1998 until 2000 I served as general counsel, chief of enforcement, and special counsel to the Commission. During my tenure with the agency I also served as a hearing officer in one case. Before and after my Commission service, I filed and prosecuted many employee and other complaints with the Commission, including several through public hearing and appeals to the full Commission following hearing officer decisions. Since leaving the agency I have contributed case analyses and commentary regarding the Commission's decisions each year to the annual Employment Law Sourcebook of the Massachusetts Continuing Legal Education Foundation.

Thank you for the opportunity to present comments. Below please find my comments relating to the above proposed new regulations.

INTRODUCTION

Since its establishment in 1946 the MCAD has had a schizophrenia problem. Its statute requires it both to enforce the anti-discrimination statutes in employment, housing and public accommodation among other roles. But the statute also empowers and obliges it to perform an

administrative adjudicatory role as well; and while the commission has dutifully sought to perform both these functions, there has sometimes appeared to be an inclination to focus on adjudication rather than on enforcement .

The very fact of its creation, however, suggests that the legislative intention was that its core duty should be assuring that the anti-discrimination laws will be effective, through its enforcement role. Adjudication, while necessary, should be focused on augmenting the enforcement role, leaving courts to adjudicate the final determination whether that enforcement exceeds the statutory mandate.

COMMENTS

1.04(2)(a)(3) Filing by mail.

This provision states that filing by mail is discouraged. This discouragement is inconsistent with the enforcement role of the agency. It is an unfortunate fact of life that many of the citizens whose right to freedom from discrimination is infringed upon, are those citizens least capable of filing a complaint, whether because of language barriers, low literacy level, intellectual disability, geographic location or other challenges. While encouraging use of the Portal will be a means of more efficiency in complaint processing, many of the citizens most vulnerable to abuse may be unfamiliar with or intimidated by computer and internet practices; or may even not have access to a computer. Discouraging mail-in complaints places an additional obstacle for these citizens to achieve justice and the commission to faithfully discharge its enforcement role. This language should be removed from the new regulations.

1.04(2)(b) Removal of in-person intake.

Similarly to the discouragement of mail-in complaints, the apparent elimination of in-

person interviews for complaint filing appears likely to impact most heavily on citizens who are least able to frame and file complaints for themselves. At present some third of all individual pro se complaints are reportedly made in person; eliminating this service would thus substantially reduce the commission's access to incidents of statutory violations.

It is possible that the proposed language of 1.04(2)(a)(2) suggesting that persons can appear at Commission offices to file through the portal "with the assistance of the Commission" is meant to replace the deleted Intake procedure. If so, it would appear to address this problem. But if this is the intent, the language should be clarified to this effect.

I.04(3) Discovery rule

Requiring complainants to know whether conduct is unlawful or not, and conditioning their ability to pursue legal relief on that knowledge, when that question is sometimes difficult even for trained attorneys, is unrealistic and unreasonable. Employing instead the language when the complainant knew or should have known of a "cause of action" makes this limitation on the discovery period more contingent on a determination having been made by a qualified person at the Commission or in the bar.

1.04(3) Start of Statute of Limitations Clock

Parties to a potential employment (or other discrimination) dispute are often best off when the possibility of private resolution is given the greatest opportunity of being realized. Defining the point when the clock starts as the point at which all internal means of resolution have been exhausted and unequivocal notice has been provided to the complainant by the employer (or whatever other entity is involved) that no such relief will be granted, would be more beneficial than the language proposed.

1.04(4)(a)

The language staying the running of the limitations period for filing an MCAD complaint while a resolution procedure under a collective bargaining agreement is carried out can save the commission work, and is an existing policy. Indeed, those same benefits can be produced under other kinds of agreements, even if technically informal. This provision should be enlarged so that tolling occurs for informal agreements so long as those agreements meet the standards set out in 1.04(4)© .

1.04(6) Content

The insertion of language appearing to require identification of specific perpetrators of alleged discrimination is unrealistic in many employment situations, where employees are aware only of the adverse acts and cannot know what individuals are responsible for them. Language should be added to qualify this insertion to the effect it is required "unless not reasonably knowable to the complainant."

1.05(1) Preservation of evidence.

This section should include language to the effect that instructions to preserve evidence in demand letters or other correspondence giving notice of the imminence of filing an MCAD complaint shall also be binding on the parties.

1.05(2)(b)

The new language in this section adds a great many open-ended "grounds" on which complaints may be dismissed without investigation, or with only minimal investigation. One troubling provision permits dismissal for "de minimis" harm whether monetary or non-monetary. Arguably a Black woman having to give up a seat on a bus for a ride of a half hour is "de minimis." But it was the basis of one of the greatest civil rights achievements in U.S. history. This provision seems to grant excessive discretion to the Commission.

The probable cause standard under G.L.c 151B, on the basis of which complaints may or may not proceed through investigation and hearing, has been litigated more than once. That standard is essentially comparable to the standard for dismissal under Mass. R. Civ. P. 56, (summary judgment), i.e., that when an Investigating Commissioner determines there is sufficient evidence for a fact-finder to reasonably believe it is more probable than not (a preponderance of the evidence) that unlawful discrimination occurred the case may not be dismissed. Many in the array of bases set out in this proposed regulation do not seem to comport with that standard.

Suggest that the Commission redraft these bases for dismissal to focus on the statutory and jurisprudential language.

1.05(2)(d)

For the convenience of parties perhaps include the deadline for filing a notice of appeal as provided under this section.

1.05(8)(d)

One of the most helpful features of the Position Statement in the past has been the requirement that it be signed by a person having personal knowledge of the factual details contained in the statement (not simply by a lawyer, who likely would not have such knowledge.) This requirement has prompted reviews by respondents that led to addressing of the issues raised by the complains and sometimes to swift resolution of the complaint.
The Commission could increase its efficiency and serve its mission by adding explicit language requiring such personal knowledge to be attested to under pains and penalties.

1.05(10)(b) Rescheduling

In the past, respondents have materially slowed the investigation of a case by seeking

spurious continuances of Investigative Conferences. The Commission's efficiency could be aided by language requiring good cause be shown when seeking continuances for these conferences, which are a good device to encourage resolution of complaints.

1.05(13) Predetermination Discovery

A significant number of cases before the commission have been of a nature that limited discovery could lead to prompt determination of critical facts, and thereafter to resolution of the case. It seems unfortunate to deprive the commission of this tool to assist in prompt resolution of cases which would help accomplish the Commission's mission.

1.06(1)(d)

Adopting a position that a complaint may be dismissed because a complainant refuses to agree to a settlement that the commission deems adequate again vests an excessive degree of discretion in the Commission. Tempting as this position is from the perspective of closing cases, it threatens to compromise the enforcement mission. Perhaps some attempt to define what constitutes an adequate settlement (a percentage of a complainant's demand?) could redeem this provision; but that may simply be too difficult to articulate in a meaningful way.

1.06(1)(e) Mediation

Having the decision makers present in person at mediation is a way to enhance the Commission's success in using this tool to resolve cases. Indeed many successful private mediators impose this requirement on the parties they attempt to assist. Not only do the decision makers often have the best factual awareness of issues, but requiring them to attend in person makes them focus on the issue. So language should be added to this section that not only a "authorized representative" but the actual decision makers be required to attend MCAD mediations.

1.08(4)(b)(1): Preliminary hearings.

The statutory requirement that a complainant receiving a Lack of Probable Cause finding be afforded a "preliminary hearing" has been a burden on the Commission for many years. But this right represents another safeguard against erroneous dismissals of meritorious claims: it led to a successful outcome on more than one complaint in my experience, and therefore supports the enforcement role. Simply adopting a regulation that effectively eliminates that right is violative of the statute and will most likely fail to pass judicial scrutiny. Perhaps language in the regulation permitting the delegation of this function to an investigator (different from the one making the initial determination) would both meet the commission's need and be upheld in court.

1.10(1) Discovery

Giving the chair sole authority to grant discovery rights to parties seems like adding a significant further burden to a role already tasked with multiple duties both administrative and adjudicatory. It seems inevitable that delay would result. At the least this should be a function that any commissioner, and perhaps other staff, could carry out.

1.10(7) Admissions

An addition that should help focus and narrow the issues and hopefully make hearings more efficient.

1.12(10) Failure to appear at public hearing

Complaints filed can represent an important source of information concerning violations of the statute which are occurring in the Commonwealth, and therefore can assist in the enforcement function. Requiring that the failure a complainant to appear for public hearing result in a dismissal of the complaint. Suggest adding language that "unless the hearing commissioner finds sufficient merit in the complaint to warrant the Commission undertaking

prosecution on its own" the complaint shall be dismissed.

1.12(19): Attorney fees

The long-settled "lodestar" process for determining reasonable attorney fees has judicial approval and is well recognized by the bar. It allows ample latitude to include various factors in the fee determination process. It is hard to envision a compelling reason to insert the "average hourly fee" language in the Commission's approach to making fee determinations, particularly the apparent difficulty of determining that average. The commission should continue with its existing approach.

1.13(3) Pre-Determination Motions

Including a sentence seeking to discredit pre-determination motions because of delay seems argumentative and out of keeping with the purpose of the regulations, and would appear to presage a negative response. Indeed, such a motion could resolve disputes between counsel swiftly and therefore reduce delay. Responsible parties file motions only when necessary; this step may be the only vehicle available for the purpose. This language should be removed.

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Community Legal Aid CENTRAL AND WESTERN MA

February 2, 2026

Sunila Thomas George, Chair
Massachusetts Commission Against Discrimination
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MCADProRegs@mass.gov

RE: Proposed Changes to MCAD Rules of Procedure, 804 CMR 1.00 et seq.

Dear Chair George and MCAD Commissioners:

Massachusetts has long been a national leader in enforcing anti-discrimination laws. As the independent state agency responsible for implementing these laws in employment, housing, and public accommodations, the Massachusetts Commission Against Discrimination (MCAD) is tasked with ensuring fair, efficient, and equitable enforcement—not creating additional barriers for complainants. That authority must be exercised in a way that keeps these protections broadly accessible and consistent with the Legislature's intent.

As the regional legal aid organization representing low-income individuals and families in Central and Western Massachusetts, Community Legal Aid sees firsthand the vital role that the MCAD plays in protecting civil rights and providing access to justice. For many of our clients, the MCAD is the only realistic forum for seeking redress. Many complainants appear *pro se* and must navigate a complex and often opaque administrative process without counsel, making accessibility, clarity, and support essential.

We recognize that the MCAD operates under significant resource constraints, and we share concerns about the agency's capacity to process complaints efficiently and consistently. However, those constraints should not be addressed through regulatory changes that shift the burden onto complainants. The populations we serve already face substantial barriers, including limited financial resources, language access needs, disabilities, and, often, fear of retaliation. Proposed regulatory changes—such as expanding upfront screening and early dismissal, requiring filing through the online portal, limiting anonymization without clear standards, no longer mandating defaults when a respondent fails to appear, and altering the standard for evaluating attorneys' fee petitions—risk disproportionately affecting those least able to navigate them.

From our experience representing vulnerable individuals in housing, employment, and public accommodation matters, procedural barriers do not deter frivolous cases, but rather impede legitimate claims. When access to the MCAD is curtailed, discrimination goes unchallenged, unlawful practices persist, and the populations most in need of protection are left without meaningful recourse.

The MCAD is statutorily obligated to enforce the Commonwealth's anti-discrimination laws in a manner that is accessible, equitable, and consistent with their remedial purposes. Addressing the agency's capacity challenges requires increased resources and structural support,

not regulatory changes that erode protections or place additional obstacles in the path of those experiencing discrimination, especially low-income and marginalized communities.

Accordingly, Community Legal Aid, Inc. submits the following comments to various proposed changes to the MCAD's Rules of Procedure (804 CMR 1.00 et seq.).

Proposed Changes to Preliminary Investigation Procedure

The proposed regulations significantly restructure the Commission's intake and investigative process by requiring *mandatory* "preliminary" investigations and expanding the scope of permissible dismissals at early stages. Taken together, the proposed language of §§ 1.05 (2) (a) and (b) will *increase* the Commission's administrative burden and, worse, compromise its ability to identify and combat discrimination within the most vulnerable populations.

Requiring a preliminary investigation will not reduce the amount of work the agency is facing—particularly when the proposed language would expand the scope of a preliminary investigation to evaluate a case's merits and damages—it merely shifts the investigation to earlier in the process, with a less developed record. Labeling this process "preliminary" does not reduce the time or effort required to perform it. Commission staff will still have to review allegations, analyze legal sufficiency, assess jurisdiction, evaluate and calculate damages, and draft dismissal notices, but without the benefit of a developed factual record. Where the Commission's preliminary investigation finds apparent merit, that effort will be duplicated; the Commission will still need a position statement from the Respondent and will still be obligated to conduct a full investigation. Any theoretical efficiency gained downstream is likely to be offset by increased demands at the front end. After a respondent has submitted a position statement, the Commission knows what facts are actually in dispute and has a clear picture of the parties' positions on the legal issues in the case. It would be much more efficient to conduct an investigation at that juncture, after the parties' themselves have identified the salient issues.

Discrimination is not always apparent from the face of a complaint and often emerges only through investigation, especially for *pro se* complainants—who are more likely to be subjected to discriminatory conduct and less likely to know which facts are required or important to include in their complaints. Thus, the significant expansion of the Commission's authority to dismiss complaints during preliminary investigations based on amorphous and highly subjective criteria is especially troubling.

The additional "Grounds for Dismissal" following a preliminary investigation in the proposed regulations may lead to the improper dismissal of meritorious cases squarely within Chapter 151B's remedial framework. For example, the proposed regulations authorize the Commission to dismiss a complaint after a preliminary investigation based on a determination that the complainant has only suffered "de minimus" monetary or non-monetary harm. However, conditioning enforcement based on the perceived monetary value of a complaint risks marginalizing charges brought by the most vulnerable individuals, including those with limited resources or less obvious harms. The proposed changes would also authorize the Commission to

dismiss a complaint because a determination has been made that the public interest requires the Commission focus its resources "on complaints with a greater impact on the mission to eradicate discrimination." Nothing in Chapter 151B permits the Commission to make this comparative judgment and forgo pursuit of one legitimate claim of discrimination at the expense another.

Significantly, the proposed regulations will have a deleterious effect on the investigation and enforcement of the Commonwealth's fair housing laws at a time when the federal government is not prioritizing the eradication of housing discrimination like it once did. Many victims of housing discrimination are denied housing for discriminatory reasons at the application stage after a phone call or limited interaction with a landlord because the applicant has a housing subsidy, children, or because of their membership in another protected category. People in this situation, particularly those in low-income households who may be facing eviction or cannot afford their current rent, must continue to apply to multiple apartments to avoid homelessness, sometimes experiencing discriminatory denials from multiple landlords. The damages in any one of these situations may not be as substantial as the damages that a high paid executive might receive in an employment case, but the role of the MCAD is equally important in terms of vindicating the rights of a victim of housing discrimination and potentially requiring a landlord – who may be rejecting every applicants in a particular protected category – to undergo training or other steps designed to stop their discriminatory behavior.

In summary, the proposed regulations may function to transform the Commission from an agency designed to uncover discrimination into one that too often screens it out before discrimination can be identified.

Proposed Changes Requiring Complaints to be Filed Through the MCAD's Online Portal

The proposed regulations would require all applicants, with very few exceptions, to file their complaints through its new and untested online portal. Prioritizing agency efficiency over complainants' accessibility is contrary to the Commission's statutory duty to receive and investigate complaints of unlawful discriminatory practices. G.L. c. 151B. The MCAD's FY25 report shows that only 30% of complaints were filed electronically. Approximately 70% of intakes were made by alternate means (26% virtual; 36% walk-in; 7% mail) that the citizens of the Commonwealth have relied upon and utilized out of preference and necessity. Eliminating walk-in and virtual appointments while also "strongly discourag[ing]" and deprioritizing mail-in complaints—arguably the most accessible avenue available—will disproportionately affect those who are already most vulnerable to discrimination in the workplace and in housing.

Requiring complainants to use the new online filing system disproportionately impacts complainants with disabilities and those without access to computers or the internet. For example, one of our recent clients who came to us after filing an MCAD complaint *pro se* had significant physical and intellectual disabilities and could not read or write. He could not have filed a complaint without the ability to first walk-in and request an appointment for an intake; if that option had not been available, the employment discrimination he faced would never have been

addressed. Permitting complainants to come into the MCAD office to "file through the MCAD Case Portal with the assistance of the Commission" is not a sufficient substitute for the intake appointments that now exist. It is also not uncommon for clients who qualify for legal aid services to lack ready access to a computer or the internet. Many of the clients we serve live in rural areas of Massachusetts and would not be able to physically go into a Commission office for the purpose of obtaining access to the online portal. These clients rely on the ability to mail in their complaints and would be left without any method of filing if that option were not available. They should not be discouraged from filing the only way they can.

The regulations state that the filing of a complaint by methods other than the portal "may be allowed as a reasonable accommodation for disability." While disability exceptions should absolutely be incorporated to this mandate for online filing, this exception is vague and does not help disabled clients understand how to navigate the process of seeking an accommodation. It also fails to provide for any accommodation to complainants who cannot access technology due to poverty rather than disability. Additional questions outside of accessibility also arise. What kind of documentation will the Commission be requiring complainants to provide to prove that the exception or accommodation is needed? If a complainant requests an exception, will the Commission be tolling the 300-day filing requirement until they make a determination about whether such an exception will be made? If not, the Commission is arbitrarily shortening the time that complainants are statutorily entitled to have to file a charge.

Additionally, the Commission's stated timeline of end-to-end testing of the electronic filing system in Q1 2026 with an anticipated rollout for the public in Q2 is deeply concerning. This rushed testing process will not leave time for testing with actual client populations and will inevitably lead to implementation before the system is functioning smoothly. The portal should not be rolled out prematurely, and, at a minimum, it should not be *required* until voluntary use of the system is seamless. The Department of Unemployment Assistance's (DUA) migration to a new platform in May 2025 should serve as a cautionary tale to the Commission. DUA had a historic backlog ranking it reportedly the worst in the nation, and its rushed rollout of a new technology system last year exponentially compounded the problem.[1] The DUA migration has significantly delayed benefits for countless clients of Community Legal Aid, many of whom have been waiting nearly six months to have their claim adjudicated. The MCAD should not force participants to utilize a new technology system on the proposed timeline or it may, like DUA, end up doing more harm than good.

Proposed Regulations Concerning Pseudonym Complaints

The proposed regulations also erect unnecessary barriers when it comes to complaints that need to be filed under a pseudonym. Section 1.04(7) would require a complainant, including a

[1] *See* "Massachusetts set out to modernize its unemployment insurance system. Then it hit a new low" available at https://commonwealthbeacon.org/government/state-government/massachusetts-set-out-to-modernize-its-unemployment-insurance-system-then-it-hit-a-new-low/.

minor, to file a motion requesting to proceed by pseudonym. Requiring a minor child to seek approval before anonymizing is inconsistent with accepted court practice. In court, parents or guardians may simply file a complaint on behalf of their child, using the child's initials (for example, as "Jane Doe on behalf of her minor child J.R."). The MCAD should allow parties to proceed the same way since there is presumably no scenario in which the MCAD would deny anonymization with respect to a child. Doing so would also create consistency among case captions as proceedings are often ultimately removed from the MCAD into court.

Additionally, the proposed rule allows a party to "request" a pseudonym which indicates that the MCAD will have discretion to approve or disapprove such a request. However, the regulation offers very little guidance as to the criteria the Commission will use when making the determination that "exceptional circumstances" exist to warrant such anonymization. Uncertainty concerning whether a request to anonymize the complaint will be allowed may deter complainants who are concerned for their safety from filing with the MCAD. The Commission should provide further clarity around when a situation warrants anonymity (perhaps with examples) in order to alleviate this barrier.

Proposed Changes Altering the Standard Applicable to Attorneys' Fee Petitions

As a legal aid organization, Community Legal Aid represents low-income clients who rely heavily on the MCAD as their primary – and often only – forum for enforcing their civil rights under G.L .c. 151B. The proposed regulations change the standard applicable to attorneys' fee petitions, making low-income complainants' ability to obtain counsel even more difficult.

Fee-shifting is essential to the enforcement of civil rights laws, particularly for low-income individuals who cannot afford private counsel. When assessing fee petitions, courts apply the lodestar method, a well-established methodology focused on reasonable hours and fair market rates. The proposed regulations, however, require an attorneys' fee petition to "include information about average hourly rates for attorneys with similar experience" which is not part of the lodestar analysis. This additional requirement will inevitably raise a further barrier to compensating attorneys for the work they must do in order to competently represent and zealously advocate for their clients.

Massachusetts courts have repeatedly emphasized that attorneys' fees must be sufficient to attract competent counsel to cases that may not otherwise be economically viable. This new standard will result in lower fee awards that do not accurately compensate attorneys for their work, which, in turn, will lead private attorneys to hesitate to take on MCAD cases and will impact legal services organizations' ability to help complainants.

Complainants often already have a difficult time finding an attorney to take their cases, and many go unrepresented through a convoluted and emotionally taxing administrative process. According to the MCAD's most recent annual report, a mere 29% of complaints were filed by either an Attorney or Duly Authorized Representative on a complainant's behalf. *See* Mass.

Comm'n Against Discrimination, *Fiscal Year Ann. Rep*., 8 (2025). This change will only increase the difficulty low-income clients face in obtaining private counsel.

Moreover, this proposed change will be particularly harmful for legal aid attorneys, whose expertise in representing vulnerable workers in complex discrimination cases may not be reflected in simplistic averages, and whose work is already undervalued relative to private-sector counterparts. For legal aid organizations that are already operating under resource constraints, fee awards serve not as profit, but as a mechanism to sustain representation and expand services to other clients. When MCAD fee awards fail to cover the actual costs of representation for the cases legal aid organizations are able to handle, the organizations are forced to absorb these costs, reducing their capacity to serve future complainants. Moreover, if fewer private attorneys are willing to take on these important cases, more clients will come to already overburdened legal services organizations seeking assistance, compounding the issue.

Limiting the ability to recover full attorneys' fees for work performed will seriously impact the MCAD's ability to accomplish its Legislative mandate that G.L. c. 151B be vigorously enforced and accessible to all individuals, regardless of income.

Proposed Changes Relating to Defaults

The proposed procedures surrounding defaults in the investigative phase are insufficient because they grant respondents the ability to ignore the process with impunity and drag proceedings out for lengthy periods of time before finally deciding to appear. First, entry of default should be mandatory if a respondent fails to participate. In the proposed regulations, respondents get several chances to respond before the Commission "may" enter default. *See generally*, 804 CMR 1:07. The Commission "may" serve a Notice of Consequences if the respondent fails to answer a complaint or participate in the investigation. If they do not respond to that, an investigative default is not mandatory – it "may" be imposed.

If a complainant follows the MCAD's process and goes through the difficulty of filing a complaint of discrimination on time before the statute of limitations expires, and the respondent does not respond, there should be an automatic consequence. The MCAD should send a strong message to respondents that unlawful discrimination will not be tolerated. To give a respondent so many opportunities before default *might* enter does not further the goal of eradicating discrimination in the Commonwealth; it sends the exact opposite message that accountability may be avoided.

Further, in the event a default enters, respondents are given the opportunity to seek to remove the default within 14 days after it is issued on a showing of "good cause." While the rules currently require a respondent in every case to provide their position statement along with a petition to remove a default, the proposed regulations now only require the respondent to do so "if required by the Notice of Consequences." There is no legitimate reason to change this requirement and create a scenario where a party may request removal of a default, wait until it is granted, and

then receive even more time to provide their already late position statement. This only slows the process down further and rewards the respondent for failing to act in a timely manner in the first instance.

Troublingly, the proposed regulations also eliminate section 1.07(3)(b), which provides for attorneys' fees and costs in the event of a party's default or failure to cooperate. This, again, only serves to reduce the incentive for a respondent to participate in proceedings in a timely manner. The threat of having to pay fees to the other party *and* to the Commission is an incredibly powerful tool to encourage respondents to participate. Moreover, it is unclear why the Commission, which already has limited resources, would choose to eliminate this avenue to collect additional money from a bad actor that has wasted the Commission's and other parties' time when that money could be used to help the Commission address more cases in the future.

Moreover, as explained above, reducing the availability of attorneys' fees diminishes the likelihood that complainants will be able to obtain legal representation. Filing a complaint at the MCAD can be a heavy lift. If an attorney puts in all the work required to interview a client and witnesses, investigate their claims, review available evidence, draft a demand, and file a complaint with the MCAD, only to be met with silence from a non-responsive respondent, there should be a guarantee that they will be able to recover appropriate fees for their work. Removing this provision will inevitably lead to more attorneys rejecting otherwise promising cases due to their potential client's financial situation. This change will only disadvantage victims of discrimination and sends the message that the MCAD is more interested in protecting perpetrators of discrimination from financial burden than in pushing to address discrimination in as timely a manner as possible.

Conclusion

For the reasons discussed above, Community Legal Aid urges the Commission to reconsider these proposed changes to its regulations.

Sincerely,

/s/Alycia M. Kennedy
Alycia M. Kennedy, Deputy Litigation Director
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Outlook

MCAD Regs - Public Comment

From Groot, Natalie <NCGroot@mintz.com>
Date Mon 2/9/2026 10:20 AM
To MCADProRegs (CAD) <MCADProRegs@mass.gov>

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To Whom It May Concern:

I appreciate the Commission's efforts to modernize and clarify its procedural regulations in a manner that promotes fairness, efficiency, and the effective use of resources. The proposed revisions establishing a preliminary investigation prior to service represent a meaningful and constructive development. Allowing the Commission to assess threshold issues—such as jurisdiction, timeliness, standing, facial plausibility, and public-interest impact—before requiring a respondent to answer aligns with principles of administrative efficiency and procedural fairness. The expanded grounds for early dismissal following preliminary investigation appropriately recognize that not all filed matters warrant full formal investigation and help ensure that Commission resources are directed toward cases with substantial merit and public significance.

I also commend the Commission for the implementation of the MCAD Case Portal, which should improve transparency, case tracking, and communication for parties and counsel, and reduce unnecessary delay.

Thank you for the opportunity to provide comment on the proposed regulations.

Best,
Natalie

Natalie Groot
Member

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March 6, 2026

Elyse Best

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To Whom It May Concern,

I am writing as a concerned disabled Massachusetts resident to provide public comment regarding the proposed amendments to 804 CMR 1.00 governing the procedures of the Massachusetts Commission Against Discrimination (MCAD).

M.G.L. c. 6, sec. 56

I recognize that the Commission faces significant demands on its resources, and that those resources may be further strained due to federal funding cuts. Efforts to improve efficiency and case management may therefore be necessary. However, several aspects of the proposed revisions raise concerns about access to justice for individuals who rely on the Commission to investigate and address discrimination.

When the state's primary civil rights enforcement body limits its ability to investigate complaints, individuals may be directed toward local rights commissions or other community-based bodies for assistance. While these local commissions play an important role in education, outreach, and community engagement, many operate on a volunteer basis and often lack the legal authority, investigative capacity, or resources necessary to pursue formal discrimination claims—particularly those involving federal law or complex legal remedies.

As a result, individuals may be referred to institutions that are not equipped to provide meaningful relief or enforce civil rights protections. This creates a structural gap in the enforcement system, where people experiencing discrimination may struggle to find a viable path forward for their claims to be investigated and addressed.

For many individuals, the Commission represents the primary or only formal pathway for pursuing civil rights violations. When that pathway becomes more limited, it raises broader

questions about where individuals are expected to turn when they experience discrimination and seek meaningful recourse.

First, the proposed expansion of the Commission's authority to dismiss complaints during preliminary investigation raises concern. The proposed standards allowing dismissal of claims that appear "facially implausible," that have a "tenuous nexus" between discriminatory conduct and a protected class, or that involve harm considered "de minimis" may unintentionally exclude legitimate claims before a full investigation can occur. Many individuals who file complaints do so without legal representation and may not initially present their experiences using precise legal language, all the information they have for their case, or the right representation to help guide them. Without an investigation, it may be difficult to fully assess whether discrimination occurred.

Relevant section: 804 CMR 1.05(2) – Review and Authorization / Preliminary Investigation

- These terms are highly technical to legal standards. Phrases such as "facially implausible," "tenuous nexus," and "de minimis harm" are legal terms of art that many ordinary residents do not understand. Individuals filing complaints—particularly those without attorneys—may struggle to frame their experiences in a way that satisfies these standards at the initial stage.
- Many discrimination cases require investigation to uncover evidence. Discrimination is often subtle and may involve patterns of conduct, internal workplace policies, or witness testimony that are not immediately visible in the initial complaint. If cases are dismissed before investigation, potentially valid claims may never receive meaningful review.
- People filing complaints are frequently unrepresented. Many individuals who turn to MCAD cannot afford legal representation. Expecting them to articulate complex legal theories at the outset may disadvantage those who most need the Commission's protection. Almost all don't have access to legal representation as it is. They automatically know they can't get a lawyer and have to rely on their own testimony with little support, which is already a major barrier in getting the help they are entitled to have.
- The "de minimis harm" standard may minimize real lived experiences of discrimination. Harm from discrimination is not always financial. Emotional distress, loss of dignity, denial of opportunity, and hostile environments are real harms that may initially appear small on paper but have significant impact on a person's life.
- Disability discrimination claims may be particularly affected. Many disability-related complaints involve failures to accommodate, misunderstandings, or subtle forms of

exclusion that may initially appear minor or unclear. Without investigation, the context necessary to understand discrimination may never come to light.

- Subtle discrimination is often the hardest to detect and prove, yet it is one of the most common forms of harm people experience.
- What appears “minor” or ambiguous in isolation can represent a clear pattern of discrimination when examined over time.
- People with cognitive disabilities, mental health conditions, or emotional regulation challenges may experience these harms more acutely, particularly when institutions dismiss them before a full investigation.
- Repeated small acts of bias can have cumulative and destabilizing effects, especially for individuals already navigating disability, trauma, or systemic marginalization.
- Individuals without legal representation often struggle to present their experiences using precise legal language, even when discrimination has occurred.
- Language barriers can prevent people from clearly articulating the context or nuance of discriminatory treatment, especially when English is not their first language.
- Power dynamics frequently discourage people from reporting discrimination, particularly when they fear retaliation, dismissal, or being labeled “difficult.”
- People who are less assertive, unfamiliar with institutional processes, or historically marginalized may be disproportionately excluded when complaints are dismissed early.
- Prematurely dismissing claims against risks overlooking patterns of discrimination that only become visible through investigation.
- When systems rely on narrow initial interpretations of a complaint, they risk screening out the very individuals' civil rights protections are meant to protect.

- Early dismissal may shift the burden of investigation onto the complainant. Individuals experiencing discrimination often rely on the Commission’s investigative authority to obtain information from employers, housing providers, or institutions. Without that investigative step, complainants may be unable to access the evidence needed to support their claims.
    - Access to records and institutional information is often controlled by the respondent. Employers, housing providers, and institutions typically hold key documents such as personnel records, internal communications, policies, and witness accounts. Without investigative authority, individuals may not be able to obtain the information necessary to demonstrate discrimination.

- Identification and security requirements can create barriers. Increasing identification requirements, including Real ID or other forms of documentation required to access certain facilities or records, may exclude individuals who do not possess those documents or who cannot easily obtain them.
- Travel and mobility limitations may prevent in-person access. Some individuals may have disabilities, medical conditions, caregiving responsibilities, or financial constraints that make travel to government offices, institutions, or record repositories difficult or impossible.
- Not all individuals have reliable technological access. Online systems assume consistent internet access, computer literacy, and the ability to navigate digital platforms. Many people—particularly low-income residents, older adults, and some disabled individuals—may not have the necessary technology or familiarity with these systems.
- Privacy and security concerns may discourage online information sharing. Individuals may be understandably hesitant to submit personal information electronically due to identity theft, benefit fraud, or past experiences with stolen personal data, including fraudulent tax filings or unemployment claims.
- Housing instability can make documentation difficult. Individuals experiencing housing instability may not have a permanent mailing address or a secure location where official records, benefit letters, or identification documents are stored.
- Language and cognitive accessibility barriers exist. Legal processes and documentation requirements can be difficult to understand for individuals with limited English proficiency, cognitive disabilities, learning disabilities, or mental health conditions that affect information processing.
- Many individuals do not have access to legal advocates or support networks. While attorneys and advocates can help gather evidence and navigate procedures, many complainants approach the Commission alone and may not know what information is necessary to substantiate their claims.
- Expecting complainants to independently gather evidence may discourage reporting. When the burden of investigation shifts to individuals who already face systemic barriers, it may discourage people from filing complaints or pursuing claims, particularly in cases where discrimination is difficult to document without institutional cooperation.
- Civil rights enforcement has historically relied on investigatory authority precisely because discrimination is often hidden. Removing or limiting that investigative role risks placing the burden on individuals who are least equipped to access the necessary information.

- The practical effect may be to prioritize administrative efficiency over access to justice. While resource constraints are understandable, broad discretion to dismiss cases at the preliminary stage may result in fewer complaints being investigated, particularly those that initially appear small or difficult to prove.

Second, the provision allowing dismissal when the Commission determines that the public interest requires focusing resources on complaints with greater impact may create uncertainty for individuals seeking recourse for discrimination. While resource constraints are understandable, civil rights protections are most meaningful when individuals can have their claims evaluated on their merits.

Relevant section: 804 CMR 1.08(1)(d) – Administrative Dismissal

- The core purpose of MCAD is to provide individuals with a pathway to justice when they believe they have experienced discrimination.
  - When access to investigation is limited by internal determinations of impact or priority, it raises concern about whether individuals can meaningfully access that pathway.
- If complaints are dismissed based on perceived public impact rather than their merits, individuals may be left without a clear place to turn for help. This raises a fundamental question: *where are individuals expected to go to seek recourse when discrimination occurs?*
  - Local human rights commissions and volunteer bodies often lack the legal authority, staffing, or proper investigative capacity to absorb cases that fall outside MCAD's priorities.
  - Redirecting individuals to those spaces can unintentionally shift responsibility onto institutions that were never designed to replace the state's civil rights enforcement system.
- Civil rights enforcement should not depend solely on internal resource triage when the harm being alleged is discrimination. The system exists precisely to ensure those claims receive serious consideration.
  - This issue intersects with broader frameworks of social justice, racial justice, disability justice, language justice, and immigrant justice. Individuals who experience discrimination across these lines often already face structural barriers when seeking institutional support.
- When access to investigation becomes more limited, the individuals most affected are often those who already face the greatest barriers to navigating legal systems, including

people with disabilities, people with limited English proficiency, immigrants, and individuals without legal representation.

- At its core, the question becomes whether civil rights enforcement is structured primarily around institutional capacity or around ensuring meaningful access to justice for those experiencing discrimination.

Third, the increased reliance on digital filing through the MCAD Case Portal may present barriers for some residents, particularly individuals with limited internet access, limited technological literacy, disabilities, or language barriers. Maintaining multiple accessible methods for filing complaints remains important to ensure equitable access to the complaint process.

Relevant section: 804 CMR 1.04(2) – Manner of Filing

- Not all residents have reliable access to stable internet or functional devices. Even with basic or subsidized internet service, slow connections, loading failures, and system timeouts can make online portals difficult to use.
- When digital systems become the primary gateway to filing a complaint, technical barriers can effectively become barriers to justice.
- Individuals with disabilities may face additional challenges depending on how the portal is designed. It is unclear whether the system is compatible with screen readers, refreshable Braille displays, voice-to-text tools, or other assistive technologies.

Accessibility questions remain important:

- Is the portal fully navigable with assistive devices?
- Is it usable for individuals who cannot read standard text?
- Are there audio, voice-to-text, or alternative input options?
- Does the system allow individuals to explain their situation in their own words rather than forcing narrow form selections?
- The design and bandwidth requirements of the portal matter. Platforms that require significant loading time, multiple pages, or complex navigation can be particularly difficult for individuals using assistive technology or slower internet connections.
- Older adults and individuals who are not computer-literate may find lengthy digital processes overwhelming, especially when they are already trying to navigate a stressful discrimination experience.
- Language accessibility is also critical. If the portal relies heavily on legal terminology or complex forms, individuals without legal representation may struggle to accurately communicate their experiences.

- Digital systems should expand access—not replace other accessible pathways. Maintaining multiple filing options (such as phone, in-person assistance, or simplified submission methods) helps ensure that individuals are not excluded from the complaint process.

On The Issue of Discovery

The proposed rules indicate that parties generally do not have the right to conduct discovery during the investigative stage unless the Commission specifically authorizes it. In many discrimination cases, however, critical evidence—such as internal emails, hiring records, workplace policies, or other documentation—is often controlled by the respondent. Without meaningful access to these materials during the investigation, complainants may face significant challenges in demonstrating the basis for their claims.

Limited discovery during the investigative stage may also create practical barriers for many complainants. As noted earlier, individuals who file discrimination complaints often do not have immediate access to the documents needed to support their claims. In many cases, important records—such as emails, employment files, housing records, or internal policies—are controlled by the respondent rather than the complainant. Individuals may have to navigate lengthy or complicated processes to obtain copies of these materials, and doing so can be especially difficult for people who are already facing instability, fear, or limited access to institutions.

For some individuals, particularly immigrants or those living with heightened concerns about immigration enforcement, traveling to government offices or federal buildings to obtain records may feel unsafe or intimidating. Others may face barriers related to work schedules, caregiving responsibilities, transportation, or the limited hours during which offices are open. Even seemingly simple steps—such as waiting for documents to arrive by mail—can create delays when individuals have unstable housing, inconsistent access to mail service, or frequent moves.

Relevant sections: **804 CMR 1.05(13) – Predetermination Discovery and 804 CMR 1.10 – Discovery**

Additional barriers may also affect a person's ability to gather evidence, including:

- Limited understanding of which documents are relevant to a discrimination claim.
- Difficulty requesting records from employers, landlords, or institutions that control the information.

- Fear of retaliation when asking a current employer or housing provider for documentation.
- Language barriers that make it difficult to communicate with agencies or understand document requests.
- The cost of obtaining records, copies, or transcripts.
- Digital access barriers when records are only available through online systems.
- Time constraints for individuals working multiple jobs or managing caregiving responsibilities.
- Trauma or stress related to the discriminatory experience can make navigating complex processes overwhelming.

Because of these barriers, limited access to discovery during the investigation stage may make it significantly harder for complainants to substantiate their claims early in the process. Ensuring that individuals have a meaningful opportunity to obtain and present relevant evidence is therefore an important component of equitable access to the civil rights complaint system.

Relevant section: 804 CMR 1.08(4) – Preliminary Appeal of Disposition

This section provides complainants with only ten days to file an appeal following certain dismissal decisions.

While clear timelines are important for administrative efficiency, a deadline of this length may present challenges for many individuals navigating the complaint process.

Potential concerns include:

- Pro se complainants who do not have legal representation may need additional time to understand the dismissal and determine how to respond.
- Limited time to gather supporting information or evidence that may be necessary to challenge the decision.
- Accessibility barriers for individuals with disabilities, including those who require additional time to review documents, obtain assistance, or prepare written submissions.

Finally, the provisions allowing dismissal when a complainant declines a settlement offer that the Commission considers reasonable may create unintended pressure on individuals to accept settlements even when they believe their claims have not been fully addressed. While settlement can be an important tool in resolving disputes, individuals should not feel compelled

to accept an agreement simply to avoid losing the opportunity to have their complaint investigated.

Relevant section: 804 CMR 1.09(11) – Failure to Accept Reasonable Settlement Offer

- This provision may create implicit pressure on complainants to accept settlements, particularly when declining an offer could result in dismissal of their case.
- Individuals who have experienced discrimination are often already under significant stress, particularly if the complaint arises from workplace discrimination, housing instability, harassment, or other traumatic circumstances.
    - People navigating trauma, anxiety, or crisis situations may feel forced to make quick decisions simply to end the process, rather than because the settlement meaningfully resolves the harm.
        - A system intended to provide access to justice should not replicate the survival pressures that many complainants are already facing.
        - Individuals should not feel that their only viable option is to accept a settlement to avoid losing access to investigation.
- Power imbalances may also influence settlement decisions. Employers, landlords, or institutions often have greater legal resources, while many complainants do not have legal representation.
- Without meaningful avenues for appeal or reconsideration, individuals may feel they have little recourse if they decline a settlement; they believe it is inadequate.
- Settlement decisions can be particularly difficult for individuals with disabilities, language barriers, or limited familiarity with legal processes, who may struggle to fully understand the long-term implications of accepting or declining an offer.
    - The provision may unintentionally prioritize case closure over accountability, which can undermine public confidence in the enforcement of civil rights protections.
- Some forms of discrimination involve broader patterns or systemic issues, and early settlement pressure may prevent those patterns from being fully examined through investigation.
    - When complainants feel pressured into accepting settlements, the result may be unresolved in harm and reduced trust in the civil rights enforcement process.

The Massachusetts anti-discrimination laws exist to protect individuals who often face significant barriers when reporting discrimination. I respectfully encourage the Commission to

carefully consider how these proposed procedural changes could affect access to the complaint process, particularly for individuals who are unrepresented or otherwise vulnerable.

- Civil rights systems exist precisely because discrimination is often difficult to recognize, document, or articulate at the outset. Screening complaints too narrowly risks defeating that purpose.
- An investigative process should create space to uncover patterns and context—not foreclose them before the facts are examined.
- Communities most vulnerable to discrimination are often the least equipped to present complaints in formal legal terms at the initial stage. Policies must account for that reality.
- If early dismissal standards are too restrictive, the individuals most likely to be excluded are the very people civil rights protections were designed to protect.
- Ensuring access to investigation is not about lowering standards—it is about ensuring that discrimination is not overlooked simply because it is subtle, cumulative, or difficult to articulate at first.

These concerns should also be understood within the broader context of how civil rights enforcement systems are currently funded and structured. The Massachusetts Commission Against Discrimination works with federal agencies such as the U.S. Department of Housing and Urban Development and the U.S. Equal Employment Opportunity Commission to investigate discrimination complaints. Because some of MCAD's investigative work is supported by federal funding, changes at the federal level can affect the agency's staffing, workload, and overall capacity to process cases.

At the same time, MCAD is responsible for enforcing civil rights protections under Massachusetts law, which covers discrimination in many areas of daily life. When funding or staffing levels become strained, agencies may feel pressure to close cases more quickly or limit which complaints move forward. While resource limitations are a real challenge, it is important to ensure that changes to procedures do not unintentionally reduce access to justice for the people in the system is meant to protect.

These pressures can affect many types of discrimination cases, including:

- Housing discrimination, including cases involving disability, sexual orientation, gender identity, source of income (such as housing vouchers), or language barriers.
- Employment discrimination, including discrimination based on race, disability, gender/gender identity, sexual orientation, religion, national origin, age, or other protected characteristics.

- Public accommodations discrimination, such as unequal and inequitable treatment in businesses, services, or public spaces.
- Education discrimination, including access to programs, accommodations, or fair treatment in schools and educational settings.
- Language access issues, communication in general, particularly for individuals with limited English proficiency who may already face barriers navigating legal systems.
- Broader civil rights enforcement capacity, where fewer investigators and limited resources can lead to case backlogs, pressure to dismiss complaints earlier, or increased reliance on automated or digital systems.

For these reasons, any procedural changes should be carefully considered to ensure that they do not unintentionally limit access to civil rights protections. When individuals experience discrimination, it is important that they still have a clear and meaningful pathway to seek help and have their concerns reviewed.

Thank you for considering these comments and for your continued work to enforce the Commonwealth's civil rights protections.

Respectfully,

Elyse Best, Resident of Somerville, Massachusetts

March 11, 2026

Massachusetts Commission Against Discrimination
1 Ashburton Place
Suite 601
Boston MA 02108
via email to MCADProRegs@mass.gov

RE: Proposed Amendments to the Procedural Regulations

Dear Commission Members,

On behalf of the Boston Bar Association ("BBA"), we thank you for the opportunity to comment on the proposed changes to the MCAD Regulations.

The invitation to comment was distributed to all of the BBA's sections, and members of our Civil Rights and Civil Liberties section discussed the proposals and offer the attached comments. Please note that the attached document does not constitute a position of the BBA as a whole or even of the Section, but rather reflects the views of the individual members. We hope that these comments may be useful to your office as it considers the proposed amendments.

Thank you for providing members of the bar with an opportunity to weigh in on these proposed changes. Please feel free to contact us should you have any questions or concerns.

Sincerely,



Suma V. Nair
President

Comments from Members of the Boston Bar Association's
Civil Rights & Civil Liberties Section
on MCAD's Draft Updated Procedural Regulations

In response to an invitation for comments from the Massachusetts Commission Against Discrimination (MCAD), members of the Boston Bar Association's Civil Rights & Civil Liberties Section reviewed and discussed the proposed changes updating MCAD's procedural regulations, *801 CMR 1.00: Rules of Procedure*.

Members of the section appreciate the opportunity to comment on this proposal and offer the following comments in the hope that the Commission will consider them before finalizing the relevant changes to MCAD regulations.

The members expressed concern that the proposed regulations will allow MCAD to screen out many more cases without investigation (pursuant to **proposed 804 CMR §1.05(2)(b)**), even where the complaint states a claim for discrimination. This will deprive litigants, particularly *pro se* litigants who might not be able to successfully navigate the court system, of the right to have their cases heard and the discrimination they have experienced redressed. In particular:

- **Dismissal based on "vagueness"**: Many *pro se* complainants lack legal training, so their complaints are often imprecise. The purpose of MCAD's investigation is to develop facts—not to dismiss claims because they are inartfully pleaded.
- **Dismissal based on allegations of harm being "*de minimis*":** Discriminatory harm is substantive and dignitary, and therefore can be hard to quantify. However, this does not make discrimination any less unlawful. No court (as far as we are aware) has ever applied such a doctrine to discrimination claims. Additionally, the terms "moot" and "mitigated" are not well-defined.
- **Dismissal based on the "public interest" requiring Commission resources to be spent elsewhere:** This proposed criterion is undefined and would undermine transparency between the public and government institutions.
- **Dismissal based on allegations containing a "tenuous nexus between protected class and allegedly discriminatory conduct":** The nexus between the protected class and the discriminatory conduct is something that should be fleshed out during MCAD's investigation**.** Discrimination is often proven through indirect evidence developed over time, including pretext, comparators, and inconsistent employer explanations—an analysis that cannot occur at a preliminary, pre-investigative stage.

Members noted as well that the expanded grounds for screening out cases based on discretionary, premature, or subjective criteria (pursuant to **proposed §1.05(2)(b)**) would undercut MCAD's statutory mandate to investigate and make a probable-cause determination as to each complaint. MCAD also **proposes changes to §1.04(2)** to require all complaints to be filed through MCAD's on-line portal. Currently, MCAD accepts complaints from in-person appointments, phone appointments, and by mail. In FY2025 36% of complaints came from in-person intake appointments, 26% from virtual intakes, and 7% by mail. Members believe that eliminating both

mail-in filing and intake options, and requiring that complainants have access to and facility with online forms, will remove critical access points and have a devastating impact on marginalized communities, including non-English speakers, immigrants, people with disabilities, unrepresented individuals, older adults, and communities of color.

Furthermore, members fear that the expanded process for screening out cases will likely lead to an even-longer initial screening process for complaints than the current 3+ months for employment cases. The proposed regulations would impose no time limit for this screening process. This significant delay between when complainants file complaints and when MCAD decides whether it will serve and investigate the complaint deprives victims of discrimination of effective redress, protection against retaliation, and the ability to move forward in court if MCAD is not going to pursue the case. A lengthy screening period also means that respondents are not timely notified of their obligation under §1.05(1) to preserve evidence. A lengthy screening process also means there is less time for the formal investigation of the complaint under §1.05(5), and makes it more likely that a complainant will have to file in court to preserve their claims before the running of the statute of limitations without first knowing if the case can be resolved at MCAD.

Another area of concern for members is that the proposed regulations require respondents to be served with the complaint only if MCAD decides to investigate the case (pursuant to **proposed §1.05(3)**). This means that for the cases MCAD screens out, the respondent is never formally notified of the complaint, and therefore many complainants will be deprived of the anti-retaliation protections that anti-discrimination laws are supposed to confer.

At the same time, members view the elimination of the ability of parties to obtain pre-determination discovery (pursuant to the **proposed elimination of §1.05(13)**) as depriving the parties of any information that might help them understand the strengths and weaknesses of their cases, and to resolve the matter. Because the MCAD regulations do not require that the information gathered by the investigator be shared with the parties, parties will be litigating these cases at MCAD entirely in the dark; without any knowledge or understanding of the information being considered by the investigator.

The proposed regulations would raise the standard for probable cause (pursuant to **proposed §1.08(1)(f)(1)**), allowing the MCAD Chair to decline to authorize a probable-cause finding even where the investigator has found probable cause to exist. This provision, like the expanded grounds for screening cases out, means that many more valid claims of discrimination will go unheard and unresolved.

Finally, members expressed the opinion that the removal of the appeal hearing (pursuant to **proposed §1.08(4)(b)**) will significantly disadvantage *pro se* litigants before MCAD. While those litigants who have counsel may be able to craft written appeals that adequately address all of the relevant legal criteria, *pro se* litigants generally benefit greatly from a live hearing where

they can answer the Commission's questions about their case or remedy deficiencies the Commission found in their complaint.

From: Anne J
To: MCADProRegs (CAD)
Subject: 804 CMR 7
Date: Friday, March 13, 2026 11:59:26 PM

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pseudonym the definition of is to 'separate professional life from personal'.
Prior to complaint becoming public record i would argue that complainant would have option to redact their name for the purposes of their professional working life for the purposes of potential bias from companies, corporations adversely effect family members as well.
As the mcad mission is to bring to light respondents unlawful practices and not deter complainant from filing because they do not want their name public.
In place of complainant's name use docket number.

Thank you.
A. Kearney
61 Beals st
Weymouth ma
Sent from my iPhone

Nina Tepper
PO Box 102
West Hyannisport, MA 02672
March 19, 2026

MCAD
1 Ashburton Place
Room 601
Boston, MA 02108

To Whom It May Concern,

I am writing to the Massachusetts Commission Against Discrimination (MCAD) in response to proposed changes to how people access support and file claims. As a Commissioner on the Barnstable County Human Rights Advisory Commission (BCHRAC), I am deeply concerned that the implementation of a new online portal that will serve as the first screening tool for MCAD cases, not a conversation with a live person, will discriminate against people who may not be able to access this portal for both technological accessibility and personal preferences. MCAD must provide access to reporting instances of discrimination that meets the varied needs and abilities of all who consider utilizing your services.

Each individual instance of discrimination engenders complicated responses. Trauma makes it difficult to process how to stand up for oneself. Some people hesitate to reach out for help not knowing whether their complaint will be taken seriously or if they even deserve such support. They might be fearful of retaliation on the job or in the community. Others may be intimidated by the process of writing rather than articulating their experience. Reporting discrimination requires the human touch.

It takes a listening ear to encourage, validate, and confirm that experienced discrimination is both not the fault of the victim and is a legitimate complaint to pursue. With encouragement and reassurance first, knowing MCAD will stand by their side, one might then be willing to put their experience on the page and sign their name.

How will sifting through online applications make the process more efficient? Not only does the option to speak with a trained counselor at MCAD provide compassion, it also helps screen and prioritize cases.

Standing up against discrimination requires flexibility and more options for reporting, not less. I encourage MCAD not to eliminate the option for people to call in, while also include the option to report online. Thank you for your consideration.

Sincerely,

Nina Tepper
413-265-1851

From:	Dick Stagnone
To:	MCADProRegs (CAD)
Subject:	Input on MCAD Regulations and Practices
Date:	Monday, March 30, 2026 2:37:22 PM

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MCAD:

I have been through the in person Intake Process at the Boston office twice.

One thing I learned is that the paper form which complainants fill out to begin the Intake Process is discarded after an MCAD employee inputs the contents of that form into the MCAD System of Record. If a complainant asks for a copy of the paper form, MCAD staff (as I did on one occasion) refused my request.

IMHO, MCAD should scan the form and make the images part of the Complaint Record. There is a possibility that the MCAD employee missed something during the input process. It may be a minor error or it could be a major error as missing a basis of the discrimination claim which are checkbox items on the form.

Also, MCAD employees should allow and perhaps even prompt by language on the intake form that the complainant can name individuals as well as their employer. In my first contact with MCAD in October 2023, I was told it was unnecessary to name individuals as offenders, putting their names in the body of the complaint would suffice.

As you know, when it comes to taking a Civil Action in MA Superior Court, it does make a difference. If the individual names are named as offenders at the top of the form, you have not exhausted your remedies against those individuals.

Also, for those with a number of individual offenders or whose complaint covers a number of years, with a most recent discriminatory event being less than 300 days prior, the allotted 45 minutes may be insufficient. Complainants should be given the opportunity to schedule a future appointment to complete their complaint IMHO if more time cannot be granted that day.

This input is based upon my experiences, not from a review of the revised document. They may apply more to internal procedures rather than the document under revision.

Thank You,
Richard Stagnone
7 Sprague Ave
Holbrook, MA 02343
781 510-0277

APPENDIX 3

State commission takes years to resolve discrimination cases. One took 17. Another took 15

07:49

May 30, 2022

By Simón Rios and Todd Wallack

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This article is more than 3 years old.

Michelle Pavlov was seven months pregnant when she got fired. The owners of Happy Flooring in Yarmouth said they were closing their showroom on Cape Cod and couldn't afford to keep her on as a manager.

But when Pavlov started searching for a new job online, she came across a Craigslist ad for what looked like her old position — with one key difference: The post said candidates should be "preferably male."

Pavlov immediately filed a gender bias complaint with the Massachusetts Commission Against Discrimination. Then, she waited. And waited.

That was seven years ago.

She finally got a ruling in her favor this spring, but the company told her it plans to appeal, which means the case could drag on for several more years.

Meanwhile Pavlov's son — who wasn't even born when she was fired — is now in first grade.

"He's seven," she said. "He shouldn't have to know about commission counsels and discrimination."



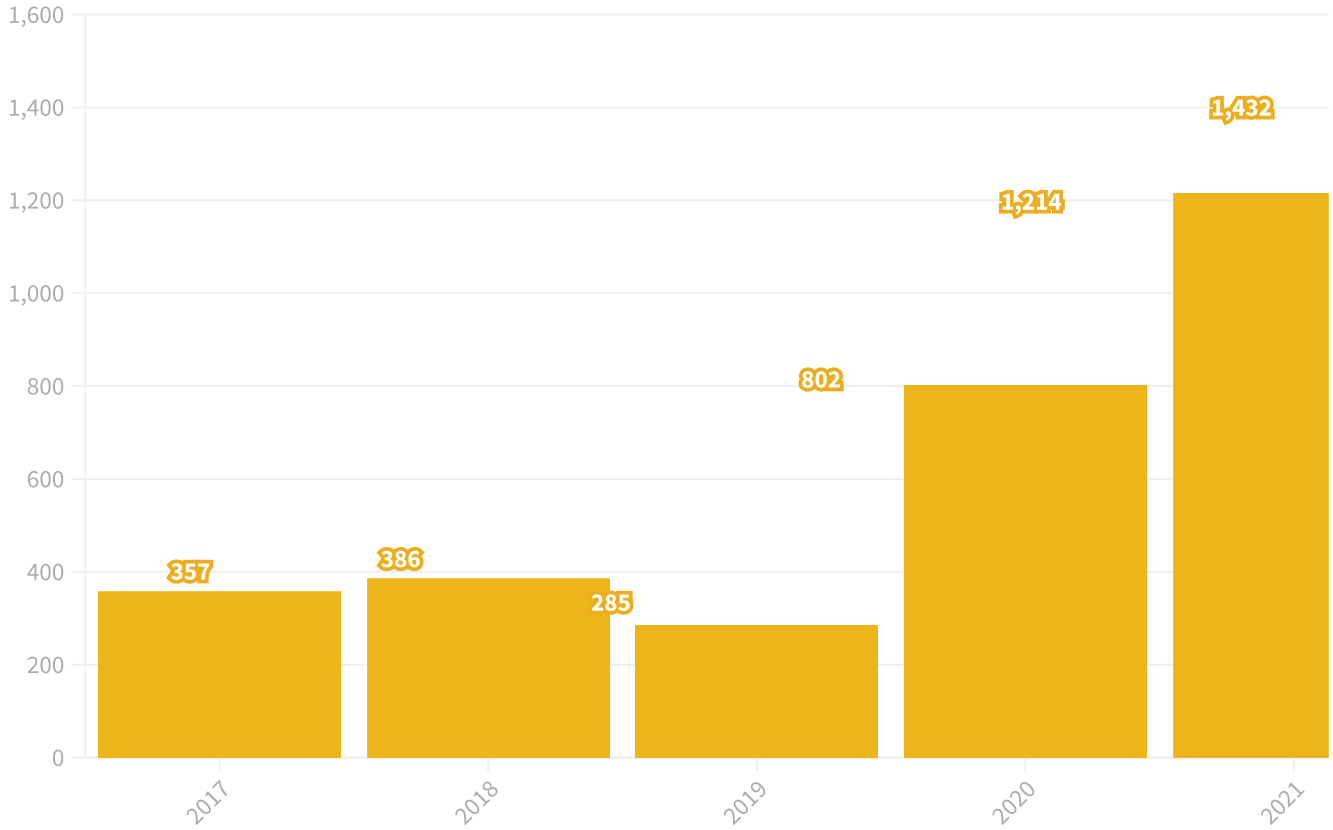
Michelle Pavlov holds a photo of her now 7-year-old son, Declan. Pavlov says she was fired from her job in 2015, because she was pregnant. (John Tlumacki/The Boston Globe)

More and more people like Pavlov have been stuck waiting years for the MCAD to make rulings. The agency has long had a reputation for tardiness, but the pandemic has made delays far worse as the agency lost employees who were not replaced.

The backlog of old cases under investigation for more than 18 months has climbed more than five-fold since 2019, the agency's own data shows, reaching 1,400 cases today. And many cases take much, much longer.

Mounting backlog

The backlog of old complaints at MCAD has soared since the pandemic began.



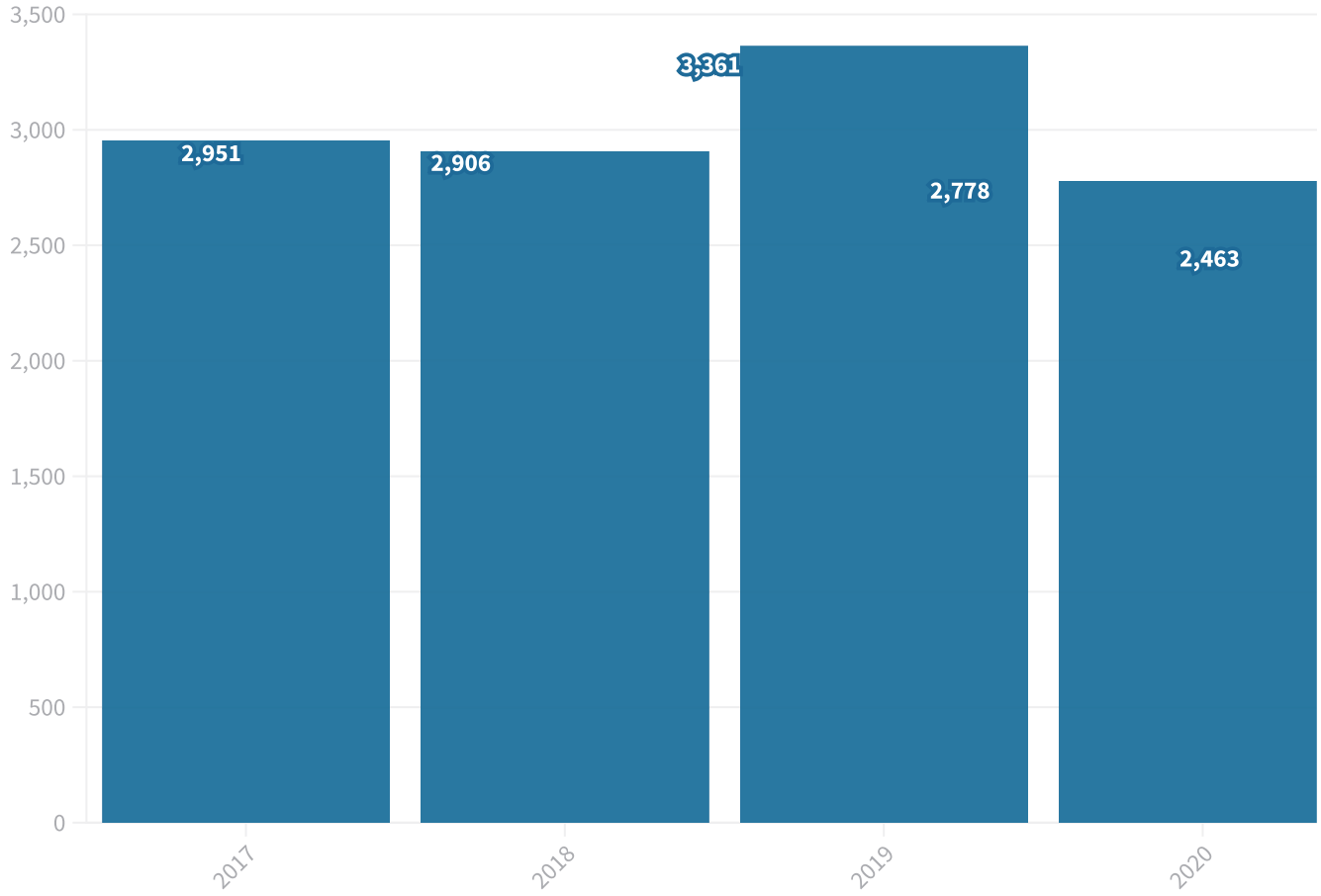
Source: Massachusetts Commission Against Discrimination • The backlog includes cases over 18 months old

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The MCAD took 17 years before last year dismissing a retaliation complaint by a fired electrical grid worker. A gender discrimination case against the Massachusetts Port Authority lasted 15 years before it was withdrawn in 2021. And records show that a dozen current cases have been pending for more than a decade.

"I feel like the system is broken," said Mela Bush-Miles, a community organizer based in Roxbury. She said the long wait times suggest that fighting discrimination is a low priority in Massachusetts.

New complaints decline
Fewer people have filed complaints with MCAD since the pandemic began.



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Some advocates also fear the delays could deter many victims from coming forward at all, missing the chance to catch violations and hold institutions accountable.

"People are just going to give up," said Tom Murphy, supervising attorney with the Boston-based Disability Law Center. And Murphy worried that could encourage people in power to just ignore the rules designed to stop discrimination.

A mounting backlog

MCAD spokesperson H Harrison acknowledged some cases have taken years to resolve. But he insists the commission was working its way through the list of backlogged complaints before the pandemic.

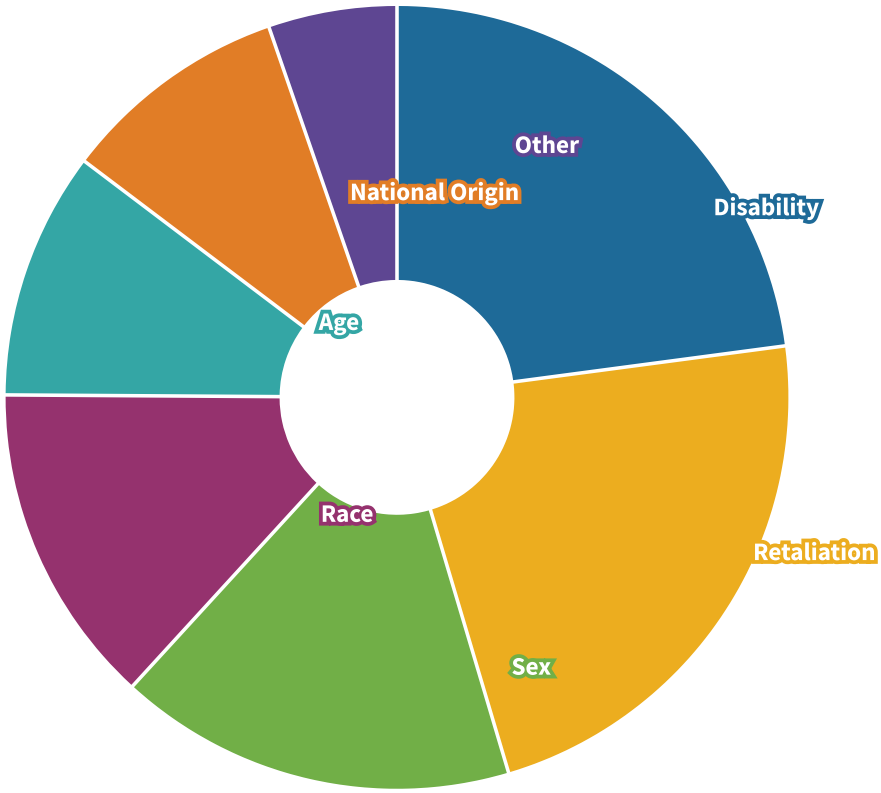
"We were arm's reach from being able to eliminate the backlog," he said.

But after COVID started spreading in the United States, Harrison said the agency suffered a number of setbacks. It had to cut back on interns, who often help with investigations. Many key employees resigned, including MCAD's general counsel and all three hearing officers. And the agency had to temporarily impose a hiring freeze early in the pandemic after losing roughly $380,000 in federal funding.

That shortfall was later replaced by the state, but the staffing woes remain. The MCAD says one-quarter of its 33 investigative slots still need to be filled.

Types of cases in 2021

MCAD handles discrimination complaints involving people in a number of protected categories.



Source: Massachusetts Commission Against Discrimination • The "other" category includes discrimination complaints based on: sexual orientation, religion, public assistance, gender identity, children, family status, lead paint and military status.

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Those who remain at the commission are often overwhelmed. MCAD investigators — who conduct interviews and determine whether there is enough evidence to show there was likely a violation — are now assigned an average of 150 to 200 cases each, compared to just 30 cases a piece at Connecticut's anti-discrimination office.

"It's incredibly stressful," said one person who recently left the MCAD's investigations unit and asked not to be named because they might want to work for the commission in the future.

In part because of the growing delays, several attorneys said they now prefer to pursue discrimination claims in civil court instead.

But advocates say many people who can't afford an attorney depend on the commission to handle their cases. And some noted the commission is also a better venue for many discrimination cases that hinge on evidence generally not allowed in traditional courtroom proceedings, such as an employee recalling what their boss told them in private.

“In many of these cases there are no witnesses," said Susan Howards, of Brookline, a criminal defense attorney who represents people at the MCAD. "It's between you and your supervisor or you and somebody in school."

But Howards warns clients it can sometimes take more than a decade to resolve a case at the MCAD. "They're shocked," she said.

The stress of waiting

Even filing a case at the MCAD has become more difficult lately. The agency says it now takes three months just to get a meeting to lodge a complaint with a staffer — something people could once do anytime at an MCAD office in Boston, Springfield or Worcester.

Then it takes an average of two more years to get a preliminary decision on whether there is enough evidence to pursue a claim. A final ruling can take many more years.

Among the six cases the full commission decided last year, the average wait was 10 years. That's more than double the average wait for the four decisions by the full commission in 2010 and 2011.

One of the long-delayed cases decided last year was brought by Rigaubert Aime, a Black retired corrections officer from Mattapan. He filed a

discrimination claim in 2011 against the state prison system, claiming superiors retaliated against him for alleging racism.



Rigaubert Aime had to wait 10 years before he got a final ruling in his discrimination case. (Jesse Costa/WBUR)

An MCAD staffer initially dismissed the case after five years. Aime appealed. And then it took another five years for the full commission to uphold that decision.

Aime said that stress of waiting for an MCAD decision all those years took a toll on his friendships. And once a bodybuilder, he stopped going to the gym entirely.

Aime, now 52, said there's no way he could recommend going to the MCAD for help:

"The waiting time, it's going to take a toll on you," he said. "It's going to be worse than what you actually are going through at your job."

"The waiting time, it's going to take a toll on you. It's going to be worse than what you actually are going through at your job."

RIGAUBERT AIME

In Barnstable, Pavlov sat at her dining room table, leafing through a three-ring binder bulging with every remnant of her job at Happy Flooring.

"They hired me to do everything," she said, "from some marketing to running their showroom, supplies, I mean, the whole shebang."

For a while, things seemed to be going well.

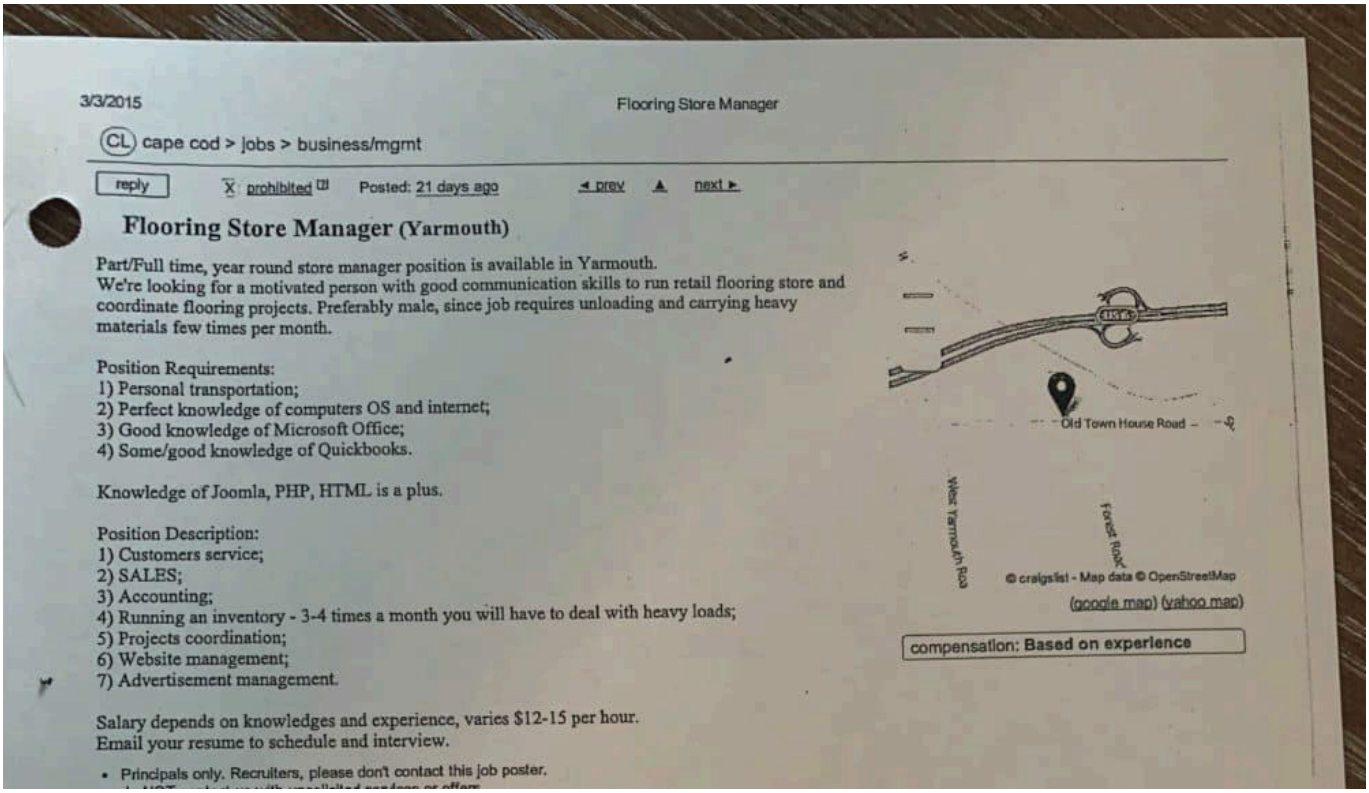
Pavlov's personal life was going well, too — she got married, bought a house with her husband and soon had a baby on the way. As her family's sole breadwinner at the time, she thought she'd go briefly on maternity leave before returning to work.

But later into her pregnancy, after she recalled asking for help lifting heavy buckets of materials at work, the company let her go in February 2015.

The company, now called New Flooring, didn't respond to requests for comment. But at an MCAD hearing, the company denied it fired Pavlov because she was pregnant.

Former owner Siarhei Huba testified that he made a mistake in writing "preferably male" in the Craigslist ad listing Pavlov's old job. "I didn't mean

to offend or discriminate [against] anybody. I just wanted to explain the job requires heavy lifting," he said.



3/3/2015 Flooring Store Manager

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Flooring Store Manager (Yarmouth)

Part/Full time, year round store manager position is available in Yarmouth.
We're looking for a motivated person with good communication skills to run retail flooring store and coordinate flooring projects. Preferably male, since job requires unloading and carrying heavy materials few times per month.

Position Requirements:
1) Personal transportation;
2) Perfect knowledge of computers OS and internet;
3) Good knowledge of Microsoft Office;
4) Some/good knowledge of Quickbooks.

Knowledge of Joomla, PHP, HTML is a plus.

Position Description:
1) Customers service;
2) SALES;
3) Accounting;
4) Running an inventory - 3-4 times a month you will have to deal with heavy loads;
5) Projects coordination;
6) Website management;
7) Advertisement management.

Salary depends on knowledges and experience, varies $12-15 per hour.
Email your resume to schedule and interview.

- Principals only. Recruiters, please don't contact this job poster.

compensation: Based on experience

A job post seeking a "preferably male" employee at a Yarmouth-based flooring company. (Simón Rios/WBUR)

The commission eventually sided with Pavlov in late March – more than seven years after she filed her complaint. It ordered the company to pay Pavlov roughly $70,000 in damages.

But New Flooring's lawyers told the MCAD they plan to appeal. And now Pavlov fears it could take years longer before the case is behind her.

And even if she ultimately prevails, Pavlov, now 35, worries it could be hard to collect. So much time has passed: New Flooring changed its name, and the co-owner who fired Pavlov sold his share in the company and moved back to his native Belarus.

Still, Pavlov said she's never planning to give up.

"You don't get to treat people that way," she said.

A smoother road to justice

Advocates and two former MCAD employees said the commission needs a number of changes to end the delays.

The most obvious fix would be to hire more workers to handle the crushing load of cases.

“We just need to fund MCAD,” said attorney Susan Howards, who says the agency is understaffed. “And we have to take these kinds of cases very seriously because they change people's lives.”

Some say the commission also needs to streamline its process to eliminate some time consuming legal maneuvers such as objections and continuances. Another option is to push parties harder to work out their differences between themselves. The commission does offer mediation, but it's optional. Murphy, the lawyer with the Disability Law Center, thinks it should be mandatory.

“The earlier in the process that you can start that conversation, the more likely it is that there will be a resolution that both parties will be satisfied with,” Murphy said.

Criminal defense lawyer Carl Williams said that if judges have deadlines to resolve cases, then so should MCAD employees.

“Who at the MCAD is saying: ‘This better be done or no one’s getting promoted’?” Williams said.

Then maybe people filing MCAD complaints today won’t have to wait 10, 15, or 17 years to see their cases in the rearview mirror.

This segment aired on May 27, 2022.



Simón Rios Reporter
Simón Rios is reporter, covering immigration, politics and local enterprise stories for WBUR.
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Todd Wallack Correspondent, Investigations
Todd Wallack is a correspondent on the investigative team.
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CIVIL RIGHTS LAWYERS DEMAND CHANGES AT MCAD

April 22, 2024

It was recently reported by *Massachusetts Lawyers Weekly* in an article entitled "Responding to threat of lawsuit, MCAD begs patience." that the Lawyers For Civil Rights ("LCR") and The Urban League of Eastern MA ("ULEM") wrote the Commission a demand letter ("Demand") seeking immediate action to address delays in taking in and processing discrimination claims filed at the Massachusetts Commission Against Discrimination ("MCAD").

The MCAD is the independent state agency that enforces the Massachusetts anti-discrimination laws by investigating complaints of discrimination in employment, housing, public accommodations, and other aspects of everyday life. Generally, employment discrimination claims must first be filed at the MCAD within 300 days of any adverse action. While the MCAD's stated mission is to eradicate discrimination in the Commonwealth, the Demand highlights difficulties experienced by unrepresented parties in securing appointments and backlogs along with delays in issuing determinations on probable cause across the board. These problems appear to have been exacerbated during the COVID pandemic and, unlike the courts that are methodically working through backlogs, the[illegible]sist at the MCAD.

Mr. Belfort addressed why many cases involving attorneys are often removed from the MCAD and are filed in Court. "In court, the attorneys drive the discovery process from the start, avoiding the prospect of long delays, fading witness memories, and stale evidence." Belfort furthers explained, "Many attorneys remove stronger cases from the MCAD due to long delays in getting a probable cause decision, a 20 percent probable cause rate, and because court offers jury trials, which benefits employees." Unfortunately, unrepresented parties usually find the prospect and complex process of removal and filing suit daunting and unattainable. The old English adage that "justice delayed is justice denied" applies to any legal case that languishes.

LCR and the ULEM, through their Demand, appear to seek to engage in a dialogue with the MCAD and to enter a Memorandum of Understanding ("MOU") with the Agency to address many of these systemic delays and staffing challenges. The MCAD has thus far declined the opportunity to enter into an MOU and has requested patience as they seek to hire more staff.

We will update this Blog with further developments as this story continues to unfold. If you have any questions about or issues involving employment law, discrimination, retaliation, the MCAD or the litigation process please reach out to Bennett & Belfort, P.C.



Responding to threat of lawsuit, MCAD begs patience

Agency pinning hope on forthcoming hires, improvements

The Massachusetts Commission Against Discrimination says it is "disappointed" that two of its "community partners" felt the need on Feb. 20 to send the agency a letter demanding a memorandum of understanding and threatening a federal lawsuit due to MCAD's persistent struggles to complete investigations in a timely manner.

MCAD met with the signatories to that letter, Lawyers for Civil Rights and Urban League of Eastern Massachusetts, on March 21 and explained that it is contending with a groaning workload, MCAD said in a statement responding to Lawyers Weekly's inquiry. In fiscal year 2024, MCAD is on course to realize the highest number of complaint filings in almost two decades, a spokesperson for the agency noted.



"We will think through the process of when it makes sense to file a [federal court] complaint, if that's what's required."

The spokesperson said MCAD's main message to LCR and Urban League was that they need to be patient. Eventually, the increased investment the Legislature has made in each of the last two state budgets and improvements to the agency's processes and procedures will bear fruit, MCAD believes.

But LCR litigation fellow Michael A. Kippins told Lawyers Weekly that LCR and Urban League left the March 21 meeting disappointed by MCAD's refusal to engage in negotiations over a memorandum of understanding.

There is a limit to "when our time will be up with respect to being patient with MCAD," Kippins said.

Many of the issues detailed in its Feb. 20 letter have been ongoing for years, Kippins noted.

"Groups like ours and like Urban League cannot just continue to sit by while nothing happens," he said.

Instead, Kippins said that LCR and Urban League will continue to keep close tabs on MCAD's progress with hiring and implementing the other steps it has outlined.

"We will think through the process of when it makes sense to file a [federal court] complaint, if that's what's required," he said.

Missing its mark

According to its regulations on "Prompt Investigation," MCAD is expected to complete investigations of Housing and Urban Development issues in "no more than 100 days" and non-HUD investigations in "no more than 18 months."

That MCAD often misses those benchmarks by a wide margin is hardly news, its struggles having been documented in state auditor's reports in 2016 and 2022.

As of June 30, 2015, MCAD had 1,839 non-housing complaint cases that had blown past the 18-month benchmark by an average of 325 days and 108 housing cases that averaged 553 days beyond the 100-day timeframe for completing those investigations.

Six years later, when the auditor took another look, the picture was just as grim: MCAD had exceeded the allowable timeframe for completing 1,308 of its 2,854 discrimination investigations, with 77.4 percent of the housing

investigations and 41.6 percent of the non-housing investigations completed late.

Approximately 70 percent of the complaints MCAD receives annually are from self-represented complainants, according to LCR.

But the deficiencies at MCAD are also affecting those who can afford legal representation, according to Cambridge employment lawyer David E. Belfort.

"Many attorneys remove stronger cases from the MCAD due to long delays in getting to a probable cause decision, a 20 percent probable cause rate, and because court offers jury trials, which benefits employees," he said.

Belfort said cases at MCAD often stagnate. It routinely takes an investigator, who is handling a caseload of hundreds of active cases, months to request information or documents and to schedule an investigatory conference, he said.

"In court, the attorneys drive the discovery process from the start, avoiding the prospect of long delays, fading witness memories, and stale evidence," Belfort said.

But for many victims of discrimination, hiring an attorney to "drive the process" is simply not an option, suggesting that a two-tiered system of justice has evolved with discrimination claims in the commonwealth.

'No times available'

In its Feb. 20 demand letter, LCR and Urban League describe another layer to the onion, beyond the lengthy investigatory process: the severe challenges complainants are having even getting through MCAD's door.

Under G.L.c. 151B, §5, prospective complainants are required to file discrimination complaints within 300 days. A regulation gives them the option to file "by delivery" — in person or by U.S. mail to any MCAD office — or "by

intake," a process in which an MCAD representative assists with and signs the complaint.

On its website, MCAD strongly encourages complainants to take advantage of its intake specialists, either in person or over Zoom. According to its most recent annual report, MCAD can accommodate up to 12 walk-in intakes daily, plus six virtual intakes scheduled through the agency's online portal.

There's just one problem: It is near impossible to secure one of those appointments to file by intake virtually, according to LCR.

In its letter, LCR details the experience of an Asian-American municipal worker who was subjected to "racist statements, unjustified pay disparities, and retaliatory actions by her supervisors" throughout her decade of employment. After she was wrongfully terminated, she tried to schedule an intake appointment online, only to be repeatedly greeted with the message, "No times available."

When she finally found available appointment times, the earliest one was more than 90 days off, beyond the 300-day statute of limitations to file her complaint.

There is an in-person intake option, too, but MCAD offers no guarantees that if a person travels to an MCAD office they will be seen or helped that same day, according to LCR.

LCR reports that it had been able to replicate the woman's experience, finding no available appointments on three-quarters of the business days in December and January.

"In one particularly troubling span of six straight business days from December 11-18, 2023, no appointments were available," the letter reads. "Even today, as we submit this request for corrective action, there are no appointments available."

Complainants can wait until the complaint is within 72 hours of missing the statute of limitations and request an emergency appointment with an intake specialist. But that, too, is a roll of the dice, LCR suggests.

"None of these are meaningful or suitable options for low-income pro se complainants, many of whom are hourly wage workers with limited transportation options," they write.

At the March 21 meeting with LCR and Urban League, the agency detailed its capacity to offer appointments for virtual intake and noted the "readily available and robust information" on its website, explaining the "quicker option" of coming to an MCAD office to file a complaint, according to MCAD's statement to Lawyers Weekly.

Visitors to the website are also offered the option to contact MCAD staff directly if they are having trouble scheduling an online appointment, especially if they need to expedite an emergency intake because they are running up against the statute of limitations, MCAD's statement adds.

"Access to the MCAD complaint filing process is greater than it has ever been due to the option of online intake appointments, resulting in a level of complaint filing not realized in almost twenty years," the statement notes.

In a spot check on April 10, the earliest available appointments Lawyers Weekly could find were nearly three months away, at 2 and 2:05 p.m. on Tuesday, July 9.

Gap in coverage

For those who would like to file their complaint in person, the situation is particularly bad in one part of the state, LCR's letter notes. Until recently, under G.L.c. 6, §56, MCAD was supposed to maintain regional offices in New Bedford, Springfield and Worcester.

However, the New Bedford office shuttered in October 2020 and has not reopened, according to LCR.

The lack of a regional MCAD office is a particular problem in New Bedford, where the housing crisis is particularly acute and disproportionately affects the large minority and immigrant populations, subjecting them to housing discrimination, LCR and Urban League say.

"Namely, landlords have been using the shortage of housing to pick and choose the specific tenants they want, and to get rid of the 'undesirables,'" LCR writes.

With no local regional MCAD office to turn to, victims of such discrimination will have a far harder time vindicating their rights, LCR says.

In its statement to Lawyers Weekly, MCAD notes that it has been working with the state's Division of Capital Asset Management and Maintenance to open a Fall River office, the Legislature having enacted a statutory change in the FY24 budget to sanction the move from New Bedford to Fall River.

"The agency is committed to opening this office location as soon as practically possible," MCAD's statement reads.

Bodies alone won't fix problem

LCR notes that the Legislature upped MCAD's appropriation from $4.3 million to $7.6 million in fiscal year 2023, and then to $8.2 million in fiscal year 2024.

The benefits of that increased investment have been slower to materialize than many may have hoped due to struggles filling vacant positions, according to MCAD's most recent annual report, issued in January.

"For the duration of the pandemic, staffing at the MCAD was an incredibly difficult issue to tackle," MCAD Interim Executive Director Michael Memmolo writes in the introduction to the report.

The report explains that for the first three quarters of fiscal year 2023, MCAD's investigations division operated at 74 percent of the standard staffing levels due to attrition and difficulty in hiring new investigators.

With the Legislature's increased investment in MCAD, the agency was finally able to offer competitive salaries, Memmolo reports.

"The cascading effect of these salary improvements also bolstered our ability to retain staff who we have historically lost to more lucrative positions — many times at other government agencies," he says.

Still, the agency "fell slightly short" of meeting its hiring goals for FY23, Memmolo acknowledges.

According to the annual report, the investigations division planned to hire an additional 16 employees to increase the agency's staffing levels to some of the highest in its history.

But in the meantime, MCAD's inventory of backlogged complaints more than 18 months old continued to increase during FY23, Memmolo notes.

"Although the backlog is not as critically large as it was in the past, the agency is striving to immediately reduce it to the pre-pandemic level of FY20 when the backlog inventory was nearly eliminated and the agency was well on its way to completing investigations within, or before, eighteen (18) months," Memmolo writes.

In the statement to Lawyers Weekly, MCAD adds: "Regardless, the MCAD's current budget cannot alone solve the problem of complaint volume outpacing agency capacity."

MCAD says it consistently assesses and implements improvements to its processes and procedures and plans to replace its "antiquated" case management system within 18 months, which should not only increase the staff's capacity but improve the online scheduling function.

Requesting patience while MCAD gets its new people and systems in place is "an understandable ask, in one sense, but not if it takes away the rights of the people it was established to serve," Kippins said.

'Last resort'

In their demand letter, LCR and Urban League note that the "deficiencies identified above are not just problematic from an operational, administrative, and policy perspective; they also violate fundamental rights under the law."

In some detail, LCR and Urban League lay out what they maintain are violations of the procedural due process rights of prospective MCAD complainants under the 14th Amendment.

"The prospective complainants' property interests here are substantial," they write, adding that the risk of erroneous deprivation of those property interests from the state of MCAD's current operations is high, particularly in the New Bedford area.

"Not only is the risk of erroneous deprivation high, but that risk could be substantially reduced with additional safeguards," they continue, citing the reopening of the New Bedford regional office and providing more intake specialists and available appointment slots for filing by intake as examples of such safeguards.

The deficiencies in MCAD's operations also violate the First Amendment, LCR and Urban League allege.

LCR and Urban League note that it is well established that significant delays in an administrative agency's processing timelines may constitute "a remediable constitutional violation," even where the relevant legal framework underlying the agency's powers does not specify a timeline for agency action.

They cite the 2008 U.S. District Court case *Machado v. Leavitt*, in which Judge Michael A. Ponsor declined to dismiss the due process claims brought by low-

income plaintiffs who had "suffered erroneous and excessive deductions from their monthly Social Security checks as a result of blunders by [the Department of Health and Human Services and the Social Security Administration] in the calculation of their prescription drug plan premiums under Medicare Part D."

In their letter, LCR and Urban League make clear that they view a federal lawsuit as a last resort. Their preferred solution is for MCAD to agree to a memorandum of understanding, "outlining remedial steps and detailing specific community commitments."

"We see this as an opportunity to work together to strengthen the MCAD and to better serve our overlapping constituencies," they write. "To avoid spending scarce taxpayer dollars on costly and protracted litigation, we hope you share our goal of focusing on immediate remedial action."

But MCAD suggested to Lawyers Weekly it views a memorandum of understanding as unnecessary.

"The agency remains disappointed in LCR and ULEM's demand for an MOU and threat of litigation where agency leadership has taken the above steps to address the challenges of this vital work for the Commonwealth of Massachusetts and to continue to work collaboratively with LCR and ULEM and other community groups, as well as our federal, state and local governing partners, and leaders across the Commonwealth who are dedicated to anti-discrimination work," its statement concludes.

But if there is no perceptible progress soon, the stalemate of MCAD resisting an MOU and LCR and Urban League insisting on one will not last forever, Kippins reiterated. Leaving MCAD to its own devices to meet its own goals on its own timeline is untenable, he said.

"We can't sit around and cross our fingers instead of making sure our clients are able to pursue their rights," Kippins said.

Discrimination complaints before state commission spike, worsening case backlog

By Amanda Beland

February 05, 2025

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This article is more than 1 year old.

For Robert Hanson, running day programs for adults with special needs was rewarding work. Some days were hard, he said, but he liked the mission.

“I've always wanted to help people and I've always had a compassion for people,” Hanson said. “I started in the field when I was like 24 years old.”

He worked at the same agency for seven years. But in January 2020, Hanson said he was called into a meeting and informed his job was terminated. He was told his eyesight was a safety issue, he recalled. Legally blind, the 57-year-old has lived with an eye disease called premature retinopathy since birth.

The meeting, which Hanson said came without warning, didn't sit right with him. “I knew that there was something wrong there,” he said.

He hired a lawyer, who helped him file a complaint in 2020 against his former employer with the Massachusetts Commission Against Discrimination. From July 2019 through June 2024, more than 14,000 people filed allegations of discrimination, in employment, housing and other disputes, with the independent state agency.



Robert Hanson enjoys an iced beverage inside Battle Grounds Coffee Company in downtown Haverhill. (Jesse Costa/WBUR)

Today, the agency faces a deluge of complaints. Last year, the commission logged a 15% increase in new filings, totaling 3,553. That's the highest number of new submissions since 2008, according to data from the agency's annual reports.

The agency's new leader, Michael Memmolo, said MCAD is working to address the swell of cases, including backfilling staff positions and modernizing their case management system. Still, the increase is concerning to legal experts who work with the commission.

"It's disappointing, but it's not surprising," said Tom Murphy, a supervising attorney at the nonprofit Disability Law Center Inc. in Boston.

Murphy said many factors can contribute to a spike in complaints, including stubborn misconceptions about employees with disabilities.

Another factor, he said, is the lingering impact from the pandemic. Many experienced managers left roles across a variety of industries during the upheaval brought on by COVID-19. This left workforces with less experienced bosses, Murphy said.

“I think there's still just a lack of adequate awareness and training of decision-makers on issues that involve people with disabilities,” Murphy said, “like reasonable accommodation, which can be very complicated.”

Reasonable accommodation is when someone with a disability asks for something that allows them equal access. Murphy says a lot discrimination complaints come when an employer and employee can't agree on an accommodation.

Elisa Filman, a Natick lawyer at the firm Hanson hired — which represents both employees and employers in MCAD cases — cited several reasons why complaints may be on the rise. She said for one, employees feel more empowered to ask for what they need in workplaces.

“People are feeling more confident about talking about what's going on with them, from a mental health perspective or from a medical perspective,” Filman said. “So they're asking for more at work.”

She said Hanson settled his complaint in mediation without going to court. However, the number of disability-related cases like his or cases involving allegations of retaliation saw the biggest jump last year, according to the latest data from MCAD. The next largest buckets involved claims over discrimination based on sex, national origin and age.

Discrimination sometimes stems from unconscious or unspoken biases, Filman explained, like assuming someone cannot complete a work project because of their disability. Or wondering if a person will do their job well before taking family medical leave.

“For the most part, gone are the days of explicit discrimination,” Filman said. “Now it's a lot more subtle.”

This subtlety can complicate investigations into claims — which can take years to complete. Last year, there were 1,851 cases filed in previous years that MCAD officials had not finished, or in some cases, even started. That’s the agency's biggest backlog in over a decade.

In 2019, MCAD faced fewer than 300 pending cases. But since the pandemic, that number has exploded.

Sophia Hall, deputy litigation director at Lawyers for Civil Rights in Boston, said her office receives about 1,000 calls a year from people who feel they've been discriminated against.

“Often when I see a client, it’s a person who's experienced discrimination not once, not twice, maybe not even five times — but maybe a dozen times,” she said. These people are so fed up, “they finally feel like they need to stand up, because they know other people are having that experience,” she added.

Reviews of MCAD by the state auditor’s office released in 2016 and 2022 found the agency repeatedly failed to complete investigations within the timeframes set by state law (100 days for housing and 18 months for other investigations). WBUR previously reported on complaints taking years to resolve and the toll delays take on those awaiting decisions.

“The messaging that happens emotionally is that this is par for the course and you should accept a life in which you're treated this way,” Hall said.

Lawyers for Civil Rights filed a letter to MCAD last February, citing the delays in investigations, and what the group asserts is an inadequate intake process for new complaints.

Memmolo, the head of MCAD, was named the agency's first-ever executive director last April. He said complaints increased in part because the public is more aware of the commission's work, noting MCAD launched a public service campaign last year and regularly conducts community workplace trainings.

He added the reopening of MCAD's Worcester office, which closed temporarily in 2022, also may have spurred more people to file complaints.

The backlog "still is an issue that we're addressing every single solitary day here," Memmolo said. However, he added there's been progress. Last year, the backlog grew by less than 3 percent.

Memmolo said more than three dozen investigators are sifting through new complaints, with each handling a few hundred cases at a time. The agency plans to swap its case management system this summer so people can file complaints online. The system will include additional languages, too.

"We are really hopeful to be able to sort of wipe the slate clean with our backlog, get ahead of that, implement our new technology, and be an agency that is proactive rather than reactive," Memmolo said.

This segment aired on February 5, 2025.



Amanda Beland Senior Producer
Amanda Beland is a senior producer for WBUR. She also reports for the WBUR newsroom.
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State agency that reviews discrimination cases says Trump-era rules likely disqualify it from federal funds

By Amanda Beland

Updated January 12, 2026

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From July 2025, the then-headquarters of the U.S. Department of Housing and Urban Development in Washington, DC. It was announced that HUD and its 2,700 employees would relocate from downtown Washington to offices in Alexandria, Virginia. (Kent Nishimura/Getty Images)

The state agency that investigates discrimination complaints in Massachusetts says it doesn't expect it can renew a contract for over $1 million in federal funds, in part due to Trump administration rule changes.

The head of the independent Massachusetts Commission Against Discrimination said federal officials last year sent a memo to warn the agency and those in other states that review housing discrimination cases about stricter funding requirements.

The U.S. Department of Housing and Urban Development memo told the agencies that if their states offer broader anti-discrimination protections than the U.S. government, they'd likely be ineligible for federal funds.

The federal guidance came after HUD last year halted enforcement of a 2016 rule that guaranteed access to housing regardless of one's gender identity. It did so as President Trump also ordered an end to similar anti-discrimination rules put in place by former President Joe Biden.

In its memo, HUD wrote the federal Fair Housing Act doesn't include protections for: "sexual orientation, gender identity, and gender expression; 'source of income'; criminal records; weight and height; or limited English proficiency." Work done to investigate complaints related to those issues would not be eligible for HUD reimbursements, the memo said.

HUD further said it'd review its contracts and possibly revoke ones with agencies governed by local laws that offer protections not explicitly stated in federal law.

That's the case for Massachusetts.

"The commonwealth has been an incredible leader in anti-discrimination law," Michael Memmolo, the agency's executive director, said. He added past administrations "appreciated" state agencies that offered "more robust protections" against prejudice than the federal government.

"We are now being told that will not be the case moving forward," he said.

Unlike the federal government, Massachusetts also bans discrimination against people on public assistance.

Last fiscal year, MCAD received nearly 300 new complaints of alleged discrimination on the basis of sexual orientation, gender identity and public assistance, according to its annual report released last month.

"The Trump Administration is committed to vigorously enforcing the Fair Housing Act as enacted by Congress," Assistant Secretary for Fair Housing and Equal Opportunity Craig Trainor said in an emailed statement Thursday. "This includes restoring fair housing enforcement to its core statutory authority and aligning our partner agencies with the law's requirements and the President's policies on DEI, the biological reality of sex, and English as the official language of the United States."

MCAD officials said HUD has not offered a new contract, but that they would be open to reviewing one. The agency's last contract with HUD expired in September, and Memmolo said he's hopeful the state will move to cover all or some of the money that MCAD expects to go without beginning as early as July.

MCAD gets roughly 20% of its total budget — or just over $2 million — from HUD and the U.S. Equal Employment Opportunity Commission, the state commission's annual report shows. Those dollars fund eight staffers in the agency's Housing Investigations Unit.

The agency's contract with the U.S. Equal Employment Opportunity Commission also expired at the end of September. Memmolo said the commission hasn't formally updated its guidance on funding eligibility, but he expects them to match HUD's changes.

The federal changes came down as the state agency grew. MCAD hired more investigators and posted new job openings last year. Simultaneously, it saw its backlog of non-housing related complaints balloon by more than 25% compared to the previous fiscal year. They include complaints related to employment, public accommodation and education.

Memmolo said the agency is trying to modernize its systems and take on fewer new cases to address the backlog.

***Correction**: An earlier version of this story said HUD officials did not offer comment after an email exchange was missed. The story has been updated with the department's statement. We regret the error.*

This article was originally published on January 12, 2026.



Amanda Beland Senior Producer
Amanda Beland is a senior producer for WBUR. She also reports for the WBUR newsroom.
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Length of MCAD Proceedings as Addressed by the Courts

Year	Citation	Context	Quote
1978	Smith College v. Massachusetts Comm'n Against Discrimination, 376 Mass. 221, 221–23 (1978)	Two complaints alleging sex discrimination by professors that progressed slowly through the agency were returned on remand by the SJC.	In commenting on two sex discrimination complaints that had been pending resolution at the Commission and in the courts for five years, Justice Wilkins noted, "Proceedings based on these complaints have followed a lethargic course, which might attract the attention of a modern Charles Dickens. A hearing on the complaints was held before a single commissioner of the MCAD on twelve days… more than nineteen months after the close of the hearing[], the single commissioner filed findings of fact and conclusions of law ruling… Almost a year later… the full commission… affirmed the decision of the single commissioner with minor modifications… The delay in the resolution of these complaints is particularly unfortunate because we conclude that the proceedings must be returned to the MCAD for further consideration."
1985	Buckley Nursing Home, Inc. v. Massachusetts Comm'n Against Discrimination, 20 Mass. App. Ct. 172, 173, n.2 (1985)	Complaint filed in 1974 by Black employee. Hearing Decision issued in 1980 and Full Commission decision issued in 1982. Appealed to Superior Court, per M.G.L. c. 30A, which upheld decision.	"The extraordinary delay (eight years) in the resolution of the case at the commission level is regrettable. We do not know the reasons for the delay. Whatever they were, we would hope that steps have been taken to rectify them. If there is any case where the rights of the parties should be promptly determined, it is a case arising under G.L. c. 151B."
1996	School Comm. of Brockton v. Massachusetts Comm'n Against Discrimination, 423 Mass. 7, 12–13 (1996)	Class action brought by teachers' union alleging sex discrimination was pending before the commission for over eleven years before a final decision was reached. The respondent school committee argued that the complaint should be dismissed under the doctrine of laches because of the delay.	"This case was pending before the commission for over eleven years before a final decision was reached. The delay is regrettable, but we see no basis for assigning any blame for the delay to the union or the teachers seeking benefits. Rather, the delay appears to be attributable, in part, to the school committee's choosing to litigate every important facet of the case. The school committee, of course, had a right to do so, but delay caused by the school committee's intense litigation tactics should not be held against the union and the teachers. The backlog of cases pending at the commission, and the commission's lack of resources, also appear to have contributed to the delay."

Year	Citation	Context	Quote
2004	Stonehill College v. Massachusetts Comm'n Against Discrimination, 441 Mass. 549, 589 n.8 (2004)	In the concurrence to this decision, Judge Sosman weighed the costs and benefits of determining a jury's ability to determine employment discrimination claims in a civil case and the MCAD's continued authority to administratively pursue discrimination claims.	Concurring in the decision to overrule Lavelle v. Massachusetts Comm'n Against Discrimination, 426 Mass. 332 (1997), Justice Sosman noted that Lavelle "literally wreaked havoc with the conduct of MCAD proceedings, undercut the MCAD's role in enforcing G.L. c. 151B, caused substantial delay in the resolution of discrimination claims, and produced a plethora of difficult substantive and procedural questions as to the interplay between the MCAD proceedings, the MCAD's decision, and a subsequent jury trial."
2005	Glover v. Massachusetts Comm'n Against Discrimination, 64 Mass. App. Ct. 1104, 1104 n.2 (2005)	Black probationary firefighter pursued race discrimination claim at MCAD, represented. Hearing Decision dismissed his complaint and Full Commission affirmed. Complainant sought judicial review pro se.	"Completion of the agency proceedings took ten years. While we sympathize with Glover's frustration over the handling of his case, there is no suggestion that the department was responsible for the delay."
2021	Fed. Sq. Properties, Inc. v. Massachusetts Comm'n Against Discrimination, 99 Mass. App. Ct. 1113 n.3 (2021) (Rule 23.0 Decision)	Respondent appealed from assessment of interest on MCAD award of attorney's fees arguing that the delay in administrative proceedings effectively doubled the award unfairly. The Court upheld the award, but cautioned MCAD in a footnote.	"The MCAD, in exercising its considerable discretion, should bear in mind that the specific posture of an individual case may make the assessment of interest on an award of fees more, or less, appropriate. In cases where there is delay in issuing a decision and resolution of the issue on appeal is a particularly close call… it may be less appropriate to assess the full amount of interest on a fee award… We do not attempt to detail all of the possible factors; the MCAD should consider the equities involved in assessing interest on a fee award on a case-by-case basis."

APPENDIX 4

The Commonwealth of Massachusetts
Commission Against Discrimination

Sunila Thomas George
Chairwoman

Neldy Jean-Francois
Commissioner

NOTICE OF PUBLIC HEARING

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The Commonwealth of Massachusetts
Commission Against Discrimination

Sunila Thomas George
Chairwoman

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SMALL BUSINESS IMPACT STATEMENT
804 CMR 1.00

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The MCAD is charged with enforcing the Commonwealth's anti-discrimination laws under M.G.L. c. 151B, c. 272, §§92A, 98, 98A, and c. 151C, and its procedural rules dictate how complaints of illegal discrimination (primarily in the areas of employment, housing and public accommodation) are investigated, prosecuted and adjudicated at the MCAD. The MCAD has revised sections of 804 CMR 1.00 to improve readability and reflect current MCAD practice and procedure. The revisions include new rules surrounding the implementation and use of the MCAD's online filing and case management system, updates to the MCAD investigation and preliminary appeals processes, as well as substantive changes to the rules with respect to motion practice, communications with the MCAD, and more. In any event, the MCAD's procedural rules are not of the type and character that uniquely or meaningfully affect small business-like any employer, housing provider or place of public accommodation subject to the statutes enforced by the Commission, small businesses must follow MCAD process when responding to a complaint of illegal discrimination. For decades, that process has required cooperating in the investigation of a complaint, and has potentially required litigating a complaint and participating in MCAD proceedings. The proposed revisions do not alter those decades-old requirements for small businesses or any other respondent.

In accordance with M.G.L. c.30A, §2, the Commission offers the following responses:

Estimate of the Number of Small Businesses Impacted by the Regulation:
Every small business in the Commonwealth that is subject to the anti-discrimination laws described above is subject to the MCAD's procedural rules once named as a respondent in an MCAD complaint.

Will small businesses have to create, file, or issue additional reports?
No.

Will small businesses have to implement additional recordkeeping procedures?
No.

Will small businesses have to provide additional administrative oversight?
No.

Will small businesses have to hire additional employees in order to comply with the

proposed regulation?
No.

Does compliance with the regulation require small businesses to hire other professionals (e.g., a lawyer, accountant, engineer, etc.)?
No.

Does the regulation require small businesses to purchase a product or make any other capital investments in order to comply with the regulation?
No.

Are performance standards more appropriate than design or operational standards to accomplish the regulatory objective?
No.

Do any other regulations duplicate or conflict with the proposed regulation?
No.

Does the regulation require small businesses to cooperate with audits, inspections or other regulatory enforcement activities?
Yes. The regulations allow for regulatory enforcement activities including but not limited to investigations, sanctions, and adjudicatory proceedings.

Does the regulation require small businesses to provide educational services to keep up to date with regulatory requirements?
No.

Is the regulation likely to deter the formation of small businesses in Massachusetts?
No.

Is the regulation likely to encourage the formation of small businesses in Massachusetts?
No.

Does the regulation provide for less stringent compliance or reporting requirements for small businesses?
No.

Does the regulation establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses?
No.

Did the agency consolidate or simplify compliance or reporting requirements for small businesses?
No.

Can performance standards for small businesses replace design or operational standards

without hindering delivery of the regulatory objective?
No.

Are there alternative regulatory methods that would minimize the adverse impact on small businesses?
No.

Fri Jan 2, 2026

Boston Globe Legal

Notices

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January 2, 2026
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January 2 2026
LNEO0431199

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The Commonwealth of Massachusetts
Commission Against Discrimination

Sunila Thomas George
CHAIR

NOTICE OF EXTENSION OF PUBLIC COMMENT PERIOD

The Massachusetts Commission Against Discrimination ("MCAD") hereby gives notice pursuant to M.G.L. c. 30A, § 2 of the extension of time to submit written comments on proposed changes to its Rules of Procedure found at 804 CMR 1.00 et seq., promulgated pursuant to its authority under M.G.L. c. 151B, § 3 and M.G.L. c. 151C, § 5. The MCAD has revised sections of 804 CMR 1.00 to improve readability and reflect current MCAD practice and procedure. The revisions include new rules surrounding the implementation and use of the MCAD's online filing and case management system, updates to the MCAD investigation and preliminary appeals processes, as well as substantive changes to the rules with respect to motion practice, communications with the MCAD, and more.

The MCAD conducted three public hearings in January 2026. Based on the comments received in writing and in the scheduled public hearings, the Commissioners voted to extend the public comment period until the end of March during a public meeting held on February 17, 2026.

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