

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

SHAWN HAYWOOD and
MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION,
Complainants

Against

Docket No. 08 BEM 03304

OFFICE OF THE
COMMISSIONER
OF PROBATION,

Respondent

Appearances: Maria Mancini Scott, Esq., for Complainant
Anne-Marie Ofori-Acquaah, Esq. for Respondent

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On November 18, 2008, Sean Haywood (“Complainant”) filed a complaint with the Massachusetts Commission Against Discrimination (“MCAD”) charging Respondent Office of the Commissioner of Probation (“Respondent”)¹ with race discrimination in violation of G.L.c.151B by failing to promote him to a permanent or temporary probation officer position. Complainant charged that he was discriminatorily denied promotions in

¹ The Chief Justice of Administration and Management was also originally charged with discriminatory conduct but the probable cause finding did not support a claim against him, resulting in his dismissal from the case.

Middlesex Superior Court in 2001 and 2006, in East Boston District Court in 2007, and in the Malden District Court in October of 2008.

On August 11, 2010, the MCAD found probable cause against the Respondent Office of the Commissioner of Probation. The matter was certified to public hearing on November 22, 2011. A public hearing was held on July 16, 19 and 20, 2012.

Prior to the commencement of the public hearing, Respondent filed a Motion in Limine to preclude evidence relating to positions for which Complainant unsuccessfully applied more than 300 days prior to the filing of the complaint. The Motion in Limine was granted as to damages but denied for the purpose of showing discriminatory animus. During the course of the public hearing, Complainant moved that the Hearing Officer reconsider the ruling and was advised to reassert the motion in a post-hearing brief. That motion is again denied.

The Complainant testified on his own behalf. The following additional witnesses testified: Mark McHale, Paul Lucci, Mira Dandridge, Kevin Johnson, Heather Rose, and Yvonne Roland. The parties submitted eighteen (18) joint exhibits. Following the public hearing, the parties jointly submitted additional documentation which I designate as Joint Exhibit 19. The parties also submitted post-hearing briefs and supplemental proposed findings and conclusions.

To the extent the parties' proposed findings are not in accord with or irrelevant to my findings, they are rejected. To the extent the testimony of various witnesses is not in accord with or irrelevant to my findings, the testimony is rejected. Based on all the relevant, credible evidence and the reasonable inferences drawn therefrom, I make the following findings and conclusions.

II. FINDINGS OF FACT

1. Complainant Shawn Haywood is a black man who lives in Everett, MA. He has a college degree with a major in criminal justice and sociology. After graduating from college, Complainant worked part-time at a homeless shelter, full-time as a street worker/youth counselor at Boston Community Centers, and part-time as a youth counselor at the Department of Youth Services. Complainant attended one year of a master's program in counseling at UMass Boston.²
2. On February 19, 1998, Complainant and 129 others were hired as associate probation officers out of more than 1000 applicants. Transcript III at 83. As of the date of public hearing, Complainant continues to occupy this position. Complainant was initially assigned to work at the Boston Municipal Court and subsequently at the Middlesex Superior Court. Complainant testified that as an associate probation officer, he documents arraignments, interviews defendants to ascertain if they can afford an attorney, prepares sentencing guidelines, pulls pending cases for courtroom use, participates in bail reviews, and trains less senior employees. Transcript II at 141. He performs administrative work in order to free probation officers to perform fieldwork. Transcript I at 45. According to Complainant's un rebutted testimony, he has received no written or verbal discipline throughout his employment by Respondent, no reprimands or coaching sessions, and no negative comments by supervisors. Transcript II at 142.
3. The Respondent Office of the Commissioner of Probation is one of seven-plus

² Complainant claimed to have a Master's Degree in counseling on his resume but answered "No" to whether he had graduated from the UMass Boston counseling program on his application for promotion to probation officer. Joint Exhibit 2. Because Complainant filled out his application for promotion in a truthful manner, I decline to draw a negative inference from the misstatement on Complainant's resume.

departments within the Trial Court of the Commonwealth. Joint Exhibit 5. Since July of 2001, the Commissioner of Probation has been the Appointing Authority for probation officers pursuant to M.G.L. c. 276, section 83.³ Joint Exhibits 13 & 14; Transcript III at 156. From 1997 to 2011, the Commissioner of Probation was John O'Brien. The Commissioner of Probation is assisted by Deputy Commissioners and by Regional Supervisors. At the individual court level, there are chief probations officers, assistant chief probation officers, probations officers, and associate probation officers. Joint Exhibit 8.

4. During O'Brien's tenure as Commissioner, the First Deputy Commissioner was Elizabeth Tavaras and the following individuals were Deputy Commissioners: Francis Wall, Patricia Walsh, Paul Lucci, Steve Bucco, and William Burke. O'Brien and Tavaras are the subjects of indictments in the U.S. District Court in Boston relative to their positions with the Department of Probation. Both refused to testify at the MCAD, asserting their rights under the Fifth Amendment to the United States Constitution.
5. The job description for probation officer consists of investigating an offender's personal history; interviewing probationers and referring them to social resources; making recommendations on dispositions; and recommending the revocation of probation and/or modification of court orders. Joint Exhibit 2. The position requires one year's experience in human or allied services and a bachelor's degree. Id. About half of the applicant pool for probation officer positions does not have prior Trial Court experience as associate probation officers. Transcript I

³ Prior to July 1, 2001, M.G.L. c. 276, section 83 provided that the Chief Justice for Administration and Management was the Appointing Authority for probation officers of the Trial Court. Transcript III at 156.

- at 96-97. The position of probation officer is considered to be part of a “professional” category of positions for EEO (Equal Employment Opportunity) purposes. Transcript II at 85, 121; Joint Exhibit 7.
6. Respondent established a three-part selection process for probation officer positions consisting of: 1) an initial screening; 2) a local interview by the presiding justice of the court, the chief probation officer of the court, and a designee of Respondent (typically the regional supervisor); and 3) a final interview by two deputy commissioners of the top eight candidates as determined by a majority of the local interviewers. Joint Exhibit 12 at 73; Transcript I at 21, 49-50; 136-137; III at 56-58, 73-74.
 7. The Department of Probation does not use job postings or interviews for temporary positions, but once a temporary position is filled, Respondent must issue a certification that it has complied with its affirmative action plan and its policy against nepotism. Transcript II at 25-27.
 8. Complainant testified that since his hire as an associate probation officer in 1998, he has applied for promotion to the position of probation officer approximately 30 times, has been interviewed on each occasion, but has never been successful in obtaining a promotion. Complainant did not retain copies of his rejection letters and was unable to produce evidence of these rejections. Transcript III at pp. 146-147. I credit that Complainant applied for more promotions than those set forth in his complaint, but I do not credit his assertion that he applied for promotion as many as 30 times.
 9. Pursuant to M.G.L. c. 149, section 52C, an employee’s personnel record need not

- include applications and rejection letters for promotional positions which the employee sought but did not receive. The parties' Collective Bargaining Agreement⁴ at Article XV, section 15.01 provides that personnel records of the Probation Department include employees' attendance, vacation days, sick days, evaluations, and letters of commendation. Joint Exhibit 4
10. Apart from information maintained in personnel files, the Trial Court is required to retain, for seven years, applications and letters of rejection relative to unsuccessful applicants. Joint Exhibit 5 at p. 10 (Trial Court Hiring Policies and Procedures, section 4.500 - Record Retention).
11. During discovery, Complainant unsuccessfully sought from Respondent all of his application materials between 1999 and 2008, but he did not identify the positions by location, date of vacancy, or date of hire. Complainant testified that he could not remember all of the positions for which he applied, but he assumed that rejection letters pertaining to the positions would be contained in his personnel file. Transcript III at 189-190. According to Respondent, however, rejection letters are not organized by applicant but, rather, by position. Thus, Respondent asserted that it could not respond to Complainant's discovery request for all application materials pertaining to unspecified positions that Complainant maintains he applied for but did not receive. Transcript III at 190-193. I credit this explanation.
12. Pursuant to the parties' Collective Agreement, the "principle" of seniority is recognized so that "when qualifications such as training, skill, ability and other

⁴ Associate probation officers and probation officers are covered by a Collective Bargaining Agreement between the Chief Justice for Administration and Management of the Trial Court and the National Association of Government Employees/ Service Employees International Union, Local 5000.

- relevant qualities are considered equal by the Employer, the Employer shall give preference in the cases of ... promotion ... to employees with the longest service.” Joint Exhibit 4, Article XX, section 20.01 at p. 50. Seniority is defined as the length of continuous regular full-time employment in the Judiciary. Joint Exhibit 4, Article XX, section 20.02 at p. 50. Pursuant to the Policies and Procedures Manual for the Massachusetts Court System, the provisions of the Collective Bargaining Agreement apply to temporary assignments to a higher level position as well as to permanent promotions. Joint Exhibit 5 at p. 15
13. Regional Supervisor Mark McHale testified that he has conducted interviews for approximately 25 positions. Transcript I at 53. He estimates that in approximately 75% of those cases, he was given the names of approximately three to five politically-connected individuals (i.e., a total of 57 to 95 candidates) to pass along to the next level of review even if they were not the most qualified for the job; of the 57 to 95 candidates, only three were black; and that based on the foregoing, more white candidates got jobs than black candidates. Transcript I at 73; 81-90, 97. McHale testified that in those instances in which he received names of favored candidates, he did not share those names with the judge on the interview panel. Transcript I at 116.
14. Deputy Commissioner of Probation Paul Lucci testified that he conducted interviews for between 25 to 50 positions and estimates that he received names of favored candidates about 75% of the time. Transcript, Vol. I at p. 145.
15. According to Lucci, an associate probation officer with 14 years of experience who is a good worker and applied 25 times for promotion to probation officer

should have been promoted. Transcript I at 147. Lucci characterized Complainant as “polite,” “well-dressed,” and a “gentleman,” but testified that he never worked with Complainant and didn’t know if Complainant’s work performance played a role in his non-promotion. Transcript I at 147, 157.

16. The Trial Court’s Affirmative Action Plan pertains to both hiring and to promotions. Joint Exhibit 6. It seeks to remedy past employment practices that resulted in discrimination and to establish goals and timetables for achieving parity in employment. Id. “Underutilization” is determined by comparing minorities in the workforce against qualified minorities in the population from which the workplace can reasonably recruit. Id. at p. 7. The Affirmative Action Plan requires a “Workforce Analysis” consisting of both the racial composition of specific job titles on a workforce-wide basis broken down by whites, blacks, Hispanics, Cape Verdeans, Asian/Pacific Islanders, and Native Americans and the racial composition of EEO job categories for each court.⁵ Id. The Plan also requires a “Labor Market Analysis” of available, appropriately-skilled minorities “in the areas in which hiring authorities can reasonably recruit” – the “local” labor market Id. at pp. 8, 23. The Plan then provides for a “Utilization Analysis” to wit, comparing the Workforce Analysis to the Labor Market Analysis. Id. at pp. 7-8. Where the analysis shows an underutilization of minorities, hiring goals (but not quotas) are imposed to achieve equal employment opportunity. Id. at p. 8

17. The Trial Court’s Affirmative Action Officer since 1998 has been Mira Dandridge. One of her job duties is to monitor promotions to ensure that

⁵ The EEO job categories consist of Manager, Professional, Technician, Supervisor, Administrative Support, and Service Workers. The Affirmative Action Plan equates the EEO job categories with specific job titles on the dubious basis that they are “essentially the same.” Joint Exhibit 6 at pp. 7-8.

minorities and women are given appropriate opportunities. According to Dandridge, the Department's Affirmative Action Plan could require the hiring of a minority candidate with equal qualifications to a non-minority candidate if such a step were justified by the utilization statistics in Respondent's Affirmative Action Plan. Transcript II at pp. 86-87. Dandridge testified that in order to determine underutilization, she compares the percentage of minorities – not specific races -- available to work in the Commonwealth's workforce, which she testified to be just over 10% (based on statewide labor market statistics) against the percentage of all minorities in the Trial Court workforce which she placed at about 20%. Transcript II at pp. 47; 119. Based on this comparison, Dandridge disputes the contention that black employees are underutilized within the Probation Department. Transcript II at pp. 62, 76.

18. According to Respondent's Workforce Analysis of the probation officer job title, the percentage of black probation officers in 2007 on a statewide basis was 12.24% -- 112 black probation officers out of an overall pool of 918 probation officers.⁶ The percentage of black associate probation officers in 2007 was 14.60% -- 29 black associate probation officers out of a pool of 179 associate probation officers. Joint Exhibit 8.

19. After the Commissioner of Probation became the Appointing Authority for the Probation Department in 2001, Complainant applied for probation officer positions in the Roxbury District Court between 2004 and 2006, in the Chelsea

⁶ Complainant, in a post-hearing brief, asserts that the overall pool of probation officers in 2007 was 1,355 but that figure is incorrect and, in turn, led to Complainant's incorrect conclusion that only 8.3% of all probation officers in 2007 were black. Transcript II at 120.

- District Court between 2005 and 2007, in the East Boston District Court in 2008 and in numerous other courts.⁷ Transcript II at 145.
20. Although Complainant asserts that he applied for a probation officer position at the Roxbury District Court between 2004 and 2006 and was interviewed, the tracking records maintained by the Trial Court do not show Complainant's name on the applicant interview hiring record for the position that Paul Shaughnessy, a white candidate, received in February, 2006. Transcript III at 148; Joint Exhibit 15. Shaughnessy had no prior service with the Trial Court. Joint Exhibit 15.
21. In 2007, Complainant applied for a probation officer position in Chelsea District Court. Transcript II at 145. He was interviewed but did not receive the position. Id. at 147-148. Respondent selected Jessica Iovanna, a white candidate, despite the fact that she had no prior service with the Trial Court. Joint Exhibit 15.
22. On December 6, 2007, two probation officer vacancies were posted in East Boston District Court in Suffolk County. Joint Exhibit 2; Transcript I at 54; II at 149; III at 94-95. Complainant applied for the vacancies on December 18, 2007.

⁷Prior to the Commissioner of Probation becoming the Appointing Authority in July of 2001, Complainant unsuccessfully applied for five probation officer positions in the Boston Juvenile Court which went to: Lori Singleton (black), Marybeth Frisoli (white), David Wood (white), John Guerini (white), Reynaldo Ford (black), and Mabel Skelton (Hispanic). Joint Exhibit 15; Transcript III at pp. 152-153. Complainant also applied for five probation officer vacancies in Middlesex Superior Court along with 82 other candidates. An interview panel interviewed 71 candidates, including Complainant. Joint Exhibit 1. The panel consisted of: 1) Deputy Commissioner of Probation Lucci, 2) Chief Probation Officer of the Middlesex Superior Court Joyce Coleman, and 3) Superior Court Regional Coordinator Tamara McClinton. Transcript I at 164, 169. Both Coleman and McClinton are black. Coleman was Complainant's supervisor at the Middlesex Superior Court at the time of the interviews. Transcript III at 87. Complainant was given an overall ranking of 15, which was sufficient to permit him to move on to the next round of the selection process. Id. Complainant did not list Coleman as a reference on his application and Coleman gave Complainant the lowest rating of the three members on the interview panel. Transcript III at pp. 88, 92. Following the interviews, Superior Court Chief Justice Suzanne DelVecchio selected the following individuals for appointment: Gregory Carbonello (white, ranked as #8), Logan Ritchie (black, ranked as #18), Angelo Gomez (Hispanic, ranked as #3), Zygmunt Choroszy (white, ranked as #9) and Vanessa Banks (black, ranked as #7). Transcript I at 165. When Ritchie declined the position, Chief Justice Del Vecchil selected Mark Mamet (white, ranked as #2). Joint Exhibit 1 (2/2/01 letter). Transcript I at 166.

Joint Exhibit 2. A total of 135 applicants, including 20 black candidates and 91 white candidates, applied for two positions. *Id.* (“Applicant Flow Record”); Transcript II at 99; III at 94. An initial screening process reduced the list to 33 candidates. Of the 33 candidates, approximately one-third to one-half already worked in the trial court system as associate probation officers. Transcript I at 94-96. The 33 candidates were interviewed by a local panel consisting of: 1) Regional Supervisor Mark McHale, 2) Chief Probation Officer David Arinella, and 3) First Justice of the East Boston District Court Paul Mahoney. Joint Exhibit 2; Transcript I at 54-55. Complainant was interviewed and ranked 16th by Judge Mahoney, 16th by McHale, and 23rd by Arinella. Complainant was not on the list of the 15 recommended candidates sent on to the final stage of the selection process. Joint Exhibit 2; Transcript I at 69-70. In order to place on the list of 15 individuals selected for the final round of the selection process, a candidate had to rank in the top 15 candidates on the lists of two out of three interviewers. Transcript I at 67, 69.

23. The successful candidates, whose appointments were approved on April 9, 2008, were Francine Hammersley and Kevin Johnson who were ranked one and two by the local panel. Joint Exhibit 2; Transcript II at 95. Hammersley, a white woman, had been an associate probation officer since 1998, had served for six years as the Director of the South Boston Girls Center where she managed an at-risk program for girls ages 9-16, had been a program manager for Boston Community Centers, received an undergraduate degree from UMass Boston in human service management, had taken graduate courses at UMass Lowell in criminal justice, and

had been a substitute teacher for two years. Joint Exhibit 2. According to Mark McHale, he had previously received her name from the Commissioner's Office as a favored candidate, but he couldn't recall if he received her name as a favored candidate in regard to the East Boston position. Transcript I at 101. Johnson is a white male with an undergraduate degree concentrating in sociology/criminal justice but no post-college education and no prior experience working for the Trial Court. Joint Exhibit 2. Johnson was terminated from a prior police officer position in Georgia during his probationary period in 1999 but proceeded to work as a probation officer in Georgia for over eight years where he was responsible for a caseload of approximately 375 cases and later for an entire county. Joint Exhibit 2; Transcript III at pp. 10, 30-31. Johnson had previously applied for a Massachusetts probation officer position in 2007 but was not appointed. Transcript III at p. 18. After applying a second time, a relative contacted the office of Massachusetts House Speaker Robert Deleo to seek support for Johnson's application. Transcript III at pp. 24, 26-27. Interviewer McHale testified that he did not recall if he received Johnson's name in 2008 as a favored candidate, but both McHale and Arinella ranked Johnson as their top candidate whereas Judge Mahoney ranked him in tenth place. Transcript I at 100, 115-116. Johnson was appointed to a probation officer position in the East Boston District Court in the spring of 2008. Transcript III at p. 22.

24. McHale testified that he distinguished among the candidates by writing down what they said during their interviews. He asserted that based on his 34 years of experience in the system, he knew what the answers "should be," but he

- acknowledged that the ranking process was subjective. Transcript I at pp. 57, 71-72. He claimed that Johnson's experience as a probation officer in Georgia was preferable to Complainant's experience as an associate probation officer in Massachusetts and stated that Hammersley had a better background than Complainant in terms of more trainings, involvement in the warrant management system, and prior work as a teacher. Transcript I at pp. 59, 61. According to McHale, he briefly discussed each candidate's interview performance with his fellow panelists. Transcript I at pp. 124, 127.
25. Following the selection of candidates for the Easton Boston District Court, Affirmative Action Officer Dandridge certified that the two promotions were in compliance with the Trial Court's Affirmative Action Plan. Transcript II at p. 25.
26. Complainant testified that when he learned in 2008 that he did not get one of the two Probation Officer positions at the East Boston District Court, he began to suspect that race was playing a role in the selection process. Transcript II at p. 152. He did not file a grievance at that time but he called Dandridge and told her that he had continually been denied promotions and thought that race was a factor. Transcript II at p. 154; III at pp. 94, 104, 114. Dandridge said that she would look into it. Transcript II at p. 155.
27. In 2008, Complainant was working at the Middlesex Superior Court in Woburn with two other associate probation officers, Heather Rose and Sylvia Gomes. Transcript II at pp. 155-156. Rose, a white female, was hired in 2007 and Gomes in 2008. Complainant assisted in their training. Transcript II at pp. 157-159.
28. Temporary probation officer appointments are made without interviews or job

postings. Transcript III p. at 59. Complainant learned in October of 2008 that Rose had been appointed to a temporary probation officer position. Rose had been employed by Respondent since 2006. Transcript II at p. 101. She testified that she received an unsolicited call notifying her of her appointment as a temporary probation officer in Malden. Transcript III at 40-44. Rose's educational and work background prior to working for Respondent consisted of earning a bachelor's degree from Salem State College and working at a bank and law office. Transcript III at pp. 34-35

29. Complainant testified that when he learned that Rose had been promoted to a temporary probation officer position, he felt anger, rage, humiliation, embarrassment, bitterness, and frustration. He stated that he his negative feelings derived from the fact that he had more seniority than Rose, that he had trained her, that she was appointed without an interview, and that there had been no job posting. Transcript II at p. 160, 179; III at p. 40. Complainant testified that ever since Rose was promoted in October of 2008, he's had trouble getting out of bed, has had migraines, lost weight, and lost his appetite. According to Complainant, he has withdrawn from family and friends, drinks more, and doesn't like to go out. Transcript II at 179. Complainant described his mind as frequently "elsewhere" because he dwells on his situation. Transcript II at 180-181. Complainant testified that he has to take medication which causes dry mouth and dry skin, makes him lose weight, and has adverse sexual side effects. Transcript II at 181. According to Complainant, he has low self-esteem because of his employment situation, has lost motivation, is self-conscious, feels like a loner and

- a victim, and is short-tempered. Transcript II at p. 182. Complainant testified that he is no longer active in sports. Transcript II at p. 183. According to Complainant, his emotional distress has increased rather than decreased since 2008. Transcript II at p. 185.
30. After learning of Rose's appointment as a temporary probation officer, Complainant filed this MCAD complaint. Complainant subsequently became aware that Respondent appointed 14 other associate probation officers to temporary probation officer positions at the same time as Rose. Joint Exhibit 3; Transcript II at pp. 162-163. The appointees included two black individuals (13.5% of all the temporary appointments) and one Asian individual, all with less seniority than Complainant. Transcript III at p. 113; Joint Exhibit 15.
31. Complainant sought professional help through the Employee Assistance Program in January of 2009 and was referred to a counselor in Medford. Transcript at p. 186. He was subsequently referred to another therapist/counselor by his primary care physician. Transcript II at pp. 187-188. Complainant was prescribed medication. Transcript II at pp. 188-189. According to Complainant, he did not receive mental health counseling prior to January of 2009. Transcript II at p. 189. Complainant described his employment situation as making him unable to trust the people he works for and as making him not like himself. Transcript II at p. 193.
32. Complainant submitted medical records by Registered Nurse Mary Lou Ryan, of Somerville Behavioral Health/Harvard Vanguard Medical Associates. Joint Exhibit 9 (covering 2/26/09 to 3/15/12). Progress notes reference a depressive

disorder, i.e., situational and/or reactive depression and anxiety with sexual side effects from SSRI's as of 7/16/98. Id. at 9-10. In February of 2009, Complainant reported insomnia, decreased appetite, weight loss, depressed mood and humiliation as a result of being passed over for a promotion. Id. at 10. On 12/28/10 Complainant reported anxiety, racing thoughts, social isolation, and insomnia. Id. at 6. A note dated 3/25/10 reports that Complainant is "[s]till fixated on loss of a promotion at work and feels he was treated unfairly." Id. at 7. A subsequent note dated 9/20/11 states that Complainant "can't get over the fact that he has been passed over for promotions and people he has trained have moved up." Id. at 1. The following year, on 3/15/12, Complainant reported that he was still focused on being overlooked for promotions. Id. at 4. During the three-year period covered by the notes, Complainant was prescribed Klonopin, Wellbutrin, Citalopram, and Sertraline for issues related to mood and anxiety but he had difficulty tolerating the medications due to sexual side effects.

33. Treatment notes from Behavioral Health Affiliates, LLC during 2009 indicate that Complainant refused to discuss his family of origin but reported bouts of depression related to how he was treated at work in general and not being promoted in particular. Joint Exhibit 10.

34. Complainant's aunt (his mother's sister) was murdered at the end of 2010. Transcript II at pp. 190-191. Complainant acknowledged that the murder affected him emotionally but claims that his feelings of anger, low self-esteem, embarrassment, bitterness, frustration, and humiliation were not related to his aunt's situation. Transcript II at pp. 191-192.

35. By order dated May 24, 2010, the Supreme Judicial Court appointed an Independent Counsel, Paul F. Ware, Esq., to investigate the hiring and promotion practices at the Massachusetts Probation Department. On November 18, 2010, the “Ware Report” was released to the public. Joint Exhibit 12. It details “systemic abuse and corruption” in the hiring and promotion practices based on the granting of political favors. Joint Exhibit 12 at p. 1. The report concludes that the hiring and promotional process has been “thoroughly compromised by a systemic rigging of the interview and selection process in favor of candidates who have political or other personal connections.” Joint Exhibit 12 at pp. 2-3. As a result, the report concludes that “the most qualified individuals were commonly passed over for hiring and promotion. Joint Exhibit 12, at p. 8.
36. On October 31, 2010, an arbitration decision was rendered which determined that the Trial Court had violated the seniority provisions of the Collective Bargaining Agreement when the Commissioner made temporary appointments in 2008. All 15 temporary appointments were rescinded⁸ and all associate probation officers in the Trial Court, including Complainant, were notified by letter dated April 8, 2011 that the temporary appointments would be re-filled in specific courts based on seniority and other criteria, and that they were invited to apply. Complainant declined to do so because he feared retaliation, did not like the location of most of the positions, did not wish to occupy such a position in a probationary capacity,⁹

⁸ Rose remained at the Malden District Court as an associate probation officer after her temporary promotion was vacated by the arbitration decision. Transcript III at 50

⁹ For employees who receive temporary promotions, the probationary period is the length of time they serve in a temporary or acting capacity but not less than six consecutive calendar months and during such time, the employees may be returned to their former permanent position at the discretion of the appointing authority. Joint Exhibit at 14.

and believed that he deserved more than a temporary promotion to the position of probation officer. Transcript II at pp. 164-166.

37. The parties stipulated that if Complainant had been promoted to a probation officer position on March 14, 2008, the difference between his earnings as an associate probation officer and what he would have earned as a probation officer between that date and June 15, 2012 (just prior to the commencement of the public hearing) would have been \$26, 282.37.

III. CONCLUSIONS OF LAW

A. Timeliness

Under M.G.L. c. 151B, section 5, complaints of discrimination must be filed within 300 days of an alleged discriminatory act unless the discriminatory conduct is held to evolve over time and justify application of the continuing violation doctrine. See Cuddy v. The Stop and Shop Supermarket Company, 434 Mass. 521 (2001) (continuing violation doctrine permits damages for conduct outside the limitations period if there is some misconduct during the limitations period and if plaintiff could not have been expected to predict whether hostile work environment would improve or not). Denials of promotion are a type of conduct which may be ascertained with certainty and, thus, do not evolve over time. See Ocean Spray Cranberries v MCAD, 441 Mass. 632, 641 (2004); Tantasqua Regional School District, 446 Mass. 756, 769-770 (2006).

Nonetheless, Complainant seeks to rely on numerous non-promotions outside the 300-day limitations period under a continuing violations theory. Complainant argues that he did not perceive a connection between his pre-2008 bypasses and racially discriminatory

animus until after he experienced a series of such disappointing outcomes and that he sought discovery of departmental records pertaining to the non-promotions but was not given the information by Respondent.

According to Complainant, it was not until he learned of Rose's temporary promotion to probation officer in 2008 that he realized his employment travails were due to race. See Silvestris v. Tantasqua School District, 446 Mass. 756, 766 (2006) *citing* Wheatley v. American Tel. & Tel. Co., 418 Mass. 394, 398 (1994) (statute of limitations triggered when "event likely to put plaintiff on notice" occurs); Tan v. Stonehill College, 23 MDLR 39 (2001) (statute of limitations triggered when employee first becomes aware that he is being paid less than white counterparts). Complainant asserts that the promotion of Rose was the triggering event for his MCAD complaint because she was a white co-worker with less seniority at the time of her temporary promotion, she received part of her on-the-job training from him, and she was promoted to a temporary probation officer position without an interview or job posting. Complainant asserts that until these factors came to light, he neither knew nor reasonably could have known that his career stagnation was due to disparate treatment based on race.

Complainant's assertion is unconvincing in light of his claim to have applied unsuccessfully for promotion approximately 30 times over the course of his career. Had he actually applied for 30 promotions, such sustained and unsuccessful efforts would have indicated well before 2008 that the goal of obtaining a promotion was being systematically thwarted. Although documentary evidence fails to support the claim of 30 unsuccessful applications, it does establish that Complainant applied for probation officer positions on multiple occasions between 2001 and 2008. In all of these situations,

Complainant was bypassed in favor of less senior white candidates whom he allegedly helped to train – the same triggers which allegedly alerted Complainant to the possible presence of disparate treatment when Associate Probation Officer Rose received a temporary promotion. Since Complainant failed to act on such triggers prior to the promotion of Rose, his unsuccessful employment efforts during those years may not be resurrected now for purposes of relief. Likewise, there is no merit to the argument that an expanded limitations period is justified by Respondent’s failure to turn over documents pertaining to Complainant’s history of non-selections. Respondent has established convincingly that such information is inaccessible without Complainant identifying the positions he unsuccessfully sought.

In sum, the denial of a promotion is an employment action which allows the fact finder to establish the “precise moment” when a discriminatory action occurs for purposes of determining when the statute of limitations begins to run. Ocean Spray Cranberries v MCAD, 441 Mass. 632, 641 (2004). Bypasses for promotions have been held to constitute discreet acts in contrast to sexual harassment which may evolve over time and for which the continuing violation doctrine has been held to apply. Contrast Ocean Spray, 441 Mass. at 641 with Cuddy v. The Stop and Shop Supermarket Company, 434 Mass. 521 (2001) (where reasonable plaintiff could not have known that pervasively-hostile work environment was unlikely to improve and where some offending conduct occurred with the limitations period, the continuing violation doctrine permits damages for conduct outside the limitations period). I conclude that the continuing violation doctrine is inapplicable to the circumstances at issue here where there were multiple occasions between 2001 and 2008 during which Complainant failed

to receive promotions that went to less senior, white candidates. Accordingly, I decline to reconsider my ruling on Respondent's Motion in Limine which bars the possibility of accruing damages outside the limitations period.

Disparate Treatment Race Discrimination

In order to prevail on a charge of discrimination in employment based on race and/or color under M.G.L. c. 151B, s. 4(1), Complainant may establish a prima facie case of circumstantial evidence by showing that he: (1) is a member of a protected class; (2) was performing his position in a satisfactory manner; (3) suffered an adverse employment action; and (4) was treated differently from similarly-situated, qualified person(s) not of his protected class. See Lipchitz v. Raytheon Company, 434 Mass. 493 (2001); Abramian v. President & Fellows of Harvard College, 432 Mass. 107, 116 (2000) (elements of *prima facie* case vary depending on facts); Wynn & Wynn P.C. v. Massachusetts Commission Against Discrimination, 431 Mass. 655 (2000). The Supreme Court characterizes the burden of establishing a prima facie case of disparate treatment as "not onerous," requiring only that a qualified individual establish circumstances "which give rise to an inference of unlawful discrimination." Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981). Sufficient circumstances to support a prima facie case exist here insofar as the Complainant is acknowledged to satisfy the entrance requirements for a probation officer position and was denied a promotion for 14 years while numerous non-minority individuals with less seniority were selected.

Once Complainant has established a prima facie case of discrimination, the burden of production shifts to Respondent to articulate and produce credible evidence to support a

legitimate, nondiscriminatory reason for its action. See Abramian, 432 Mass. 116-117; Wynn & Wynn v. MCAD, 431 Mass. 655, 665 (2000). If Respondent does so, Complainant, at stage three, must persuade the fact-finder by a preponderance of evidence that Respondent's articulated reason was not the real one but a cover-up for discrimination. See Abramian, 432 Mass. 117-118; Knigh t v. Avon Products, 438 Mass. 413, 420, n. 4 (2003); Lipchitz v. Raytheon Company, 434 Mass. 493, 504 (2001). Complainant can, but is not required to, prove discrimination on the basis of circumstantial evidence that convinces the trier of fact that Respondent's proffered evidence is not credible. See Blare v. Huskey Injection Molding Systems Boston, Inc., 419 Mass. 437, 445 (1995).

Respondent's defense at stage two rests on the fact that even though Complainant was rejected each time he applied for promotion in 2001, 2007 and 2008,¹⁰ the racial composition of the selected candidates and, in some cases in the selection panel, contradicts any inference that Complainant's non-selections were based on racial animus. Workforce statistics likewise buttress Respondent's defense. As of 2007, the Probation Department's workforce was approximately 20% minority, with black employees comprising 10.92% of its entire workforce and 12.24% of its probation officer workforce. Each of these statistics exceeds the 10% minority composition of the statewide workforce. The foregoing data are sufficient to satisfy Respondent's burden at the second stage of the analysis.

At stage three, Complainant points to the fact that the Ware report demonstrates that Respondent's hiring scheme was fraudulent, that the principles and requirements set forth

¹⁰ The relevant appointments are those which took place after the July 1, 2001 change in law that made the Respondent Commissioner of Probation the Appointing Authority.

in Respondent's Affirmative Action Plan were set aside in favor of patronage appointments, that the seniority provisions of the parties' Collective Bargaining Agreement were disregarded in order to promote favored candidates who were disproportionately white, that the interview grades given to candidates were a smokescreen for preordained results, and that the relevant population for assessing disparate impact should have been limited to specific counties. These arguments are supported by evidence that Deputy Commissioner Paul Lucci and Regional Supervisor Mark McHale together conducted between 50 and 75 applicant interviews but could name only a handful of black individuals among all the politically-connected candidates whose names they passed along to the Appointing Authority.

Complainant maintains, as well, that Respondent failed to fully implement a seniority preference set forth in Article XX of the parties' Collective Bargaining Agreement and, as a result, he was bypassed in favor of white candidates with less seniority for temporary probation officer positions. Respondent takes the position that the seniority preference does not apply to temporary probation officer selections, citing the Trial Court Personnel Policies and Procedures Manual at section 4.700(A)(I)(d) in support of its position. Joint Exhibit 5. While section 4.700 omits any reference to seniority in regard to temporary assignments, section 4.800(A)(1) makes clear that temporary assignments to a higher level position must be made in accordance with applicable collective bargaining provisions. One such provision is Article XX, section 20.01 which provides that, when qualifications are considered equal, the Trial Court shall give preference to employees with the longest service when qualifications of competing candidates are equivalent. Another provision is Article II, section 2.02, which requires that seniority be considered

when selecting probation officers to perform temporary service in a higher position. These provisions make clear that Respondent's seniority preference does apply to temporary probation officer candidates as well as to candidates for permanent appointments. See also National Association of Government Employees and Trial Court of the Commonwealth (Jeffrey Rideout, Grievant) (John Cochran, Arbitrator, 2010) (AAA No. 11 390 02291 09) (concluding that Trial Court must consider the relative qualifications of individuals and their relative seniority prior to making temporary appointments to probation officer positions).

Had the seniority preference been applied to temporary probation officer selections in 2008, the outcomes might have been different. Fifteen temporary probation officer appointments were made at that time, but none were offered to Complainant even though he helped to train one of the appointees --Heather Rose – and had more seniority than Rose and four of the white male appointees. Complainant subsequently declined to apply for the fifteen temporary positions after Arbitrator Cochran required that they be posted and re-filled, but the evidence establishes that in 2008, he would have accepted the Malden slot offered to Rose had it been awarded to him on the basis of his seniority, skills and experience. Indeed, it was his failure to receive the Malden slot which motivated the filing of the instant complaint.

Insofar as statistical evidence of disparate impact is concerned, Complainant correctly focuses on probation officer positions within Suffolk County where the percentage of black individuals in the workforce exceeds that of the rest of the state. Complainant argues that the racial composition of probation officers in Suffolk County courts should have been evaluated against the racial composition of the Suffolk County labor force.

Complainant's argument is twofold: first, that Respondent's mistakenly relied on EEO categories of jobs rather than the discreet position of probation officer in specific courts and second, that the discreet position of probation officer should be measured against the population of the area from which employees are drawn, i.e., the relevant county.

In contrast to Complainant's approach, Respondent relies on its 1998 Affirmative Action Plan which analyzes the entire probation officer workforce as a single group and limits the analysis of individual courts to hiring patterns within broad categories of EEO positions such as "Official/Manager," "Professional," and "Technician."¹¹ Respondent justifies this approach on the assumption that EEO categories are "essentially the same as that presented for each title" without citing any evidentiary support for this assumption. See Joint Exhibit 6 at pp. 7-8. Respondent compares the resulting employment to the racial composition of the statewide labor market in order to produce a "utilization analysis." Joint Exhibit 6 at pp. 7- 8 & Appendix A at p. 23. Such an approach ignores the Plan's requirement to break down job titles by specific races and to compare the racial composition of job titles to local labor markets.

In a post-hearing submission, Respondent refines its analysis to focus on the specific position of probation officer within individual courts,¹² but continues to focus on "minority" probation officers and the "minority" labor pools within individual counties rather than black probation officers and qualified black adults within individual counties.

¹¹ Within the analysis of individual courts, the title of probation officer is subsumed into the EEO category of "Professional."

¹² See Respondent's Supplemental Findings and Conclusions; 41 CFR section 60-2.11 (requiring affirmative action programs to be based on a workforce analysis of each job or title); 41 CFR 60-2.14 (looking to the geographical area from which a contractor reasonably could seek workers to fill positions) and Massachusetts census data setting forth racial patterns within individual counties. Based on the foregoing, Respondent now appears to concede that the relevant job category is that of probation officer and the appropriate recruitment area is the county in which a court sits rather than the state as a whole.

Respondent cites a panoply of federal regulations, guidelines and state material in support of its position, but such an approach is not mandated by law, obscures racial hiring patterns, contravenes 41 CFR Part 60 section 60-2.11 (requiring contractors to present employment data broken down by Blacks, Hispanics, Asian/Pacific Islanders and American Indians/Alaskan Natives) and ignores 29 CFR section 1607.4 (A-D) specifying that records pertaining to the impact of selection procedures be maintained by separate races. Accordingly, in evaluating Complainant's efforts to secure a probation officer position, I shall examine the number and percentage of black probation officers in the specific courts where Complainant sought promotions measured against the number and percentage of black adults possessing bachelor's degrees in the counties where the courts are located.

The evidence establishes that after the Commissioner of Probation became Appointing Authority in 2001, Complainant sought probation officer positions in the Roxbury District in Suffolk County in 2006, in the Chelsea District Court in Suffolk County in 2007, and in the East Boston District Court in Suffolk County in 2008. In addition, as discussed supra, I conclude that Complainant would have accepted a temporary probation officer position in Malden District Court in Middlesex County in 2008 had he been given the opportunity to do so.

Hiring data from 2007 and 2008 indicate that blacks were underrepresented as probation officers in the Chelsea District Court and in the East Boston District Court at the time that Complainant pursued promotional opportunities in those locations. In the Chelsea District Court in 2007, six of the court's eight probation officers were white, two were Hispanic, and none were black measured against 8.8 % of Suffolk County's

population over age twenty-five with Bachelor's Degrees who were black. In 2008, when Complainant sought a probation officer position in the East Boston Division of the BMC, all of the court's five probation officers were white measured against 11.9 % of Suffolk County's adult population with Bachelor's Degrees who were black. That same year, Heather Rose, rather than Complainant, was selected as a temporary probation officer in the Malden District Court even though: 1) the Court already had eight white probation officers and only one black officer, 2) Complainant was more senior than Rose, and 3) Complainant had helped to train Rose. Although the Malden District Court sits in Middlesex County where only 3.6 % of the adult population was black in 2008 (Joint Exhibit 19), the U.S. Census Bureau estimates that the City of Malden had a black population of 14.8 % in 2010. Similar census data is not available for 2008, but I extrapolate from the 2010 statistic that the 2008 black population of the City would have exceeded the percentage of black probation officers in the Malden District Court.

Respondent attempts to rebut the inference of discrimination by pointing to the existence of racial diversity in probation officer positions in the Lynn and Lowell District Courts, but minority officers who are not black account for much of that diversity. For instance, the probation officer workforce in the Lynn District Court prior to October of 2008 contained no blacks and only one black probation officer thereafter out of a workforce of twenty. Similarly, the Lowell District Court had just one black probation officer in 2008 out of a workforce of fourteen. Various other courts situated in Suffolk County also had few black probation officers in 2007 and 2008, despite the fact that Suffolk County had a college-educated adult population that was 8.6 % to 11.9 % black during 2007 and 2008. For example, Brighton District Court had no black probation

officers as of October 11, 2008, the Chelsea District Court had no black probation officers in 2007, and the East Boston Division of the BMC had no black probation officers in 2008. The only courts which had a significant black presence in their probation officer workforce in 2007-2008 were the Roxbury and West Roxbury District Courts.

In sum, Respondent defends its hiring practices on the basis of a Workforce Analysis which subsumes the title of probation officer within the EEO category of "Professional," analyzes job titles on a system-wide basis, and focuses on "minority" statistics rather than statistics pertaining to black individuals. Compounding the lack of precision is Respondent's use of statewide labor market figures which, in the case of Suffolk County, dilutes the labor pool of qualified black candidates. Respondent's methodology in all these respects undercuts the statistical disparity between blacks and whites in the rank of probation officer.

As a result of the inadequate data discussed above, Respondent failed to implement its Affirmative Action Plan to remedy disparate treatment. Although Affirmative Action Officer Dandridge testified that Respondent's Affirmative Action Plan could require the hiring of a minority candidate with equal qualifications to a non-minority candidate if such a step were justified by utilization statistics, no such determination was made in this case. Instead, Respondent engaged in the preferential hiring of politically-connected individuals who were disproportionately white and failed to consider Complainant's seniority in making temporary probation officer appointments. The Ware Report notes that as a result of Respondent's practices, "qualified individuals were commonly passed over for hiring and promotion." Complainant appears to be one such qualified individual.

He met the minimum entrance requirements for the position of probation officer and succeeded in maintaining a blemish-free record throughout fourteen years of employment as an associate probation officer. Such credentials, according to Deputy Commissioner of Probation Paul Lucci, should have resulted in his promotion barring the presence of negative factors, none of which are present in this case. There is, in short, no reasonable explanation for why Complainant did not receive a promotion during his fourteen-year career other than the existence of employment practices which favored white candidates at the expense of Complainant and constituted disparate treatment based on race.

IV. REMEDIES AND DAMAGES

Upon a finding of unlawful discrimination, the Commission is authorized, where appropriate, to award: 1) remedies to effectuate the purposes of G.L. c. 151B; 2) damages for lost wages and benefits; and 3) damages for the emotional distress suffered as a direct of discrimination. See Stonehill College v. MCAD, 441 Mass. 549 (2004); Buckley Nursing Home v. MCAD, 20 Mass. App. Ct. 172, 182-183 (1988).

A. *Remedies to Effectuate G.L. c. 151B*

The evidence establishes that within the three-hundred day limitations period prior to the filing of his charge of discrimination, Complainant submitted an application to fill a probation officer vacancy in the East Boston District Court.¹³ This effort, together with evidence that he was qualified for said position, had seniority over other candidates, and was a minority applicant whose race was under-represented, entitles Complainant to appointment to the next probation officer vacancy within a Suffolk County Court in which blacks are under-represented as probation officers and to front

¹³ In 2007, Complainant applied for a probation officer vacancy in Chelsea District Court but that application lies outside the Statute of Limitations period for purposes of relief.

pay for the period between July 16, 2012 (the commencement of the public hearing) and the date of appointment.

B. Damages for Lost Wages and Benefits

Complainant is entitled to back pay damages for the period between the denial of promotion to the East Boston District Court in 2008 and the commencement of public hearing. See Stephen v. SPS New England, Inc., 27 MDLR 249, 250 (2005) (lost back pay runs to the date of the public hearing). The evidence indicates that Complainant applied in late 2007 to fill a probation officer vacancy in East Boston District Court and that, but for disparate treatment, he would have been appointed to the position on April 9, 2008. Rather than focus on this denial, however, the parties focus on a subsequent denial of a temporary probation officer promotion on October 14, 2008 and stipulate that the difference between what Complainant would have earned as a probation officer between that date and June 15, 2012 (just prior to the commencement of the public hearing) is \$26, 282.37. I conclude that Complainant is entitled to back pay from April 9, 2008 and extrapolate from the agreed-upon sum that Complainant is entitled to back pay damages the amount of \$ 30,017.00 for the period commencing April 9, 2008 to the date of public hearing on July 16, 2012 and for benefits which would have accrued had Complainant been appointed as a probation officer on April 9, 2008.

B. Emotional Distress Damages

An award of emotional distress damages must rest on substantial evidence that is causally-connected to the unlawful act of discrimination and take into consideration the nature and character of the alleged harm, the severity of the harm, the length of time the Complainant has or expects to suffer, and whether Complainant has attempted to mitigate

the harm. See Stonehill College v. MCAD, 441 Mass. 549, 576 (2004).

It is not unusual for multiple sources of emotional distress to be present in a discrimination case. The presence of other significant stressors does not absolve an employer from liability for the emotional distress caused by its discriminatory actions. See Williams v. Karl Storz Endovision, Inc., 24 MDLR 91 (2002) *citing Franklin Publishing Co., Inc. v. MCAD*, 25 Mass. App. Ct. 974, 975 (1988).

Complainant testified that, he felt anger, rage, humiliation, embarrassment, bitterness, and frustration over his continued failure to be promoted. He stated that he his negative feelings derived from the fact that he had more seniority than successful applicants for probation officer positions, that he had trained some of them, and that some non-minority candidates were appointed without an interview or job posting. Complainant testified that ever since Rose was promoted to a temporary probation officer position in October of 2008, he's had trouble getting out of bed, has had migraines, lost weight, and lost his appetite. According to Complainant, he has withdrawn from family and friends, drinks more, and doesn't like to go out. Complainant described his mind as frequently "elsewhere" because he dwells on his situation. Complainant testified that he has to take medication which causes dry mouth and dry skin, makes him lose weight, and has adverse sexual side effects. According to Complainant, he has low self-esteem because of his employment situation, has lost motivation, is self-conscious, feels like a loner and a victim, and is short-tempered. Complainant testified that he is no longer active in sports. According to Complainant, his emotional distress has increased rather than decreased since 2008. Complainant sought professional help through the Employee Assistance Program in January of 2009 and was referred to a counselor in Medford. He was

subsequently referred to another therapist/counselor by his primary care physician.

Complainant was prescribed medication. Complainant described his employment situation as making him unable to trust the people he works for and as making him not like himself.

Complainant's medical records from Registered Nurse Mary Lou Ryan cover a three-year period between 2009 and 2012. According to the notes, Complainant has a history of depression and anxiety dating back to the late 1990s and has periodically taken antidepressants. At the end of 2008, he became "very depressed" and "humiliated" after being passed over for a promotion, resulting in insomnia, decreased appetite, weight loss, and feelings of sadness. Notes from March of 2010 through March of 2012 indicate that throughout this period, Complainant was "fixated" on loss a promotion, feelings that he was treat unfairly, and that people he has trained received promotions when he was passed over. During the three-year period covered by the notes, Complainant was prescribed Klonopin, Welbutrin, Citalopram, and Sertraline for issues related to mood and anxiety but he had difficulty tolerating the medications due to sexual side effects.

Complainant refused to discuss his family of origin during therapy. Complainant's aunt was murdered at the end of 2010. At the public hearing, he acknowledged that the murder affected him emotionally but claims that his feelings of anger, low self-esteem, embarrassment, bitterness, frustration, and humiliation were related to his work situation, not his aunt's situation. That may be the case, but the murder undoubtedly contributed to the emotional state which Complainant eloquently described at the July of 2012 public hearing as did a longstanding history of depression which predated his non-promotions in 2007 and 2008.

After weighing all the factors contributing to Complainant's emotional distress, I conclude that Complainant is entitled to \$75,000.00 in emotional distress damages.

V. ORDER

Based on the foregoing findings of fact and conclusions of law and pursuant to the authority granted to the Commission under G. L. c. 151B, sec. 5, Respondent is ordered to:

- (1) Cease and Desist from all acts of discrimination as adjudicated;
- (2) Appoint Complainant to the next vacancy for Suffolk County probation officer in a court where blacks are under-represented in that capacity and compensate Complainant with front pay between the public hearing and said appointment in an amount that is the difference between an associate probation officer's salary and a probation officer's salary;
- (3) Pay Complainant the sum of \$30,017.00 in back pay damages plus interest at the statutory rate of 12% per annum from the date of the filing of the complaint, until paid, or until this order is reduced to a court judgment and post-judgment interest begins to accrue and for benefits which would have accrued had Complainant been appointed as a probation officer on April 9, 2008;
- (4) Pay Complainant the sum of \$75,000.00 in emotional distress damages, plus interest at the statutory rate of 12% per annum from the date of the filing of the complaint, until paid, or until this order is reduced to a court judgment and post-judgment interest begins to accrue;
- (5) Within one hundred twenty (120) days of the receipt of this decision, Respondent shall conduct a training session concerning race discrimination

for all supervisors at the Office of the Commissioner of Probation who participate in the selection process for the position of probation officer. Respondent shall use a trainer provided by the Massachusetts Commission Against Discrimination or a graduate of the MCAD's certified "Train the Trainer" course. Respondent shall submit a draft training agenda to the Commission's Director of Training at least one month prior to the training date, along with notice of the training date and location. The Commission has the right to send a representative to observe the training session. Following the training session, Respondent shall send to the Commission the names of persons who attended the training.

- (6) Respondent shall repeat the training session at least one time for supervisors and administrators who fail to attend the original training and for new supervisors and administrators who are hired or promoted after the date of the initial training session. The repeat training session shall be conducted within one year of the first session. Following the second training session, Respondent shall send to the Commission, the names of persons who attended the training.

This decision represents the final order of the Hearing Officer. Any party aggrieved by this Order may appeal this decision to the Full Commission. To do so, a party must file a Notice of Appeal of this decision with the Clerk of the Commission within ten (10) days \after the receipt of this Order and a Petition for Review within thirty (30) days of receipt of this Order.

So ordered this 29th day of April, 2013.

Betty E. Waxman, Esq.,
Hearing Officer