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Commonwealth of Massachusetts
Commission Against Discrimination

1 Ashburton Place, Boston 02108

MAS. AFB. 27E: 44/990

ADMINISTRATIVE SERVICES: 727-3990

October 31, 1990

Robert H. McClain, Jr.
Undersecretary
Executive Office of
Administration and Finance
State House, room 373
Boston, MA

Dear Mr. McClain:

Enclosed please find a copy of the second report component of the Eight-Year Record and Transition Report of the Massachusetts Commission Against Discrimination. It consists of the Historical Record portion of the report.

Sincerely yours,

John Ahearn
Associate Director

Enc.

GOVERNMENT DOCUMENTS
COLLECTION

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I. SUMMARY BACKGROUND AND HISTORY

Legislative Mandate:

The MCAD is the Commonwealth's civil rights enforcement agency, empowered to investigate and decide cases of discrimination in areas of employment, housing, public accommodations, credit, and education. The agency also promulgates rules and regulations.

Executive Orders and State Regulations:

The Commission monitors and assists government in civil rights compliance efforts. MCAD reviews civil rights performance of state agencies and municipalities pursuant to executive orders, state regulations and bulletins, as well as memoranda of agreement.

Historical Background:

The Agency was established in 1946. It was a small but progressive agency up until the late 1960s. The earlier perception of the agency was that of providing social services rather than, as its mandate declared, serving as a law enforcement agency. The increasing areas of jurisdiction and the demands by constituent communities on the agency called for a reorganization. In the mid-1970s the structure changed from four part-time commissioners to three full-time commissioners with the Chairman having the authority to assign cases. Policy decisions are made by a vote of two of the commissioners. The management style is collegial, by which administrative decisions are derived through team discussions and negotiations. Accountability has been enhanced through the Performance Management System and the Employee Performance Review System. After four years of the previous administration's decreasing emphasis on civil rights, the MCAD was enhanced by an increasing budget during the 1980s and strong pro-active commissioners in both case processing and in civil rights reviews. In fact, the success in these areas has in part contributed to the increase in the number of people seeking to have their complaints resolved through MCAD. However, in the past two years, due to budget constraints the Commission has had to cut back in both personnel and in program emphasis. It is now at a point where any further cuts would place the agency in the untenable position of having to decide between mandates. One of the four MCAD offices (Worcester) has already been closed.

II. STATUS OF THE MCAD IN JANUARY 1983

In January 1983 when this administration assumed stewardship for the MCAD it was reviewed in terms of what

had occurred during the previous four years and some of the needs for changes.

Quantitative Profile in 1982

Financial:

Appropriation	Percent of Total
State \$932,969	64%
Federal 703,350	43%
Total 1,636,319	

Staffing:

State	15
Federal	33
Total	48

Case History:

Filed	1641
Closed	2145
Inventory	2120

Case Processing Time:

352 Average Days to Closure

Case Production

While the per-person case production had increased to 45 cases, the greater accountability for each employee was needed, a management information system (MIS) was introduced to the agency. A stepped-up effort to use the MIS to both enhance production and improve quality control of cases was implemented.

Investigation of employment cases was done through the Investigative division. Housing cases were processed through the Public Sector Division. The Legal Division handled cases in both areas, and reviewed all "Probable cause" cases; it processed all of these cases to closure.

Credibility within the constituent communities needed to be established, particularly with respect to both the complainant's and respondent's bar. The "probable cause" finding was one legal standard defined by agency regulation which required immediate attention.

Civil Rights Review

The Civil Rights Review Program has historically represented an important aspect of the Commonwealth's overall civil rights effort. It is, in fact, the state's most direct link between its Affirmative Action Review Policies and the various municipalities. In 1982 this unit reviewed \$200 million dollars worth of municipal grant applications, but was limited in its capacity to provide further technical assistance to these municipalities, or to fully perform its compliance enforcement service, due to the

continual phasing down of the unit's staff, from 6 to 3 people. A renewed effort was needed to make substantitative reviews that would result in municipal civil rights activities. The benefit to cities and towns for their compliance with civil rights regulations is their ability to then qualify for competitive funding.

The activities with the Secretariats were needed to be reestablished in order to have the executive orders be enforced.

Legal Division

The Division consisted of nine attorneys, with two attorneys specializing in housing cases. The enlargement of the legal staff was needed in order to review probable cause findings and to process the backlog of cases waiting for hearing.

Housing

With state funding for the agency declining, a renewed creative effort was needed in the search for alternative funding. In 1982 43% of the housing investigators were paid for with federal funds. Furthermore, this unit closed 332 housing cases.

Aggressive measures were also needed to secure additional funding from federal agencies.

III. ADMINISTRATION'S PROGRAM AND POLICY INITIATIVES JANUARY 1983 - OCTOBER 1990

NEW MANDATES

- 1983 - Deafness was added to the agency's jurisdiction in housing cases
- 1983 - The definition of age was changed, deleting the upper limit of 65 years
- 1984 - Handicap was added to jurisdiction in employment and public accommodations cases
- 1986 - Sexual harassment was added to jurisdiction under sex discrimination
- 1987 - Lead paint was added as an unlawful reason for not renting to children
- 1989 - Handicap was added to jurisdiction in housing cases
- The limitation on the amount of damages which could be recovered in housing cases was removed
- An Award of complainants attorney fees and costs was added in housing and employment cases
- Civil penalties were added in housing cases
- No exemption was made for real estate brokers
- Any person who coerces was added to list of potential respondents

- Sexual Orientation was added to the jurisdiction in housing, employment, public accommodations and credit

Regulations of Federally Funded Programs

The MCAD has begun a process to make its legislation equivalent to that of HUD's for the processing of Title VIII cases. With strong support from the disability community, minority and female caucus of the legislature, a bill was passed in 1989 and signed by the Governor to make MCAD fully equivalent with Title VIII, allowing MCAD to continue to receive these federal funds.

Regulations of State Agencies

The MCAD has worked with Secretariats pursuant to Ex.Or. 227 to develop regulations for cities and towns to qualify for state discretionary funds. In 1989, with the advice of MCAD, EOCD developed regulations to complement the existing EOEAA regulations for affirmative action.

Crosby Hearings

The Commissioners have conducted 6 public hearings and received testimony from over 100 people as a part of the Commonwealth's response to the US Supreme court decision in Crosby v. City of Richmond. This has been a major effort of the Commission in the last six months of this administration to provide a factual predicate for state agencies with MBE/WBE programs, so that Massachusetts can maintain its proud record in MBE/WBE business development.

Probable Cause Standard

After receiving testimony at a public hearing from both the respondent's and complainant's bar MCAD regulations were amended, lowering the probable cause (PC) standard. This, in part, has contributed to one of the highest PC rates in the country (15%).

Housing Testing Program

MCAD's program is one of the best in the country and carries a national reputation. The Commission has aggressively sought HUD funding for this program and was so successful in receiving a disproportionate amount of these competitive grants that HUD regulations were changed to decrease the possibility of MCAD receiving a large portion of funding. Our grant applications have been rated #1 out of the 100 grant applications received.

Creative housing discrimination testing was completed in 1983 in Cambridge/Somerville; 1984 in Milton; 1985 in Cape Cod; 1987-8 in Framingham; 1988-9 in Waltham/Medford; and 1989-90 in Springfield. Target populations within the housing testing program have included Blacks, Hispanics, rental subsidy recipients, and families with children. Some programs have targeted the rental market and others have focused on the sale of homes. The results have been

consistent in that housing discrimination was documented. The investigations and resulting P.C. findings have led to creative settlements with the real estate community.

District Attorney Conferences

In response to the Commission's concern with increasing violence against people of color and others throughout the state, and in cooperation with the U.S. Justice Department, and each of the District Attorneys conferences were sponsored that would address the civil rights issues in each county. Twelve such conferences were held over a three-year period. Results have included the prosecution and conviction of individuals for having violated the state law against harassing and committing acts of violence against minorities and others.

Sexual Harassment Policy

The MCAD has worked with state agencies for the development and adoption of statewide sexual harassment guidelines and a policy to conform with the recent U.S. Supreme Court rulings. Such a policy has been adopted and is being implemented.

AIDS Policy

In response to discrimination against persons with AIDS the MCAD was one of the first legal institutions in the country to interpret its handicap discrimination law to include persons with AIDS. Persons who test HIV-positive or have ARC are to be included under the law. A policy reflecting this interpretation was developed and adopted in 1988. This pioneering interpretation led other states to adopting the language contained in our policy. A rapid response to AIDS cases at the Commission was begun shortly after this policy implementation.

Ford Foundation Grant

The MCAD was one of the 25 finalists, out of 1300 applicants, for funding based upon the innovative work by the public sector in the Housing testing program. Presentations were made at the John F. Kennedy School of Government in July of 1990.

Computerization of Information

As the management information system that was begun in the past administration was fully implemented, many cost saving steps have been added. From the early case information retrieval process existing in 1982, to the present system of having the entire agency "on-line" has been a major achievement. All of the investigators and attorneys are now using word processing equipment. This has been a considerable cost savings to the agency. The number of cases processed has gone from 1600 per year to 3000 per year in the 8-year period. The control unit has been able to

process these cases despite the loss of 3 persons, and our investigations have increased production despite the loss of 12 investigators.

Federal Funding

The MCAD has fiercely competed for competitive funds, from both EEOC and HUD, for case processing monies as well as discretionary grants. The agency has been able to obtain 40% of its total operating budget from federal funds. This has been a concerted effort of both staff and commissioners, making MCAD the top state agency in the country in the number of complaints processed, and one of the top ten state agencies processing EEOC complaints.

Volunteer Efforts

In response to the recent cuts in state funds, the MCAD has made a concerted effort to recruit volunteers to assist in the work of the Commission, primarily in case processing. This year alone 40 nonpaid volunteers have worked at least 15 hours a week for a 3-month period.

Volunteer advisors for each section of the state have been revitalized. There are approximately 140 such people on advisory groups to the Commission. The official Advisory Board to the Commission is appointed by the Governor.

Dispute Resolution

In cooperation with Mass. Mediation Service, the Commission is offering to parties in cases where probable cause has been found, the option to go to mediation to settle the issues. This 1990 innovation has resulted in a number of cases settling and, at the same time, has saved the Commission the time and cost of lengthy public hearings.

Municipal Equivalency Efforts

It has been the policy of this Commission to support efforts of cities that wish to form Human Rights Commissions, which would locally process complaints of discrimination, as well as those that want to gain HUD equivalent status. In fact, testimony of MCAD staff has been a part of the process in such communities. Support has also been given to cities, most notably Boston and Cambridge, making legislative efforts to obtain equivalent status with MCAD.

Civil Rights Review Achievements

All municipalities with over 10,000 residents, except one, were brought into conformity with the EOEAA regulations. Achievements in 1984 through 1988 alone indicate that the number of women employed by municipalities in the Commonwealth increased by 9.1% and the number of minorities employed increased 7.8%. The increase of minorities in all positions and women in non-traditional positions is in direct proportion to monitoring efforts by the MCAD. The

number of communities reporting contract compliance information increased from 41 to 110. There was an increase of 655 in the number of hours worked by women in construction and a 72 % increase in the number of hours worked by minorities on municipal contracts. MBE/WBE programs were developed for 140 municipalities. These programs are being monitored through computerized information systems.

IV. PROGRESS MADE TOWARD IMPLEMENTING THE ADMINISTRATION'S INITIATIVES

The above policy and programmatic initiatives and changes were made in an effort to restore credibility to the agency, as well as to meet the expectations of the civil rights community. The community looks to MCAD, as the chief enforcement agency of civil rights laws, to take a leadership role in addressing the current and long standing issues in this state.

New Legislative Mandates

The addition of sexual orientation to the Commission's jurisdiction has resulted in 16 cases being filed this year. Support should be continued for this new protected class. Early resolution of these cases must be achieved in order for MCAD to establish good will with the gay and lesbian community.

MCAD efforts to secure substantial equivalency with Title VIII (to cover handicap and children in housing) must be followed through. Legislation, making our law equivalent to the federal law, has been passed and is currently under review by HUD. If substantial equivalency is not obtained this agency could lose all HUD funding. The required changes must be made in order to maintain this source of funding.

Pending state legislation includes House bill 2667. This bill that would provide funding to the MCAD from a \$10.00 increase in the real estate license fee. The housing testing program has clearly shown that discrimination is strongly entrenched within the real estate community; passage of this bill would place the cost of enforcing the law prohibiting discrimination in housing on the community engaged in discrimination.

Regulations and Executive Orders

Pursuant to Ex. Order 227, MCAD is the agency that must take certain steps to advise Secretariats on matters of policy with respect to civil rights. The policy of the last three administrations must continue. The Civil Rights Review unit has been working to secure signed Memoranda Of Agreements (MOAs) from each secretary. The MOAs are the first step in the development of Secretariats regulations. Such regulations would govern the administration of programs and

disbursement of discretionary funds. This mandate needs to be continued with adequate staffing. The MCAD has computerized its information. This needs to be continued with the cities and towns. Regional fair housing programs need to be continued and new ones developed with MCAD assistance. Each of the areas in the state are vulnerable to a suit similar to the federal court order Judge Skinner has handed down for Boston, N.A.A.C.P. v Kemp. The MBE/WBE programs developed by municipalities need to be monitored with adequate staff to achieve the tremendous potential results. State agencies need to monitor and report to the named agency for overseeing the state's contract compliance program. This program's implementation has resulted in no work shut downs on construction since the inception of the program in 1975.

Crosby Hearings

This is a high priority for the Commonwealth. Due to the US Supreme court ruling, and the subsequent need for each agency and municipality to develop the factual predicate for their existing MBE/WBE programs, it is imperative that the findings of the MCAD become part of their record. The Commission must need to play an active role in assisting the administration on these matters.

Probable Cause Standard

The revised standard has led to more people being able to resolve their complaints, than under the previous standard. Questions of credibility have been resolved in favor of the complainant at a greater frequency. More cases are processed.

Housing Testing Program

The most serious problem encountered in enforcing Massachusetts' housing laws is that of denial. People simply refuse to acknowledge that discrimination exists. Due to the fact that the results of the housing testing program are made public, individuals formerly denied access may be housed. The testing program has received the support of the Welfare Dept. since its goals match that of MCAD: house the homeless. Steps are taken to house female-heads-of-households moving them out of welfare hotels and into their own homes.

District Attorney Conferences

This program needs to be continued with the newly elected DAs. Furthermore, the civil rights advisory committees that have been established in each of the areas as a result of these conferences should be maintained. DA conferences have served as effective tools for bringing the civil rights community and criminal prosecutors together in working to eliminate hate crimes.

Sexual Harassment

While the policy has been developed, the policy needs to be further implemented. The educational component needs to be updated periodically.

AIDS Policy

The policy was extremely successful in establishing an interpretation of the handicap law. The MCAD needs to continue its efforts to fast track AIDS cases through its system. Fast tracking allows a complaint to move through the agency as a high priority case.

Ford Foundation Grant

In competition for the \$100,000 grant, the MCAD's 1990 application survived until the final round of cuts. Therefore, the door is open for reapplication in 1991.

Computerization of Information

This has been a very successfully implemented program. The agency has control of the information on its cases; this needs continual updating. All staff members need to be encouraged to increase their use of the information system. While word processing has been introduced in the past year more and better equipment is needed. In the near future demands for a variety of programs will be made on the system; demands of this type are good and need to be encouraged.

Federal Funding

The MCAD has successfully competed for and secured about 40% of its budget for the past 8 years from federal sources. Given the current budget, this action must continue. However, federal requirements are becoming more stringent making it more difficult to meet the standards. While operating under these heightened standards, MCAD must continue to satisfy all new requirements. This means more rigid standards for processing cases and overcoming the morale problems created by doing redundant but required tasks.

Volunteer Efforts

The volunteer response has been wonderful but it is a continual effort. Through the work of volunteers cases have been processed that giving the staff reductions, would have otherwise had to wait.

Efforts with the advisory committee must be handled professionally. The tremendous amount of time expended by the administration did not result in productive work. Many of the advisory committee were invaluable in assisting the commission in its lobbying effort. However, in the past two years MCAD has had tremendously successful legislative years, in part due to the advisory committees assistance.

Dispute Resolution

Due to the high cost of public hearings all efforts to decrease this cost are necessary. If both complainant's and respondent's attorneys agree to the process then this program should be expanded. Dispute resolution is results-oriented, cost effective and creative.

Municipal Equivalency Efforts

It has been the administration's policy that as acts of discrimination increase a greater number of municipal agencies would be helpful to the over all civil rights activities in the state. Support particularly for the Commissions in Boston and Cambridge in achieving equivalent status needs to be continued.

Civil Rights Review

This program has been able to achieve positive results. All of the mechanisms that have been in the process of development for the past 15 years are now in place; effective monitoring is the next step. We had seven staff in this unit. We are now down to two people. They cannot monitor all that needs monitoring nor can they offer technical assistance as needed. We need at least four new staff in this division to do the appropriate job of program monitoring. It is highly technical and more complicated as the laws are under closer scrutiny.

V. STATISTICAL HISTORY 1983 - 1990

The following is a summary of activity of the agency in the past 8 years in measurable data.

	<u>Appropriation - Net Revenue</u>		
	STATE	FEDERAL	TOTAL
1982	\$ 932,969	\$ 703,350	\$1,636,319
1983	1,005,005	1,053,949	2,058,954
1984	1,141,196	1,008,743	2,149,939
1985	1,248,401	676,822	1,925,223
1986	1,315,630	765,509	2,081,139
1987	1,600,196	789,149	2,389,245
1988	1,945,143	819,944	2,765,087
1989	1,578,062	1,086,730	2,664,792
1990*	1,310,490	702,981	2,013,471

* Includes \$100,000 Retained Revenue

Current Status of FY 91 Appropriation

The FY 91 original appropriation was \$ 1,195,812. The appropriation was reduced to \$ 1,084,901. The Commission has expended through 10/31/90 \$ 344,692 or 35% of the available funding. The appropriation amounts include \$ 100,000 Retained Revenue funding.

	<u>Positions Funded</u>		FEDERAL
	TOTAL	STATE	
1982	48	15	33
1983	63	22	41
1984	82	23	59
1985	71	45	26
1986	67	43	24
1987	67	47	20
1988	62	51	11
1989	55	34	21
1990	38	25	13

	Case History		
	FILED	CLOSED	OPEN
1982	1641	2145	2120
1983	1954	2064	1981
1984	1910	2187	1668
1985	2078	2060	2256
1986	2555	2175	2618
1987	2797	2057	3508
1988	3149	2511	4291
1989	3177	2619	5003
1990*	2661	1625	5518

* as of 10/90

	<u>Case Processing Time (Average days to Closure)</u>
1982	352
1983	379
1984	372
1985	270
1986	245
1987	274
1988	304
1989	402
1990	438

Inventory of Public Hearing Cases

Assigned to Commissioners	255
Allen	98
Rodriguez	69
Hurst	88
Full Commission	15
Court	5
Enforcement	9
Suspended	3
Att. Gen'l - Judicial Review	10
Mediation	14
TOTAL	<u>311</u>

VI. PROSPECTIVE ISSUES

Expected agency accomplishments and problems if present programs and policies are continued

The funding cuts experienced by the MCAD this year have been disproportionate to those of other state agencies. Due to the fact that the Commission's appropriation only provides for staffing, with less than ninety thousand dollars for remaining for all other budgetary items, any cuts are directed to a reduction in staff and essential services. The agency has experienced a decrease from 55 funded positions to 38 funded positions in the past year. At the same time a federal reduction in discretionary funding for civil rights enforcement has begun. Taken together, state and federal funding cuts have resulted in an overall phase down of civil rights law enforcement funding.

Funding cuts have had a tremendous effect on the agency. Cases continue to be filed and processed, but the reduction made by the agency in case processing time, from 400 plus days 8 years ago to 280 days last year, is slowly being eliminated. While MCAD processing time is still considerably less than the average time elapsed in the state court system, complainants remain waiting longer for their case to be closed. Justice delayed may result in justice being denied.

In 1990 several new factors were added to this problematic situation. MCAD gained new mandates and a case load that is double that of 1982. The inventory is now over 5,000 and increasing with each cutback. It is expected that even with the innovations of the past 8 years the inventory and case load will increase to a point where the reputation of the Commission, and its ability to provide effective service to the Commonwealth, will be an issue for the new administration. At present, the expectations of complainants is greater than the service that can be provided.

With the policy decision cutting MCAD to a staff of 38, the Commission began operating with fewer than the absolute minimum number of people it takes to carry out agency mandates. It has been possible to ride out the problems for six to twelve months. However, the moral problems have begun to surface in increased sick leave, requests for leaves of absence and a general feeling of hopelessness that management has had to bolster. Many of the best employees have sought and obtained employment elsewhere, while others have made long term career changes.

As the State's only law enforcement agency for civil rights, citizens of the Commonwealth have looked to the MCAD for leadership and as a resource on civil rights matters.

MCAD is no longer able to provide research information on civil rights: speaking engagements are limited and few; monitoring of case orders and agreements is no longer possible; and public hearings, costing an average of \$4,000 a piece, have been reduced. Even with the recent innovative move toward arbitration the inventory of cases waiting for hearing will increase: justice once more is delayed.

The most recent round of cuts have led to the closing of MCAD's office in Worcester. Future cuts will that, contrary to our mandate, other regional offices will have to experience a further reduction in staff or be closed.

Civil rights laws are under attack throughout the federal court system. As a result, a greater effort is needed in order to maintain the few gains that have been made since 1964. A much more rigorous standard is now required for making findings of fact and closing cases. To meet this heightened legal standard the need for a greater number of MCAD attorneys, investigators and support staff is evident.

The reduction of legal staff has meant that MCAD does not have attorneys with the time necessary to take cases into court. It is also extremely difficult for the agency to find legal personnel to serve subpoenas or obtain temporary restraining orders; justice is once more denied.

The reduction of the investigative staff has meant that MCAD investigators carry case loads of 125 cases each. The unreasonableness of this case load can be demonstrated by way of the following example: if an investigator held a 15-minute conversation with each complainant during the course of one week that task alone would amount to a full work week. Due to the unmanageable number of cases which an investigator is responsible for the agency has had to reduce the number of days, from five to three days a week, that complaints are taken from the public: access to justice is again denied.

The reduction in the civil rights review unit has meant that the amount of technical assistance which the unit can provide to cities and towns is severely reduced. MCAD is not able to provide the training that is necessary to bring people to the level of knowledge required to administer the highly technical affirmative action programs. As a result many communities are placed in the vulnerable position of having to run a difficult program without adequate training. Furthermore, since the hiring results for minorities and women in nontraditional positions is in direct proportion to the monitoring performed by the civil rights review unit, cuts in this staff will reduce employment opportunities for minorities and women.

The reduction of personnel at MCAD to monitor the state's contract compliance program, which provides for the hiring of minorities on state-assisted construction, is a potential problem. To date, Massachusetts has been the only state without a work stoppage, due in part to the contract language of A & F Bulletin 75-14 and the concurrent monitoring. The language of Bulletin 75-14 has been upheld in federal court but without effective monitoring lawsuits may be expected in the short term.

When reductions in public funding occur usually the first to feel them are individuals in the protected classes. In the past these individuals have included minorities, women, elderly, homeless and disabled people. However, as additional classes of people are afforded protection under the civil rights laws many people who have not previously dealt with MCAD begin making demands on the agency: these new and often highly vocal groups have joined to an already impatient service population. Many non minority males, who only begin to experience discrimination after the age of 40, have contacted the Commission. Other non minority males, covered under handicap and sexual orientation protections, have been surprised to learn how few resources are allocated to address their problems. The MCAD is under constant and increasing pressure to deliver services which, within its present budget, it cannot provide.

The ultimate result of the horrific budgetary cuts made on the Agency will fall on the administration, as it finds itself involved in lengthy litigation. To date the dedicated staff has not brought grievances, but common sense indicates that the long term effect of working with people in crisis, the constant pressure of working under staffed and the increasing demands from constituent communities will result in the filing of complaints. Within the last month alone four staff members have been physically assaulted.

MCAD took a lead in proving a response to the U.S. Supreme Court decision in Crosby v. City of Richmond. However, it is only the beginning of this type of activity for the administration. Because of the federal attack on civil rights more of these types of activities will be required. It is only a matter of time before stronger defenses will be needed to support each of the Commonwealth's programs and policies. The highly sophisticated MBE/WBE programs, and employment affirmative action plans can expect challenges in the future. At the present time the mandates of Executive Orders with respect to handicap and Viet Nam- era veterans cannot be implemented. And the Governor is being asked to explain why affirmative action has reverted to last hired first fired.

VII. RECOMMENDED ACTIONS AND INITIATIVES

The following is a list of the initiatives, policies and programs which are recommended for consideration by the new administration:

A. Legislative

- H 2667. A bill to increase real estate license fees, with the additional monies used to enforce the State's fair housing laws.
- Equivalency legislation. Introduce legislation that will supplement existing housing legislation in order to meet HUD requirements.
- Education. Draft legislation to provide protection for minorities and women who are being discriminated against after gaining admission to educational institutions; MCAD only covers discrimination in admission.
- Public Accommodations. The dollar amount which can be awarded as damages needs to be increased.
- Assessing Cost.
- Private funding. A bill that would allow MCAD to receive grant awards from private foundations and other private sources.

B. Federal Contract Obligations

1. Equal Employment Opportunity Commission (EEOC)

The MCAD has two contracts with the EEOC for the processing of employment cases. Employment cases are dully filed with both MCAD and the EEOC and a continual updating of the contract must be maintained. The contract is specific and detailed in its requirements. Contract modifications are often made during the contract quarters.

- Title VII. During the past contract year the Commission closed 861 cases. It is recommended that this contract be maintained and that modifications in the number of cases to be closed be made on a regular basis; to meet this recommendation funding for adequate staffing must be provided.
- Age Cases. During the past contract year the Commission closed 195 cases. It is recommended that this contract be maintained and that modifications in this contract number be made, in

conjunction with the Title VII contract, on a regular basis.

2. Department of Housing and Urban Development (HUD)

- Title VIII. The continuation of all HUD contracts depends upon whether or not MCAD gains equivalency status by the end of 1992. HUD's new program requirements must be met.
- Children and Handicap. This grant for investigation of dual filed complaints, complaints filed both with MCAD and with HUD, makes MCAD an agent of HUD for investigative purposes. HUD's requirements, while stringent, do provide additional funds for staffing on cases that, whether or not HUD monies were available, must be investigated by the Commission in order to fulfill obligations under state law.
- Housing Testing Program. Although this program has been cut back it will run through the first year of the new administration. Without the testing program the larger systemic issues of housing discrimination will go undetected. The program has also served as a substitute for the large number of commission-initiated class action complaints done in the past.
- Incentive Funding. These are federal discretionary funds that an agency can compete for. MCAD is in the process of securing incentive funds that were lost as a result of the interpretation by HUD of one of its regulations; the result was not in MCAD's favor. Other HUD regional offices around the county have developed a different interpretation of this same regulation.

C. State Contract Obligations

The Dept. of Public Welfare has joined efforts with the MCAD to address the homeless issue by funding, in part, a program to further the Commission's antidiscrimination efforts. With the assistance of funding from this department, the MCAD has tested for discrimination against female heads-of-households holding section eight certificates who are living in welfare hotels. Through this program people have been housed; two public agencies have cooperated together for an elegant solution to the homeless problem. It is recommended that this program be continued and, in fact, expanded in order to provide immediate

complaint resolution for people holding rental subsidies that are illegally denied housing.

D. Ford Foundation Grant Funding

After being one of 25 finalists in the selection process for the award of this grant, from a field of 1300 applicants, it was noted that the ten awards were generally made to agencies that had applied in previous years. MCAD should re apply in 1991 for this grant, highlighting the success of the Housing Testing Program.

E. Obligations under Executive Orders and Regulations

Executive Order 227

Advise Secretariats to develop policies in the area of civil rights. The MCAD must monitor existing:

- Memoranda of Agreements
- Business Affirmative Action Plans
- Handicap Affirmative Action Executive Orders

F. Mandates Under Regulations of EOEA and EOCD

The MCAD provides Civil Rights reviews of cities and towns in the areas of:

- Employment
- Housing
- MBE/WBE
- Goods and Services

The agency must monitor 351 cities and towns and also provide technical assistance to all of their affirmative action staff members.

G. A & F Bulletin 75-14

MCAD must monitor the state agencies for compliance with this bulletin and continue as the named party in the appeal process.

H. Memoranda of Agreement with City Referral Agencies

MOAs must be signed in order for complaints to receive dual filing, at both the MCAD and the local level. Explicit procedures must be developed for the investigation and resolution of complaints. This should be done immediately with the following cities:

Boston
Cambridge

I. Priority of Cases

The agency has placed a high priority on the cases that receive dual filing at a federal agency and at MCAD, simply because the processing of these

cases pays for approximately 40% of the MCAD staff. If the state is to adequately fund the agency then it could be done on a first-come, first-served basis. Yet, because of the shortened life expectancy of complainants with AIDS a high priority has been placed on these cases. It has been the policy of the MCAD to prioritize other cases using common sense. It is recommended that this policy continue.

J. Case Performance Goals

Pursuant to the PMS and the EPRS each employee must be held accountable. Goals for case closure by attorneys and investigators have been set and are recommended to be continued at the current levels. The minimum annual goals are 30-per lawyer and 72-per investigator.

K. Crosion Activity

Public hearings have been held and a report will be issued by the end of the year. The role of the MCAD should include providing education and advise to state and municipal agencies that must take action pursuant to the case.

L. The Future Structure of the MCAD

If any further reductions are made to the agency's budget then a choice between mandates must be made. The highest priority is that of processing discrimination cases, with federally-funded employment and housing cases being the most important. The federal funds are what pay for the staff to do case processing. If the federally-funded cases do not receive top priority then funds are further reduced, resulting in fewer persons employed to process cases.

Further reductions in the Commission's budget will lead to the closing of all branch offices; the Worcester office has already been closed. However, should proper funding be allocated to the agency then following the restoration of the Worcester office, a Lawrence branch office should be opened. The protected classes in the Lawrence area are making growing demands upon the agency and the need for an office in this location is evident.

More word processing equipment must be added to the MCAD to meet the needs of the already growing demands on our five existing processors; these five machines are shared among 20 staff members.

M. Processing of State Cases

The next administration must begin immediately to establish a policy which each of the Secretaries can implement in order to settle cases pending at MCAD. The attitude displayed by state and municipal respondents is outrageous; treating these cases as if the state and local agencies can resort to unlimited resources in establishing their defense. Outside counsel for these respondents act like they have won the lottery when handling these cases; the cases drag on endlessly, squandering precious resources. A policy decision demanding that counsel for government respondents act with the same spirit of cooperation as is displayed by private sector attorneys would be cost effective for all concerned.

N. Alternatives to Funding

The MCAD's policy of using volunteers to assist the staff, using mediation techniques to reach resolution rather than holding a costly public hearing, and adding the telephone time-saving devices need to be continued.

At some point, however, even with every possible measure having been taken to cut costs and make innovations with existing resources, the administration must face facts. The service needs of the protected classes can only be provided if these individuals are willing to wait 2 years for a resolution of their complaints.

VIII. NARRATIVE SUMMARY OF REPORT

The MCAD is at a crossroad. In its 49 year history the agency has been through many changes. The Commonwealth can proudly point to its passage of pioneering legislation and the subsequent additions of new MCAD mandates; the Commission continues to play a strong leadership role in the civil rights law enforcement community. New mandates include the addition of the protected class for disabled and sexual orientation. In other areas the laws have been made stronger, including greater fines for public accommodations cases and attorney fees and costs for complainants in employment and housing cases.

Agency innovations have included the introduction of management informations systems, accountability through employee reviews and time-saving innovations, in case processing.

During the past eight years the MCAD has been a high profile agency, bringing civil rights issues to the public's attention through use of the news media. Through federal

funding from HUD, one's right under state and federal law to be free from discrimination in housing has been brought to television audiences by way of one minute spots and open communication with TV, radio and newspaper reporters. Each of the Commissioners have discussed civil rights issues by way of television appearances and through hosting radio talk shows.

The MCAD has revitalized its review of cities and towns, demanding that municipalities comply with their affirmative action obligations in order to receive state funding. MCAD's decisions opposing funding for particular municipalities have been taken courageously and only as a last resort. As a result employment of minorities and females in municipalities has continued to increase. Municipal programs for MBE/WBEs have brought millions of dollars into the minority and female business community; communities that would not exist without MCAD monitoring.

The fair housing efforts of the MCAD, primarily through the Fair Housing Testing Program and the Fair Housing Program reviews of the Civil Rights Review Unit, have placed the agency in the national spotlight. Creative testing of housing markets throughout the state have produced hard evidence that minorities and female heads-of-households frequently encounter discrimination in their efforts to obtain housing. Innovative resolutions to the complaints filed under the testing program have included the participation of minorities and females in market areas that have discriminated against them. These resolutions are being carried out in conjunction with the Commission's work with fair housing officers in cities and towns; demonstrating the agency's commitment to working in concert with others that have equal opportunity in housing as a goal.

The Commission can proudly look back on these past eight years as period of time during which the District Attorneys have worked in conjunction with the civil rights community to prosecute violators of hate crimes.

The past eight years represent a part of the history that will be passed on to a new administration; with this history the new administration must provide civil rights enforcement and leadership through the '90s. In order to meet the expectations of all protected classes the new administration must face the issue of resource allocation. Cutbacks and continual underfunding of this agency is the most pressing issue. The Commission believes that part of a solution to this problem is in House Bill 2667. Massachusetts has a very low real estate licence fee compared to other states. The commission subscribes to the policy that those who do the crime should have to pay the fine; therefore, real estate brokers and salesmen who

violate the fair housing laws should pay for enforcement of the laws. Through the housing testing program and in the processing of housing cases the Commission has been able to document that a minority or female head-of-household, receiving rental assistance, stands a 66% chance of being denied housing simply because they receive rental assistance. This form of housing discrimination is illegal and must be eliminated. By adding a few dollars to the real estate licence fee the MCAD would have adequate resources to address this problem. The new administration is strongly urged to support this recommendation or locate another funding source.

The federal attack on civil rights laws is not going to decrease nor are the number of people requiring redress to violations of their civil rights. Strong enforcement mechanisms are the least costly ways of resolving these problems. It should be noted that the Hispanic population is the fastest growing minority group in Massachusetts. It is expected that over the next decade the Hispanic population will increase from 10 to 20 percent. Without a safety mechanism in place, such as a fully operational state Commission Against Discrimination, Massachusetts will be caught by surprise. The example of Lawrence should not be forgotten.

The awareness of disability issues in the '90s calls for increased enforcement of existing laws, new legislation and further educational efforts. The number of handicap cases filed with the Commission have increased by 5 percent each year since the addition of this protected class. Handicap cases now represent 23% of the agency case load.

The civil rights of women are under attack at the federal level. It is a constant struggle to maintain the few gains that have been made by women in nontraditional positions. The issues that existed when equal employment laws were passed continue to exist. A constant vigilance, in both antidiscrimination enforcement and in affirmative action, is required.

It is through an agency such as MCAD that diverse protected classes are brought together for limited resources. It is strongly recommend that the new administration work with each of the protected classes to accomplish the mandates of the commission -- -to enforce the civil rights laws of the Commonwealth.